

2003 DRAFTING REQUEST

Bill

Received: 11/07/2002

Received By: rryan

Wanted: As time permits

Identical to LRB:

For: Donald Friske (608) 266-7694

By/Representing: Tim

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters: rryan

Subject: Criminal Law - miscellaneous

Extra Copies: MGD

Submit via email: YES

Requester's email: Rep.Friske@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Prohibit inviting harassment on the internet

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rryan 11/18/2002 mdsida 12/12/2002	jdyer 12/18/2002		_____			S&L Crime
/1			rschluet 12/19/2002	_____	lemery 12/19/2002		S&L Crime

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/2	mdsida 12/20/2002	jdyer 12/30/2002	rschluet 12/30/2002	_____	lemery 12/30/2002		S&L Crime
/3	rryan 05/01/2003	jdyer 05/01/2003	chaskett 05/01/2003	_____	sbasford 05/01/2003	amentkow 05/01/2003	

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Att Intro

<END>

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/1		1/3 5/1 jld	rschluet 12/19/2002		lemery 12/19/2002		S&L Crime

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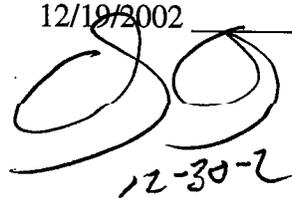
Prohibit inviting harassment on the internet

Instructions:

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/?	rryan 11/18/2002	jdyer 12/18/2002		_____			S&L Crime
	mdsida 12/12/2002	1/2 12/31 jld		_____			
/1			rschluet 12/19/2002	_____	lemery 12/19/2002		



Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

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		1 12/18 jld					
FE Sent For:							

Handwritten notes: "1 12/18 jld", "PB", and "<END>" with a signature.

11/7/02

Tim, Rep. Fiske

Redraft 01 ABS31 (1429/1)

except make new crime a Class A
misd instead of a Class E felony
- is aware of penalty changes
effective 2/1/03

11/18

Plc to Tim (cover e-mails?)

He will call back

Yes.

6.47(1)(b)

(b) "Offense relating to domestic abuse" means an offense specified in s. 940.19, 940.20 (1m), 940.201, 940.22, 940.225, 940.32, 947.013, 948.02, 948.025, 948.06, 948.09 or 948.095.

29.921(3)

(3) Harassment. The department and its wardens may execute and serve warrants and processes issued for violations of s. 947.013 (1m) (b) if the victim of the harassment is intentionally selected because of the victim's race in the same manner as any constable may serve and execute the process; and may arrest, with or without a warrant, any person detected in the actual violation, or whom the warden has probable cause to believe guilty of a violation of s. 947.013 (1m) (b), whether the violation is punishable by criminal penalties or by forfeiture and may take the person before any court in the county where the offense was committed and make a proper complaint. For the purpose of enforcing s. 947.013 (1m) (h), any warden may stop and board any boat and stop any vehicle, if the warden reasonably suspects there is a violation of s. 947.013 (1m).

36.11(22)(a)1.a.

a. The legal definitions of, and penalties for, sexual assault under ss. 940.225, 948.02 and 948.025, sexual exploitation by a therapist under s. 940.22 and harassment under s. 947.013.

38.12(11)(a)1.

1. The legal definitions of, and penalties for, sexual assault under ss. 940.225, 948.02 and 948.025, sexual exploitation by a therapist under s. 940.22 and harassment under s. 947.013.

48.685(2)(bb)

(bb) If information obtained under par. (am) or (b) 1. indicates a charge of a serious crime, but does not completely and clearly indicate the final disposition of the charge, the department, county department, child welfare agency, school board or entity shall make every reasonable effort to contact the clerk of courts to determine the final disposition of the charge. If a background information form under sub. (6) (a) or (am) indicates a charge or a conviction of a serious crime, but information obtained under par. (am) or (b) 1. does not indicate such a charge or conviction, the department, county department, child welfare agency, school board or entity shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and the final disposition of the complaint. If information obtained under par. (am) or (b) 1., a background information form under sub. (6) (a) or (am) or any other information indicates a conviction of a violation of s. 940.19 (1), 940.195, 940.20, 941.30, 942.08, 947.01 or 947.013 obtained not more than 5 years before the date on which that information was obtained, the department, county department, child welfare agency, school board or entity shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and judgment of conviction relating to that violation.

