

## 2003 ASSEMBLY BILL 738

January 7, 2004 - Introduced by Representatives HUEBSCH, SUDER, OWENS, GRONEMUS, SCHNEIDER, SERATTI, JESKEWITZ, SHILLING, F. LASEE, VAN ROY, KREIBICH, TOWNSEND, RHOADES, MONTGOMERY, BERCEAU, STASKUNAS, TURNER, WEBER, OLSEN, LADWIG, ALBERS, SINICKI and KRAWCZYK, cosponsored by Senators ROESSLER, SCHULTZ, MOORE, DARLING, BROWN, A. LASEE and LASSA. Referred to Committee on Criminal Justice.

1     **AN ACT** *to amend* 940.32 (1) (a) 10., 940.32 (2) (a), 940.32 (2) (b), 940.32 (2) (c),  
 2           940.32 (2e) (b) and 940.32 (2e) (c); and *to create* 940.32 (1) (a) 6m., 940.32 (1)  
 3           (d) and 940.32 (3m) of the statutes; **relating to:** stalking.

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### *Analysis by the Legislative Reference Bureau*

2001 Wisconsin Act 109 (Act 109) made substantial changes to the law on stalking. Under that law, as amended by Act 109, a person commits the offense of stalking if:

1. He or she intentionally engages in a course of conduct directed at another person (the victim) that would cause a reasonable person under the same circumstances to fear bodily injury to or the death of himself or herself or a member of his or her family or household.

2. The person intends that at least one 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 (state of mind element).

3. The person's acts induce fear of that type in the victim.  
 Current law lists a number of acts that may be part of a "course of conduct," including: 1) maintaining a visual or physical proximity to the victim; 2) approaching or confronting the victim; 3) appearing at the victim's workplace or contacting the victim's employer or coworkers; 4) appearing at the victim's home or contacting the victim's neighbors; 5) entering property owned, leased, or occupied by the victim; 6) contacting the victim by telephone or causing the victim's telephone or any other

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person's telephone to ring repeatedly or continuously; 7) sending material by any means to the victim or, under certain circumstances, to a member of the victim's family or household or an employer, coworker, or friend of the victim; 8) delivering an object to property owned, leased, or occupied by the victim; 9) 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 that the object be delivered to the victim; or 10) causing another person to engage in any of the acts described in items 7) to 9).

A person also commits the offense of stalking if all of the following apply:

1. The person was previously convicted of sexual assault or a domestic abuse offense against the victim.

2. The person engages in any one of the acts listed in items 1) to 10) above (as opposed to a course of conduct).

3. The person intends that the act 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.

4. The person's act induces fear of that type in the victim.

This bill makes several changes in the law on stalking. First, the bill modifies the state of mind element for both types of stalking offenses. It replaces the requirement that the state prove the offender's intent with a requirement that the state prove that the offender knew or should have known (the level of intent required in the stalking statute before Act 109) that at least part of the course of conduct (or the single act, in the case of stalking by a repeat offender) would result in one of the specified adverse consequences (such as fear of bodily injury) for the victim. Second, the bill adds "causing a victim to suffer serious emotional distress" to the list of specified adverse consequences upon which a stalking conviction can be based. Thus, under the bill, causing, or engaging in conduct that the actor knew or should have known would cause, the victim to suffer serious emotional distress is treated the same as conduct that causes the victim to fear bodily harm.

Third, the bill specifies that photographing, videotaping, audiotaping, or, through any other electronic means, monitoring or recording the activities of the victim can be part of a course of conduct (or an act upon which a repeat offender stalking conviction can be based). Fourth, the bill specifies that causing another person to monitor or record the activities of the victim or to engage in any of the acts described in items 1) to 9) above — not just those listed in items 7) to 9) — may be part of a course of conduct (or an act upon which a repeat offender stalking conviction can be based).

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

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

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1           940.32 (1) (a) 6m. Photographing, videotaping, audiotaping, or, through any  
2 other electronic means, monitoring or recording the activities of the victim. This  
3 subdivision applies regardless of where the act occurs.

4           **SECTION 2.** 940.32 (1) (a) 10. of the statutes is amended to read:

5           940.32 (1) (a) 10. Causing a person to engage in any of the acts described in  
6 subds. 7. 1. to 9.

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

8           940.32 (1) (d) “Suffer serious emotional distress” means to feel terrified,  
9 intimidated, threatened, harassed, tormented, or alarmed.

10          **SECTION 4.** 940.32 (2) (a) of the statutes is amended to read:

11          940.32 (2) (a) The actor intentionally engages in a course of conduct directed  
12 at a specific person that would cause a reasonable person under the same  
13 circumstances to suffer serious emotional distress or to fear bodily injury to or the  
14 death of himself or herself or a member of his or her family or household.

15          **SECTION 5.** 940.32 (2) (b) of the statutes is amended to read:

16          940.32 (2) (b) The actor ~~intends~~ knows or should know that at least one of the  
17 acts that constitute the course of conduct will cause the specific person to suffer  
18 serious emotional distress or place the specific person in reasonable fear of bodily  
19 injury to or the death of himself or herself or a member of his or her family or  
20 household.

21          **SECTION 6.** 940.32 (2) (c) of the statutes is amended to read:

22          940.32 (2) (c) The actor’s acts cause the specific person to suffer serious  
23 emotional distress or induce fear in the specific person of bodily injury to or the death  
24 of himself or herself or a member of his or her family or household.

25          **SECTION 7.** 940.32 (2e) (b) of the statutes is amended to read:

