



2001 SENATE BILL 440

February 13, 2002 - Introduced by Senators BURKE, HUELSMAN, DARLING, GEORGE, HANSEN, MOORE, PLACHE, ROESSLER and SCHULTZ, cosponsored by Representatives WIECKERT, HUNDERTMARK, BOYLE, COGGS, HAHN, KAUFERT, LA FAVE, LADWIG, LASSA, J. LEHMAN, MCCORMICK, MEYERHOFER, MUSSER, POCAN, RYBA, SHILLING, SINICKI, STONE, SYKORA, TURNER, BERCEAU and FREESE. Referred to Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform.

1 **AN ACT to repeal** 940.32 (1) (d) and 940.32 (3m); **to renumber and amend**
2 940.32 (1) (a), 940.32 (1) (b) and 940.32 (2m); **to amend** 940.32 (2) (intro.),
3 940.32 (2) (a), 940.32 (2) (b), 940.32 (2) (c), 940.32 (3) (intro.), 940.32 (3) (a),
4 940.32 (3) (b), 947.013 (1t) and 947.013 (1x) (a); and **to create** 940.32 (1) (a) 1.,
5 940.32 (1) (a) 2., 940.32 (1) (a) 3., 940.32 (1) (a) 4., 940.32 (1) (a) 5., 940.32 (1)
6 (a) 6., 940.32 (1) (a) 7., 940.32 (1) (a) 8., 940.32 (1) (a) 9., 940.32 (1) (a) 10., 940.32
7 (1) (a) 11., 940.32 (1) (am), 940.32 (1) (ap), 940.32 (1) (cd), 940.32 (2e), 940.32
8 (2m) (a), 940.32 (2m) (b), 940.32 (2m) (d), 940.32 (2m) (e) and 940.32 (3) (c) of
9 the statutes; **relating to:** stalking and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a person commits the offense of stalking if: 1) he or she engages in a course of conduct directed at another person (the victim) that would cause a reasonable person to fear bodily injury to or death of himself or herself or a member of his or her immediate family (the "reasonableness of the fear element"); 2) the person knows or should know that the victim will reasonably fear bodily injury to or death of himself or herself or a member of his or her immediate family (the "knowledge element"); and 3) the person's acts induce such fear in the victim.

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Current law defines “course of conduct” to mean maintaining, on two or more calendar days, a visual or physical proximity to a person. In addition, current law defines “immediate family” to mean a spouse, parent, child, sibling, or any other person who regularly resides in the household or who within the prior six months regularly resided in the household.

A person who commits the offense of stalking is guilty of a Class A misdemeanor. More severe penalties may be imposed for stalking under certain circumstances. (The tables below describe the circumstances under which the more severe penalties apply and what those penalties are, as well as the penalties that are applicable under this bill.)

This bill modifies the elements of the offense of stalking and establishes a new penalty structure. First, the bill redefines “course of conduct” to mean a series of one or more acts carried out over time, however short or long, that show a continuity of purpose. The acts may include: 1) maintaining a visual or physical proximity to the victim; 2) approaching or confronting the victim; 3) appearing at the victim’s workplace or home or contacting the victim’s employer, coworkers, or neighbors; 4) entering property owned, leased, or occupied by the victim; 5) contacting the victim by telephone or causing the victim’s telephone or any other person’s telephone to ring repeatedly or continuously; 6) sending or delivering material or an object to the victim or his or her home; 7) delivering an object to a member of the victim’s family or household or an employer, coworker, or friend of the victim with the intent it be delivered to the victim; 8) harming an animal owned or cared for by the victim or a member of the victim’s family or household; or 9) causing another person to engage in any of these acts.

Second, the bill establishes the following penalties for stalking offenses:

<i>Special circumstances under which offense occurs</i>	<i>Classification under current law</i>	<i>Classification under bill</i>
None (<i>i.e.</i> , basic offense of stalking)	Class A misdemeanor	Class E felony
After conviction for misdemeanor or felony harassment or another stalking conviction	Class D felony (only if offense involves gaining access to a government record)	Class D felony (requirement regarding gaining access to record eliminated)
After conviction for violent crime	N/A	Class D felony
After conviction for any crime against current victim within last seven years	N/A	Class D felony

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Involving gaining access to an electronic record containing personally identifiable information regarding the victim	Class D felony	Class D felony (modified to cover causing another person to gain access to the record)
Involving unlawful wiretapping or unlawful tracing of a telephone call	N/A	Class D felony
Victim is a minor	N/A	Class D felony
Victim suffers bodily harm	Class E felony	Class C felony
Family or household member suffers bodily harm	N/A	Class C felony
After conviction for misdemeanor or felony harassment or another stalking conviction against current victim within last seven years	Class E felony	Class C felony
After conviction for violent crime against current victim within last seven years	N/A	Class C felony
Act involved in the course of conduct involves use of a dangerous weapon	N/A	Class C felony

Third, the bill prohibits a person from engaging in any of the individual acts that can, in combination with other acts, constitute a course of conduct, if all of the following apply: 1) the person was previously convicted of sexual assault or found to have committed an act of domestic abuse; 2) the individual at whom the current act is directed was the victim of the sexual assault or the act of domestic abuse; 3) the person intends that the act will place the victim in reasonable fear of bodily injury to or death of himself or herself or a member of his or her family or household; and 4) the person's acts induce such fear in the victim. This new offense is a Class E felony.

Fourth, the bill revises the reasonableness of the fear element. Under the bill, the court, in determining whether any fear resulting from the course of conduct would be reasonable, must consider whether the course of conduct would induce fear not just in a reasonable person, but in a reasonable person under the same circumstances as the victim.

Fifth, the bill replaces the knowledge element with an element based on the actor's intent. Under the bill, in order for a course of conduct to constitute stalking, the actor must intend that at least two of the acts that constitute the course of conduct will place the victim in reasonable fear of bodily injury to or the death of himself or herself or a member of his or her family or household.

Sixth, the bill replaces the term "immediate family" with separate definitions for "member of a family" and "member of a household." Under the bill, "member of a family" is defined to mean: 1) a spouse, parent, child, or sibling; or 2) any person who is related to another individual by blood or adoption. "Member of a household" is defined to mean any person who regularly resides in the household of another, or who, within the prior six months, regularly resided in the household of another.

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The penalties for the offenses described above are as follows:

<i>Crime</i>	<i>Maximum fine</i>	<i>Maximum term of Imprisonment</i>
Class A misdemeanor (not used under the bill)	\$10,000	Nine months
Class E felony	\$10,000	Five years
Class D felony	\$10,000	Ten years
Class C felony	\$10,000	Fifteen years

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 940.32 (1) (a) of the statutes is renumbered 940.32 (1) (a) (intro.)
2 and amended to read:

3 940.32 (1) (a) (intro.) “Course of conduct” means ~~repeatedly maintaining a~~
4 ~~visual or physical proximity to a person. a series of 2 or more acts carried out over~~
5 ~~time, however short or long, that show a continuity of purpose, including any of the~~
6 following:

7 **SECTION 2.** 940.32 (1) (a) 1. of the statutes is created to read:

8 940.32 (1) (a) 1. Maintaining a visual or physical proximity to the victim.

9 **SECTION 3.** 940.32 (1) (a) 2. of the statutes is created to read:

10 940.32 (1) (a) 2. Approaching or confronting the victim.

11 **SECTION 4.** 940.32 (1) (a) 3. of the statutes is created to read:

12 940.32 (1) (a) 3. Appearing at the victim’s workplace or contacting the victim’s
13 employer or coworkers.

14 **SECTION 5.** 940.32 (1) (a) 4. of the statutes is created to read:

15 940.32 (1) (a) 4. Appearing at the victim’s home or contacting the victim’s
16 neighbors.

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1 **SECTION 6.** 940.32 (1) (a) 5. of the statutes is created to read:

2 940.32 (1) (a) 5. Entering property owned, leased, or occupied by the victim.

3 **SECTION 7.** 940.32 (1) (a) 6. of the statutes is created to read:

4 940.32 (1) (a) 6. Contacting the victim by telephone or causing the victim's
5 telephone or any other person's telephone to ring repeatedly or continuously,
6 regardless of whether a conversation ensues.

7 **SECTION 8.** 940.32 (1) (a) 7. of the statutes is created to read:

8 940.32 (1) (a) 7. Sending material by any means to the victim or, for the purpose
9 of obtaining information about, disseminating information about, or communicating
10 with the victim, to a member of the victim's family or household or an employer,
11 coworker, or friend of the victim.

12 **SECTION 9.** 940.32 (1) (a) 8. of the statutes is created to read:

13 940.32 (1) (a) 8. Placing an object on or delivering an object to property owned,
14 leased, or occupied by the victim.

15 **SECTION 10.** 940.32 (1) (a) 9. of the statutes is created to read:

16 940.32 (1) (a) 9. Delivering an object to a member of the victim's family or
17 household or an employer, coworker, or friend of the victim or placing an object on,
18 or delivering an object to, property owned, leased, or occupied by such a person with
19 the intent that the object be delivered to the victim.

20 **SECTION 11.** 940.32 (1) (a) 10. of the statutes is created to read:

21 940.32 (1) (a) 10. Harming an animal owned or cared for by the victim or a
22 member of the victim's family or household.

23 **SECTION 12.** 940.32 (1) (a) 11. of the statutes is created to read:

24 940.32 (1) (a) 11. Causing a person to engage in any of the acts described in
25 subds. 7. to 10.

SENATE BILL 440**SECTION 13**

1 **SECTION 13.** 940.32 (1) (am) of the statutes is created to read:

2 940.32 (1) (am) “Domestic abuse” has the meaning given in s. 813.12 (1) (a).

3 **SECTION 14.** 940.32 (1) (ap) of the statutes is created to read:

4 940.32 (1) (ap) “Domestic abuse offense” means an act of domestic abuse that
5 constitutes a crime.

6 **SECTION 15.** 940.32 (1) (b) of the statutes is renumbered 940.32 (1) (cb) and
7 amended to read:

8 940.32 (1) (cb) “~~Immediate family~~” “Member of a family” means a spouse,
9 parent, child, sibling, or any other person ~~who regularly resides in the household or~~
10 ~~who within the prior 6 months regularly resided in the household~~ who is related by
11 blood or adoption to another.

12 **SECTION 16.** 940.32 (1) (cd) of the statutes is created to read:

13 940.32 (1) (cd) “Member of a household” means a person who regularly resides
14 in the household of another or who within the previous 6 months regularly resided
15 in the household of another.

16 **SECTION 17.** 940.32 (1) (d) of the statutes is repealed.

17 **SECTION 18.** 940.32 (2) (intro.) of the statutes is amended to read:

18 940.32 (2) (intro.) Whoever meets all of the following criteria is guilty of a Class
19 ~~A misdemeanor~~ E felony:

20 **SECTION 19.** 940.32 (2) (a) of the statutes is amended to read:

21 940.32 (2) (a) The actor intentionally engages in a course of conduct directed
22 at a specific person that would cause a reasonable person under the same
23 circumstances to fear bodily injury to himself or herself or a member of his or her
24 immediate family or to fear the death of himself or herself or a member of his or her
25 immediate family or household.

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1 **SECTION 20.** 940.32 (2) (b) of the statutes is amended to read:

2 940.32 (2) (b) The actor ~~has knowledge or should have knowledge~~ intends that
3 at least one of the acts that constitute the course of conduct will place the specific
4 person ~~will be placed~~ in reasonable fear of bodily injury to ~~himself or herself or a~~
5 ~~member of his or her immediate family or will be placed in reasonable fear of the~~
6 death of himself or herself or a member of his or her ~~immediate family~~ or household.

7 **SECTION 21.** 940.32 (2) (c) of the statutes is amended to read:

8 940.32 (2) (c) The actor's acts induce fear in the specific person of bodily injury
9 to ~~himself or herself or a member of his or her immediate family~~ or induce fear in the
10 ~~specific person~~ of the death of himself or herself or a member of his or her ~~immediate~~
11 family or household.

12 **SECTION 22.** 940.32 (2e) of the statutes is created to read:

13 940.32 (2e) Whoever meets all of the following criteria is guilty of a Class E
14 felony:

15 (a) After having been convicted of sexual assault under s. 940.225, 948.02, or
16 948.025 or a domestic abuse offense, the actor engages in any of the acts listed in sub.
17 (1) (a) 1. to 11., if the act is directed at the victim of the sexual assault or the domestic
18 abuse offense.

19 (b) The actor intends that the act will place the specific person in reasonable
20 fear of bodily injury to or the death of himself or herself or a member of his or her
21 family or household.

22 (c) The actor's act induces fear in the specific person of bodily injury to or the
23 death of himself or herself or a member of his or her family or household.

24 **SECTION 23.** 940.32 (2m) of the statutes is renumbered 940.32 (2m) (intro.) and
25 amended to read:

SENATE BILL 440**SECTION 23**

1 940.32 **(2m)** (intro.) Whoever violates sub. (2) is guilty of a Class D felony if he
2 or she any of the following applies:

3 (c) The actor intentionally gains access or causes another person to gain access
4 to a record in electronic format that contains personally identifiable information
5 regarding the victim in order to facilitate the violation ~~under sub. (2).~~

6 **SECTION 24.** 940.32 (2m) (a) of the statutes is created to read:

7 940.32 **(2m)** (a) The actor has a previous conviction for a violent crime, as
8 defined in s. 939.632 (1) (e) 1., or a previous conviction under this section or s. 947.013
9 (1r), (1t), (1v), or (1x).

10 **SECTION 25.** 940.32 (2m) (b) of the statutes is created to read:

11 940.32 **(2m)** (b) The actor has a previous conviction for a crime, the victim of
12 that crime is the victim of the present violation of sub. (2), and the present violation
13 occurs within 7 years after the prior conviction.

14 **SECTION 26.** 940.32 (2m) (d) of the statutes is created to read:

15 940.32 **(2m)** (d) The person violates s. 968.31 (1) or 968.34 (1) in order to
16 facilitate the violation.

17 **SECTION 27.** 940.32 (2m) (e) of the statutes is created to read:

18 940.32 **(2m)** (e) The victim is under the age of 18 years at the time of the
19 violation.

20 **SECTION 28.** 940.32 (3) (intro.) of the statutes is amended to read:

21 940.32 **(3)** (intro.) Whoever violates sub. (2) ~~under any of the following~~
22 ~~circumstances~~ is guilty of a Class ~~E~~ C felony if any of the following applies:

23 **SECTION 29.** 940.32 (3) (a) of the statutes is amended to read:

24 940.32 **(3)** (a) The act results in bodily harm to the victim or a member of the
25 victim's family or household.