50.065(2)(bb)

(bb) If information obtained under par. (am) or (b) indicates a charge of a serious crime, but does not completely and clearly indicate the final disposition of the charge, the department or entity shall make every reasonable effort to contact the clerk of courts to determine the final disposition of the charge. If a background information form under sub. (6) (a) or (am) indicates a charge or a conviction of a serious crime, but information obtained under par. (am) or (b) does not indicate such a charge or conviction, the department or entity shall make every reasonable effort to contact the clerk of courts to obtain a copy of the

criminal complaint and the final disposition of the complaint. If information obtained under par. (am) or (b), a background information form under sub. (6) (a) or (am) or any other information indicates a conviction of a violation of s. 940.19 (1), 940.195, 940.20, 941.30, 942.08, 947.01 or 947.013 obtained not more than 5 years before the date on which that information was obtained, the department or entity shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and judgment of conviction relating to that violation.

778.25(1)(a)2.

2. Under s. 947.013 (1m) or a local ordinance strictly conforming to s. 947.013 (1m) brought against an adult in circuit court.

813.125(3)(a)2.

2. The judge or circuit court commissioner finds reasonable grounds to believe that the respondent has violated s. 947.013.

813.125(4)(a)3.

3. After hearing, the judge or circuit court commissioner finds reasonable grounds to believe that the respondent has violated s. 947.013.

813.125(5)(a)3.

3. That the respondent has violated s. 947.013.

971.37(1m)(a)2.

2. An adult accused of or charged with a criminal violation of s. 940.19, 940.20 (1m), 940.201, 940.225, 940.23, 940.285, 940.30, 940.42, 940.43, 940.44, 940.45, 940.48, 941.20, 941.30, 943.01, 943.011, 943.14, 943.15, 946.49, 947.01, 947.012 or 947.0125 and the conduct constituting the violation involved an act by the adult person against his or her spouse or former spouse, against an adult with whom the adult person resides or formerly resided or against an adult with whom the adult person has created a child.

973.055(1)(a)1.

1. The court convicts the person of a violation of a crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.19, 940.20 (1m), 940.201, 940.21, 940.225, 940.23, 940.285, 940.30, 940.305, 940.31, 940.42, 940.43, 940.44, 940.45, 940.48, 941.20, 941.30, 943.01, 943.011, 943.14, 943.15, 946.49, 947.01, 947.012 or 947.0125 or of a municipal ordinance conforming to s. 940.201, 941.20, 941.30, 943.01, 943.011, 943.14, 943.15, 946.49, 947.01, 947.012 or 947.0125; and

New York State Bar Journal
March/April 1998
Vol. 70, No. 3

Harassment: A Simple Charge, with a complicated application

by John M. Shields **

Several recent decisions have potentially further complicated the prosecution of a harassment charge. Since its inception in New York, the charge of harassment has received consistent legal challenges, resulting in repeated attempts by the courts and the legislature to amend and adequately define the statute. In fact, in 1989 the Court of Appeals held that one of the original subdivisions of the harassment statute improperly prohibited constitutionally protected speech. *People v. Dietze*, 75 N.Y. 2d 47, 550 N.Y.S. 2d 595 (1989). In 1992, the legislature redefined and expanded the crime of harassment into two degrees, designating the newly created section as more serious, and thereby a misdemeanor offense. See McKinney's, Penal Law § 240.26, Supp. Pract. Comm. The challenge within the criminal justice system is to apply and enforce the existing statute, while excluding those allegations that do not fall within the current boundaries.

Constitutionally Protected Speech

In *Dietze*, the Court of Appeals declared the former subdivision of the harassment statute, which concerned harassment by abusive language, as unconstitutional. *Dietze* at 51-53. In striking down the provision prohibiting the use of obscene or abusive language, the court held that the statute could be violated by constitutionally protected speech. *Id.* at 51-52. The Court declined to intervene and narrow an otherwise overbroad statute. *Id.* at 53. Although judicial construction may have remedied the overbreadth of the statute, it would simultaneously render it impermissibly vague. *Id.* Such a deficiency is especially intolerable in a statute regulating speech. *Id.*

Specifically in *Dietze*, the court reversed the defendant's conviction, holding that the defendant's statement that she would "beat the crap out of (the victim) some day or night in the street" did not violate the statutory provision against threatening to strike another. *Dietze* at 53-54. There was nothing to demonstrate that such a statement was serious, legitimate, or accompanied by any other conduct to demonstrate that it was anything more than a crude outburst. *Id.* While genuine threats of physical harm fall within the parameters of the statute, such outbursts, without evidence of further acts or threats, do not. *Dietze* at 54, citing *People v. Todaro*, 26 N.Y. 2d 325, 330, 310 N.Y.S. 2d, 303, 308 (1970). In *Todaro*, the Court of Appeals held that something more must be established than an individual expressing anger or annoyance in terms of apparent bravado, particularly absent further proof tending to confirm the criminal nature of the acts charged. *Todaro* at 330.

"Specific Intent" and "No Legitimate Purpose" Required

In addition to the constitutional concerns, the courts have focused on interpreting and applying the key elements of the harassment statute. In order to sustain a conviction under this section it is necessary to prove a specific intent to harass and intimidate and that the alleged conduct serves no legitimate purpose. *People v. Cifarelli*, 115 Misc. 2d 587, 588 (Crim. Ct., Queens Cty., 1982). In *Cifarelli*, criminal prosecution for harassment was commenced against the defendant after complaints were received from a neighbor regarding frequent and loud drum playing. *Id.* at 587. The defendant was a professional musician who confined his practicing to reasonable hours. *Id.* at 587, 590. The court held that it was clear that the defendant's only intent was to practice, not to purposefully aggravate his neighbor. *Id.* at 588. The fact that he may have known that his playing disturbed his neighbor is irrelevant. *Id.* It cannot be said that the defendant's practicing his artistic talents serves no legitimate purpose. *Id.* In dismissing the charge, the court stated that criminal courts should not be utilized to resolve civil disputes. *Id.* The District Attorney's office, in their discretion, should have refused to prosecute this case, which amounted to "an unwarranted waste of judicial time and efficiency." *Id.* at 589; see also *People v. Markovitz*, 102 Misc. 2d 575 (Crim. Ct., N.Y. Cty., 1979) (normal operation of a legitimate business could not constitute criminal offense).

Statute Requires a "Course of Conduct" or "Repeated Acts"

Additionally, the New York courts have focused on the fact that the statute contemplates a "course of conduct" or "repeated acts." See *People v. Wood*, 59 N.Y. 2d 811, 812 (1983). In *Wood*, the defendant was convicted of harassment for slapping a police officer's arm and uttering an obscenity when the police officer put her arm on the defendant. *Id.* at 811. In dismissing the charge, the court stated that the prosecution must establish that the defendant engaged in a course of conduct or repeatedly committed acts which alarmed or seriously annoyed another person and served no legitimate purpose. *Id.* at 812, citing P.L. § 240.25(5). Because no evidence was presented that the defendant's conduct was anything other than an isolated incident, the People failed to demonstrate the necessary elements of the charge of harassment. *Id.* at 812. Similarly, in *People v. Valerio*, 60 N.Y. 2d 669 (1983), the court held that an isolated public accusation of union

corruption does not constitute the requisite course of conduct or the repeated commission of acts proscribed by the statute. Valerio at 670. Accordingly, a course of conduct necessitates more than a single act.

In *People v. Malausky*, 127 Misc. 2d 84 (City Ct., Rochester, 1985), the trial court focused on whether the defendant "intended" to annoy, harass or alarm, while at the same time weighed the defendant's right to free speech. In *Malausky*, the defendant, from his car, invited three pedestrian females to his home to share a bottle of wine, offering them one hundred dollars (\$100). *Malausky* at 84. "The key to establishing the violation of harassment is evidentiary facts which support or tend to support an intent to annoy harass or alarm." *Id* at 86 (emphasis in original). The statute does not evaluate criminality by the impressions of an annoyed or disgruntled citizen. *Id*. Instead, the alleged conduct or language must by its nature be of a sort that would be a substantial interference with a reasonable person. *Id*. Annoying behavior alone does not support the charge of harassment. *Id*. In a free society, all citizens are subject to a certain degree of annoying behavior, which is not enough to cause the actor to suffer criminal sanctions. *Id* at 86-87. An individual must intend that such conduct annoy, harass or alarm another. *Id* at 86.

