



# ANDRÉ JACQUE

STATE SENATOR • 1<sup>ST</sup> SENATE DISTRICT

Phone: (608) 266-3512

Fax: (608) 282-3541

Sen.Jacque@legis.wi.gov

State Capitol · P.O. Box 7882

Madison, WI 53707-7882

*Testimony before the Senate Committee on Judiciary and Public Safety  
State Senator André Jacque  
October 22<sup>nd</sup>, 2019*

Chairman Wanggaard and Colleagues on the Senate Committee on Judiciary and Public Safety,

Thank you for the opportunity to testify in support of Senate Bill 235, the Cyberstalking Protection Act. This common sense bi-partisan legislation was drafted at the request of victims and prosecutors from specific cases where novel criminal defenses have been asserted, in order to update Wisconsin's stalking statutes to explicitly clarify and ensure protection for victims of electronic stalking through more modern means such as text messages, email, web applications and social media.

To be clear, cyberstalking cases are currently appropriately being prosecuted under existing law, however this cyberstalking statute will further flesh out its meaning and reduce vulnerability of such prosecutions to future defense challenges. In addition, Rep. Tusler and I have introduced an amendment in consultation with law enforcement stakeholders that takes into account jury instructions in related case law and updates the stalking definition so victims are able to be more fully protected under our statutes.

This legislation is supported by End Domestic Abuse Wisconsin and has been vetted by the Wisconsin Department of Justice. Its companion bill, Assembly Bill 259, has been approved as amended 11-0 before the Assembly Committee on Criminal Justice and Public Safety. We ask that committee members support this common sense legislation to help keep Wisconsinites safe as technology continues to evolve. Thank you for your consideration of Senate Bill 235.



---

# RON TUSLER

STATE REPRESENTATIVE • 3<sup>rd</sup> ASSEMBLY DISTRICT

## Testimony

on

### Senate Bill 235

Senate Committee on Judiciary & Public Safety

October 22, 2019

Mr. Chairman and members of the committee, thank you for hearing Senate Bill 235 relating to stalking. This bill will provide beneficial rewording of the statute, codify existing practice and interpretation, and clarify affected parties. To frame my testimony, please see Senate Substitute Amendment 1, developed in consultation with experts at DOJ.

Under current law, stalking is a “course of conduct” that includes, among other things, “[s]ending material by any means to the victim or, for the purpose of obtaining information about, disseminating information about, or communicating with the victim, to a member of the victim’s family or household or an employer, coworker, or friend of the victim.”<sup>1</sup> **To make clear, prosecutors and judges interpret the “by any means” language to already include cyberstalking; this bill and substitute amendment is not intended to upend this understanding or call into questions cyberstalking convictions achieved under this statute.** The draft substitute amendment makes improvements to the current statute in three ways.

First, the substitute amendment language explicitly includes electronic means. This is a constructive addition as texting and other forms of messaging on a variety of platforms and applications have become pervasive in society, particularly since the dawn of the smartphone age about a decade ago. Additionally, as indicated, it also codifies the current statutory interpretation and practice that electronic communications may constitute stalking.

Second, this substitute amendment conforms more closely to jury instructions, which will aid jurors in their deliberations. If anyone has ever served on a jury, or even simply observed an entire trial, ensuring the evidence presented by a prosecutor meets all the elements of a crime beyond a reasonable doubt can be difficult, occasionally confusing when complex criminal statutes are involved, and frequently debated by jurors before coming to a conclusion. By making this statute read more like the instructions jurors will hear from a judge it will aid them in their deliberation and help ensure stalkers are convicted, giving peace of mind to victims.

Third and finally, the substitute amendment includes former employers and coworkers in the class of people who may not be contacted to stalk a victim. In *State v. Ardell*, Ardell appealed, arguing that his conduct did not satisfy the conduct required for conviction because he contacted a *former* coworker of the victim.<sup>2</sup> While the Court of Appeals affirmed the trial court’s decision, the appellate opinion is unpublished and therefore may only be cited for its persuasive value and is not binding on any court in Wisconsin.<sup>3</sup> Codifying the inclusion of “former” employers and coworkers will clarify this interpretation for future cases with similar facts.

I would like to thank the DOJ for their assistance making these changes and clarifications. Thank you again, committee members, for your thoughtful consideration. I am confident these changes will have a positive impact for stalking victims across the state.

---

<sup>1</sup> Wis. Stat. §940.32(1)(a)7. (2017-18).

<sup>2</sup> *State v. Ardell*, 2018 WI App 28, ¶38, 381 Wis.2d 471 (2018).

<sup>3</sup> Wis. Stat. §809.23(3)(b) (2017-18).



**STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE**

**Josh Kaul  
Attorney General**

Room 114 East, State Capitol  
PO Box 7857  
Madison WI 53707-7857  
(608) 266-1221  
TTY 1-800-947-3529

**PREPARED TESTIMONY OF  
DIVISION OF LEGAL SERVICES CRIMINAL LITIGATION  
ASSISTANT ATTORNEY GENERAL ROBERT KAISER, JR.**

Senate Committee on Judiciary and Public Safety  
Tuesday, October 22, 2019

Chairperson Wanggaard and Vice-Chair Jacque,

The Department of Justice (DOJ) appreciates this opportunity to submit written testimony in support of Senate Substitute Amendment 1 to 2019 Senate Bill 235, which would amend Wisconsin's stalking statute to lend clarity to its coverage of electronic communications.

DOJ's position on this bill is exactly the same as its Assembly author, Representative Tusler: "To make clear, prosecutors and judges interpret the 'by any means' language to already include cyberstalking; this bill . . . is not intended to upend this understanding or call into question cyberstalking convictions achieved under this statute." Representative Ron Tusler, Testimony on Assembly Bill 259, Assembly Committee on Criminal Justice & Public Safety (Aug. 22, 2019) (emphasis omitted).

As one of the authors of the original stalking statute in 2001, and of the amendments made in 2003, and a lecturer on the crime of stalking for over 20 years to audiences ranging from prosecutors to police to social workers to psychologists to corrections officers, I can assure this committee that Wis. Stat. § 940.32(1)(a)7. was always intended to capture the broadest possible behavior of stalkers. The case law down through the years demonstrates it has done its job. "Sending material by any means" has been accepted as including cyberstalking by text message, email, Facebook message, blogs, whole websites, as well as threatening letters, in all the following cases where convictions were sustained on appeal:

- *State v. Hemmingway*, 2012 WI App 133, 345 Wis. 2d 297, 825 N.W.2d 303 (text messages and emails).
- *State v. Maier*, No. 2013AP1391, 2014 WL 1810151 (Wis. Ct. App. May 8, 2014) (used the *Hemmingway* analysis to sustain conviction based on threatening letters to jurors).
- *State v. Ardell*, No. 2017AP381, 2018 WL 1176889 (Wis. Ct. App. Mar. 6, 2018) (emails).
- *State v. Moller*, No. 2013AP2147, 2014 WL 2892403 (Wis. Ct. App. June 26, 2014) (involved the stalking of an assistant district attorney who had successfully prosecuted the defendant's wife for child abuse in retaliation for which he stalked her on the internet, specifically on Facebook with Facebook posts, blog entries, and entries on other websites that he maintained).
- *State v. Engen*, No. 2014AP2421, 2015 WL 13134150 (Wis. Ct. App. Sept. 3, 2015) (offender stalked TV personality via Facebook and email).
- *State v. Barwick*, No. 2017AP958, 2018 WL 4242105 (Wis. Ct. App. Sept. 5, 2018) (offender used Facebook messages and emails against his former spouse).
- *State v. Evans*, No. 03-3056, 2004 WL 1276746 (Wis. Ct. App. June 9, 2004) (massive amount of emails sent to person not interested in a romantic relationship).

Most recently, in *State v. Warshauer*, No. 19CF939 (Wis. Cir. Ct. Dane Cty.), Judge Hyland denied a defense challenge to a cyberstalking prosecution based on this proposed statute. The defense argued that because the legislature was considering adding cyberstalking language to the statute then that must mean that the statute hasn't yet included cyberstalking. Judge Hyland disagreed, writing, "that a future change in the statutory language does not mean electronic communications are not currently captured by the statute, but, that such a future change will simply help to better clarify that such communications *already come within the ambit of the statute.*" *Id.* (emphasis added).



Prepared Testimony of Division of Legal Services  
Criminal Litigation Assistant Attorney General Robert Kaiser, Jr.  
Senate Committee on Judiciary and Public Safety  
Tuesday, October 22, 2019  
Page 3

DOJ supports these changes to existing law to make it crystal clear to police, prosecutors, defense attorneys and judges that this behavior, which is so pervasive in our society, is covered by this statute when used to stalk others. However, clarifying the statute in the present day does not change the meaning of the plain English words "Sending material by any means" which the statute has always contained. Wis. Stat. § 940.32(1)(a)7. As Judge Hyland ruled, "A plain reading of the subsection would include e-mails if sent to the victim, or sent to a person in the victim's circle, for the purpose of communicating with the victim." *Warshauer*, No. 19CF939.

Cyberstalking terrorizes its victims and leaves them feeling helpless. Being able to bring the stalking statute clearly and unambiguously to bear on behalf of these victims will assist law enforcement across the State of Wisconsin in bringing this kind of emotional abuse of victims to an end. As such, DOJ supports Senate Substitute Amendment 1 to 2019 Senate Bill 259 and would like to thank Representative Tusler and Senator Jacque for their work on this important issue.

If you have any questions or would like any additional information, please contact Chris McKinny, Department of Justice Government Affairs Director, at (608) 224-9207 or [McKinnyCJ@doj.state.wi.us](mailto:McKinnyCJ@doj.state.wi.us).