In *Malausky*, the court held that although the alleged conduct and language clearly created annoyance, it was neither unlawful, nor criminal. *Malausky* at 87. The *Malausky* court further held that the complaint in that case failed to alleged facts tending to support the necessary elements of intent. *Id*. Finally, the court indicated that the allegations did not adequately recite a course of conduct or repeated acts as contemplated by the statute. *Id*. "One brief conversation does not establish a course of conduct." *Malausky* at 87.

Distinction Under Anti-stalking Section for "Course of Conduct"

In applying the anti-stalking section of the harassment statute, courts have developed a distinction in interpreting the term "course of conduct." In *People v. Payton*, 161 Misc. 2d 170, 612 N.Y.S. 2d 815 (Crim. Ct., Kings Cty., 1994), the court stated that the term "course of conduct" may be interpreted to mean "a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose." *Payton* at 174, citing *People v. Tralli*, 88 Misc. 2d 117, 118 (App. Term, 2nd Dept. 1976).

The court, in *People v. Murray*, 167 Misc. 2d 857, 635 N.Y.S. 2d 928 (Crim. Ct., N.Y. Cty., 1995), applied the holding in *Payton* to find the defendant's conviction legally sufficient. *Murray* at 861. In *Murray*, the defendant walked alongside the complainant, barring her egress when she sought to escape into the safety of her office building. *Id*. The defendant continued to stalk her as she retreated, and again forcibly prevented her from obtaining assistance. *Id*. He then grabbed her arm and dragged her towards Central Park. *Id*. Throughout the entire episode, the defendant made it clear that his purpose was to compel the victim into the Park with him. *Id*. Although the incident was arguably short in duration, it is the defendant's "continuity of purpose" in engaging in the above acts that is the hallmark of the anti-stalking statutes. *Murray* at 861, citing *Tralli*.

Recent Cases Interpreting and Applying Existing Parameters

Recently, several courts have clarified, refined and applied the above articulated harassment standards. In *People v. Zullo*, 650 N.Y.S. 2d 926 (Dist. Ct., Nassau Cty., 1996), the court confronted the issues of constitutionally protected speech, "intent" to annoy or harass, "course of conduct" and "legitimate purpose" of the communication. *Zullo* at 927-28. The facts in *Zullo* involve a mother calling the noncustodial parent to discuss a unilateral deduction on his part of his court ordered child support. *Id* at 927. After the complainant hung up on the defendant and then failed to answer the telephone, the defendant left a message on the complainant's answering machine protesting the reduction in the support payment and additionally called him several arguably offensive names. *Id*. The court distinguished the situation in *Zullo* from *Dietze*, which held that vulgar, derisive language is constitutionally protected public speech, in that the communication occurred in the home of the complainant where the complainant enjoyed an expectation of privacy, and not in a public forum. *Zullo* at 927. However, the court further distinguished the *Zullo* case from *People v. Miguez*, 147 Misc. 2d 482, 556 N.Y.S. 2d 231 (N.Y.C. Crim. Ct. 1990), which involved a series of phone calls and messages to a totally unwilling audience who desired no contact with the defendant, clearly evidencing an intent to annoy or harass the complainant. *Zullo* at 927.

In *Zullo* there was one message protesting the unilateral and unauthorized reduction in child support. *Id*. By virtue of frequent visitation of the child in common, the parties must communicate with each other. *Id* at 927-28. "One isolated incident is not legally sufficient to sustain a conviction for harassment." *Id* at 928. The defendant's communication, in *Zullo*, was motivated by a legitimate concern that impacted directly upon the welfare of her children. *Id* at 928. "The mere fact that the defendant in anger or frustration uses colorful language in registering her displeasure with actions of the complainant does not render the communication within the ambit of the Penal Law." *Zullo* at 928. Similarly, in *People v. Sullivan*, -- Misc. 2d ---, N.Y.L.J., 3/12/97, p.29, col. 5 (App. Term, 9th and 10th Dist.), the Appellate Court held that the defendant's following of the complainant on the street while continuing to express his personal opinion or emotion, albeit in annoying and/or obscene speech, did not add a circumstance that would raise the character of the incident to the level of harassment. *Sullivan*.

In *People v. Hogan*, 172 Misc. 2d 279, 1997 WL 225139 (N.Y.C. Crim. Ct. 1997), the court reviewed and interpreted a number of the above issues and cases in dismissing two independent harassment charges. The two cases are part of a growing trend to charge people

involved in domestic incidents with harassment for verbal abuse. Hogan at *1. In the first case, the defendant engaged in a verbal dispute with the complainant and used obscene language. Id. When the complainant left the immediate location, the defendant followed her, attempting to continue their argument. Id. In the second case, the complainant alleged that the defendant cursed and screamed at her causing her to become alarmed and seriously annoyed. Id at *2.

Neither case involved express or implied threats of physical violence or harm. Id. Neither case alleges a "course of conduct" or "repeated acts" and there is no evidence that the verbal disputes involved served "no legitimate purpose." Finally, even if the conduct alleged did fall within the parameters of the statute, it would violate the First Amendment, just as the statements in Dietze did. Id.

In both cases, there were only allegations of an isolated incident, not the required course of conduct or repeated acts. Id, citing Wood, Valerio, and Malausky. In Hogan, the conduct in both cases amounts to no more than an emotional outburst of short duration. Hogan at *3. An argument that includes profanity does not rise to a course of conduct. Id. Further, the fact that the defendant followed the complainant out the door of the apartment during the argument does not turn a single event into a course of conduct. Id, citing Sullivan.

The accusatory instruments fail to allege facts showing that the verbal disputes involved had no legitimate purpose. Id. The registering of displeasure with another person is legitimate, protected speech. Hogan, citing Zullo. In the absence of factual allegations as to the context of the offensive language, it is impossible to infer that there was no legitimate purpose to the language used. Hogan at *3. While the alleged conduct in the relevant cases may have been abusive and cruel, it was not criminal. Id at *4.

It appears from its history and the above cases that the harassment statute has created, and will continue to create, a constant ground for the courts to attempt to define the parameters of the statute. A simple and minor charge remains a complicated and uncertain offense to apply.

** John M. Shields is a Deputy Town Attorney for the Town of Southampton. Formerly, Mr. Shields was an active trial attorney for the Legal Aid Society of Suffolk County. Mr. Shields graduated from Hamilton College and received his J.D. and M.B.A. from Fordham University. He currently has two Law Review articles pending immediate publication and has published several articles in the areas of business and criminal law.

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Dsida, Michael

From: Dsida, Michael
Sent: Tuesday, November 19, 2002 3:39 PM
To: Gary, Tim
Subject: Inducing harassment bill

1. Here is some language that could be used in lieu of what was at p. 2, lines 6-7 of last session's draft:

"(a) The message invites another to communicate with the individual and the actor intends that the individual be harassed by that communication."

I believe that this language reflects your intent, since it does not require the third party to intend to harass the victim. (Arguably, last session's bill does.)

But either this language or last session's language may be subject to a First Amendment challenge. Many state harassment statutes have survived such challenges; others have not. Wisconsin's current harassment statute (s. 947.013) does not appear to have been challenged in any reported opinion (though its predecessor was ruled unconstitutional in State v. Dronso, 90 Wis. 2d 110 (App. 1979)). But the statute that this bill would create may be at greater risk of being ruled unconstitutional than the harassment statute, since it does not contain a "no legitimate purpose" clause (see s. 947.013 (1m) (b)).

2. Last session's bill did not create any cross-references to the new provision. By contrast, ss. 947.012, 947.0125, and 947.013 are referred to in a number of sections dealing with domestic abuse. Did you want me to look at those cross-references to see if there are any sections that should contain a cross-reference to this new crime?

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@state.legis.wi.us



State of Wisconsin
2001 - 2002 LEGISLATURE

0634
LRB-1119/1

RLR:jld:pg

+mgd stays

D Note

³
~~2001~~ ASSEMBLY BILL ~~531~~

October 8, 2001 - Introduced by Representatives SCHNEIDER, GRONEMUS, M. LEHMAN, HAHN, RYBA and LASSA, cosponsored by Senator ROESSLER. Referred to Committee on Criminal Justice.