Thank you for consideration of this testimony.

Wisconsin Coalition Against Domestic Violence  
1400 E. Washington Avenue, Suite 227  
Madison, Wisconsin 53703  
Phone: (608) 255-0539  
[abbys@endabusewi.org](mailto:abbys@endabusewi.org)



To: Members of the Senate Committee on Judiciary and Public Safety  
Date: October 22<sup>nd</sup>, 2019  
From: Abby Swetz, Policy and Systems Analyst, End Domestic Abuse Wisconsin  
Re: SB 235 – Relating to Stalking

Chairperson Wanggaard and Members of the Committee, thank you for the opportunity to provide testimony in support of Senate Bill 235, the bill regarding stalking and electronic communication.

My name is Abby Swetz, and I am here as a representative of End Domestic Abuse Wisconsin to express our support of this bill amending the definition of stalking to explicitly include electronic communication and internet comments.

End Domestic Abuse Wisconsin is the statewide membership organization that is the voice for survivors of domestic violence and local domestic violence victim service providers. As both a representative of those survivors and providers and as a survivor of domestic violence and electronic communication stalking myself, I am here today to speak on the importance of this bill and explain End Abuse's support.

The Center for Disease Control and Prevention conducted the most recent National Intimate Partner and Sexual Violence Survey State Report from 2010 to 2012. On the very first page about stalking, researchers at the CDC wrote "advances in technology and social networking have created more choices for harassing and threatening victims."<sup>1</sup> 7 years and countless technological advances later, the prevalence of electronic stalking is doubtless higher, but the statistics reported from 2012 are still sobering. 1 in 6 women – over 19 million nationally – experienced stalking resulting in a fear of physical harm or death in her lifetime.<sup>2</sup> The most commonly reported stalking tactic was electronic; 76% of these women received unwanted phone calls and text messages, and 29% of stalking victims reported unwanted emails or social media posts within the past year.<sup>3</sup> 12 of these 19 million women were stalked by current or former intimate partners.<sup>4</sup>

One night a year after I left my abusive spouse, I received 54 text messages between 2 and 4am. The messages detailed my location and current activities, and many of them spoke of a plan to come find me. I informed my colleagues of the general situation, but I also explained to them that I was reticent to call the police as my ex was an officer. The day ended without incident, but knowing what I now know years later about electronic communication, stalking behavior, and access to weapons – my ex kept a gun and ammunition in the bedroom – I feel incredibly lucky that those text messages did not end in violence.

---

<sup>1</sup> <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>, pg. 85.

<sup>2</sup> <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>, pg. 85.

<sup>3</sup> <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>, pg. 88.

<sup>4</sup> <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>, pg. 118.



Between 2007 and 2018, domestic violence claimed the lives of 647 Wisconsinites. 647. That we know of.

Each year, End Abuse drafts a Wisconsin Domestic Violence Homicide Report. In addition to detailing these incidents of domestic violence homicide, the reports have analyzed trends seen across the state. In every year of the report, stalking is found as a trend indicator of subsequent homicide.<sup>5</sup>

In 2008, Jennifer Vordermann was in the process of leaving her husband due to domestic violence. After receiving threatening text messages, she and her mother contacted law enforcement to report the threats. Her husband had also begun using telephone tracking devices to follow her. Police made contact multiple times but did not take her husband into custody or take possession of his weapons. He shot Jennifer in the back, killing her before turning the gun on himself, four days after Jennifer's mother reported the text message stalking to police.<sup>6</sup>

Jennifer's story is one of many incidents of domestic violence, stalking, and death detailed in our Homicide Report. Some of the incidents date back to when the victim was 15 years old. In fact, intimate partner violence has been reported as young as the age of 12,<sup>7</sup> and the number of teens in a relationship who say they have been called names, harassed, or put down by their partner through mobile devices is 1 in 4.<sup>8</sup> With the advent of new technology, this number is set to rise.

End Domestic Abuse Wisconsin supports explicitly including identifying electronic and social media communication in the statute defining stalking. Stalking is an abusive and violent act. And stalking through texts, emails, and social media is still stalking. Threats are threats, and sending them through the internet does not reduce the harm caused. The message may be electronic, but the fear is real, and so is the danger. Speaking for domestic violence survivors and advocates, we at End Abuse urge the passage of this bill.

---

<sup>5</sup> <https://s3-us-east-2.amazonaws.com/edaw-webinars/wp-content/uploads/2019/09/24130226/2018-Wisconsin-Domestic-Violence-Homicide-Report-9.24.19-FINAL.pdf>, pg. 6.

<sup>6</sup> [https://www.endabusewi.org/wp-content/uploads/2018/11/2008\\_dv\\_homicide\\_report.pdf](https://www.endabusewi.org/wp-content/uploads/2018/11/2008_dv_homicide_report.pdf), pg. 13-14.

<sup>7</sup> <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>, pg. 167.

<sup>8</sup> <https://dare2knowwi.org/resources>