Regen

1 AN ACT to create 947.0125 (4) of the statutes; relating to: prohibiting certain
2 computer postings that invite harassment or obscene, lewd, or profane
3 communication, and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits the following certain conduct or communication that is intended to harass, intimidate, frighten, threaten, or abuse:

Harassment. Whoever engages in certain conduct intended to harass or intimidate another is subject to a Class B forfeiture, which is a forfeiture not to exceed \$1,000. If the actor engages in harassing or intimidating conduct while subject to a restraining order and the conduct is accompanied by a credible threat that places the victim in fear of death or great bodily harm, then the actor is guilty of a Class A misdemeanor, which is punishable by a fine not to exceed \$10,000, confinement in jail for up to nine months, or both.

Unlawful use of a telephone or of computerized communication systems. A person who makes a telephone call or sends a message over a computer system with intent to frighten, intimidate, threaten, abuse, or harass the recipient of the call or message and who threatens to injure the recipient is guilty of a Class B misdemeanor, which is punishable by a fine not to exceed \$1,000, confinement in jail for up to 90 days, or both. A person is also guilty of a Class B misdemeanor, if he or she makes a telephone call or sends a message over a computer system with intent to frighten,

ASSEMBLY BILL 531

and either: 1)

intimidate, threaten, or abuse the recipient of the call or message, ^{if} the call or message uses any obscene, lewd, or profane language or suggests any lascivious act, or ^{if} the call or message is made with intent to prevent disclosure of the actor's identity.

INSERT A

This bill makes it a Class ~~F~~^{A misdemeanor} ~~felony~~ to ~~post~~^{send, communicate with} or display on a computerized communication system any message that invites others to ~~harass~~^{harass} a person ~~or that~~^{one of} invites others to send messages or make telephone calls to the person using obscene, lewd, or profane language or suggesting a lascivious act, ~~if~~ the following two conditions apply: 1) the actor provides information in the message on how to contact the person, and ~~if~~ the actor intends that the person be harassed or that ~~obscene, lewd, or profane~~ messages or calls be sent or made to the person. A class ~~F~~^E felony is punishable by a fine not to exceed \$10,000, a term of confinement in prison followed by a term of extended supervision that together may not exceed five years; or both.

CRIME FE - S+L

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

1 SECTION 1. 947.0125 (4) ^{IX} of the statutes is created to read:

2 947.0125 (4) Whoever ^{sends,} posts or displays a message on a computerized
3 communication system under any of the following circumstances, if the message
4 includes information on how to contact the individual who is the subject of the
5 message, is guilty of a Class ^{A misdemeanor} ~~F~~^{felony}:

6 (a) The message invites another to ~~harass~~^{harass} the individual and the person who
7 ~~posts or displays the message~~^{sends,} intends that ~~another~~^{another} harass the individual ~~be~~^{be}

8 (b) The message invites another to send mail or a message to the individual or
9 make a telephone call to the individual and use obscene, lewd, or profane language,
10 or suggest any lewd or lascivious act in the mail, message, or telephone call, and the ~~actor~~
11 ~~person who posts or displays the message~~^{sends,} intends that another send mail or a
12 message to the individual or make a telephone call to the individual using obscene,
13 lewd, or profane language or suggesting any lewd or lascivious act.

(END)

and that the communication serves no legitimate purpose

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0634/1dn

MGD:

date

JLD

Tim:

As we discussed, this draft does not amend any of the domestic abuse-related statutes to create cross-references to the new offense. ✓

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0634/?ins

.....

INSERT A

CHECK
Δ

This bill makes it a Class A misdemeanor to send, post, or display on a computerized communication system any message that invites others to communicate with a person if the actor provides information in the message on how to contact the person and one of the following two conditions applies: 1) the actor intends that the person be harassed; or 2) the actor invites others to send messages or make telephone calls to the person using obscene, lewd, or profane language or suggesting a lascivious act and intends that those messages or calls be sent or made to the person.

(end ins A)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0634/1dn
MGD:jld:rs

December 18, 2002

Tim:

As we discussed, this draft does not amend any of the domestic abuse-related statutes to create cross-references to the new offense.

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

12/19

Plc to Tim

told him analysis needs to be ~~be~~ clarified

I will redraft



2003 BILL

Regen

1 AN ACT *to create* 947.0125 (4) of the statutes; **relating to:** prohibiting certain
2 computer postings that invite harassment or obscene, lewd, or profane
3 communication and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits the following conduct or communication that is intended to harass, intimidate, frighten, threaten, or abuse:

Harassment. Whoever engages in certain conduct intended to harass or intimidate another is subject to a Class B forfeiture, which is a forfeiture not to exceed \$1,000. If the actor engages in harassing or intimidating conduct while subject to a restraining order and the conduct is accompanied by a credible threat that places the victim in fear of death or great bodily harm, then the actor is guilty of a Class A misdemeanor, which is punishable by a fine not to exceed \$10,000, confinement in jail for up to nine months, or both.

Unlawful use of a telephone or of computerized communication systems. A person who makes a telephone call or sends a message over a computer system with intent to frighten, intimidate, threaten, abuse, or harass the recipient of the call or message and who threatens to injure the recipient is guilty of a Class B misdemeanor, which is punishable by a fine not to exceed \$1,000, confinement in jail for up to 90 days, or both. A person is also guilty of a Class B misdemeanor if he or she makes a telephone call or sends a message over a computer system with intent to frighten,

BILL

that either

*by that communication
and that the
communication
serve no legitimate
purpose*

intimidate, threaten, or abuse the recipient of the call or message and either: 1) the call or message uses any obscene, lewd, or profane language or suggests any lascivious act; or 2) the call or message is made with intent to prevent disclosure of the actor's identity.

This bill makes it a Class A misdemeanor to send, post, or display on a computerized communication system any message that ~~invites others to communicate with a person if the actor provides information in the message on how to contact the person and one of the following two conditions applies:~~ 1) ~~(the actor intends that the person be harassed; or 2) the actor~~ invites others to send messages or make telephone calls to the person using obscene, lewd, or profane language or suggesting a lascivious act ~~and~~ if the actor intends that those messages or calls be sent or made to the person.

*invites others
to communi-
cate with
that
person, if*

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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:

SECTION 1. 947.0125 (4) of the statutes is created to read:

947.0125 (4) Whoever sends, posts, or displays a message on a computerized communication system under any of the following circumstances, if the message includes information on how to contact the individual who is the subject of the message, is guilty of a Class A misdemeanor:

(a) The message invites another to communicate with the individual and the actor intends that the individual be harassed by that communication and that the communication [✓] serves no legitimate purpose.

(b) The message invites another to send mail or a message to the individual or make a telephone call to the individual and use obscene, lewd, or profane language or suggest any lewd or lascivious act in the mail, message, or telephone call, and the actor intends that another send mail or a message to the individual or make a

BILL

1 telephone call to the individual using obscene, lewd, or profane language or
2 suggesting any lewd or lascivious act.

3 (END)



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0634/2
RLR&MGD:jld:rs

3

Today

RMR

2003 BILL

Regen

1 AN ACT *to create* 947.0125 (4) of the statutes; relating to: prohibiting certain
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Analysis by the Legislative Reference Bureau

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BILL

intimidate, threaten, or abuse the recipient of the call or message and either: 1) the call or message uses any obscene, lewd, or profane language or suggests any lascivious act; or 2) the call or message is made with intent to prevent disclosure of the actor's identity.

This bill makes it a Class A misdemeanor to send, post, or display on a computerized communication system any message that provides information on how to contact a person and that either: 1) invites others to communicate with that person, if the actor intends that the person be harassed by that communication and that the communication serve no legitimate purpose; or 2) invites others to send messages or make telephone calls to the person using obscene, lewd, or profane language or suggesting a lascivious, if the actor intends that those messages or calls be sent or made to the person.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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

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2 947.0125 (4) Whoever sends, posts, or displays a message on a computerized
3 communication system under any of the following circumstances, if the message
4 includes information on how to contact the individual who is the subject of the
5 message, is guilty of a Class A misdemeanor:

6 (a) The message invites another to communicate with the individual and the
7 actor intends that the individual be harassed by that communication and that the
8 communication serve no legitimate purpose.

9 (b) The message invites another to send mail or a message to the individual or
10 make a telephone call to the individual and use obscene, lewd, or profane language
11 or suggest any lewd or lascivious act in the mail, message, or telephone call, and the
12 actor intends that another send mail or a message to the individual or make a

BILL

1 telephone call to the individual using obscene, lewd, or profane language or
2 suggesting any lewd or lascivious act.

3 (END)