

- SUBJECT:** Including electronic communication in harassment offense
- COMMITTEE:** Criminal Jurisprudence — favorable, with amendment
- VOTE:** 8 ayes — Hinojosa, Keel, Talton, Garcia, Green, Kitchen, Martinez Fischer, Shields
- 0 nays
- 1 absent — Dunnam
- SENATE VOTE:** On final passage, February 7 — voice vote
- WITNESSES:** For — Laurel Redford, American Civil Liberties Union of Texas; *Registered but did not testify:* Hannah Riddering, Texas National Organization for Women; Bree Buchanan, Texas Council on Family Violence; Kevin F. Lawrence, Texas Municipal Police Association
- Against — None
- On — *Registered but did not testify:* William Harrell, American Civil Liberties Union of Texas
- BACKGROUND:** Penal Code, sec. 42.07 makes harassment a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000). A person commits an offense if, with the intent to harass, annoy, alarm, abuse, torment, or embarrass another, he or she:
- ! makes a telephone call or writes to another and in the course of the communication makes a comment, request, suggestion, or proposal that is obscene;
  - ! threatens, by telephone or in writing, in a manner reasonably likely to alarm the person receiving the threat, to inflict bodily injury on the person or to commit a felony against the person, a member of his or her family, or his or her property;
  - ! conveys a report that he or she knows to be false that another person has died or suffered serious bodily injury and does it in a manner

- reasonably likely to alarm the person receiving the report;
- ! repeatedly makes anonymous, harassing, annoying, alarming, abusive, tormenting, embarrassing, or offensive phone calls to another;
- ! makes a telephone call and intentionally fails to hang up or disengage the connection; or
- ! knowingly allows a telephone under his or her control to be used by another person to commit an offense under this section.

“Obscene” is defined as containing a patently offensive description of or a solicitation to commit a sex act or a description of an excretory function.

**DIGEST:**

SB 139, as amended, would expand the offense of harassment to include electronic communication, which would be defined as a transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectric, or photo-optical system. The term would include a communication initiated by electronic mail, instant message, network call, or facsimile machine and communication made to a pager.

The bill would create an offense for making a threat to commit a felony against a member of the person’s household by telephone, in writing, or by electronic communication, in a manner reasonably likely to alarm the person receiving the threat. “Household” is defined as a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other.

The bill would enhance punishment to a class A misdemeanor (punishable by up to one year in jail and/or a maximum fine of \$4,000) for those who previously had been convicted of a harassment offense.

SB 139 would take effect on September 1, 2001.

**SUPPORTERS  
SAY:**

SB 139 would bring Texas harassment law in step with modern technology. The law already covers harassment by telephone or letter. Extending it to cover commonly used electronic communication like e-mail, fax machines, and pagers would be a logical update to the Penal Code.

Harassment by electronic means has become a national problem. Known as “cyberstalking,” it has become such a concern that 28 states have amended their statutes to define it as criminal offense, and in August 1999, Attorney General Janet Reno issued a report on the challenge it presents to law enforcement officials.

SB 139 would not violate Texans’ right to freedom of speech. The U.S. Supreme Court has ruled that because cyberstalking generally involves conduct reasonably understood to constitute a threat of violence, such threats may be criminalized.

This bill would deter perpetrators from repeatedly harassing others by providing a stiffer penalty for repeat offenders. People who commit this crime need to know that the state takes their actions seriously. First-time offenders not be subject to the increased penalty and would have a chance to straighten up before facing a stiffer punishment.

OPPONENTS  
SAY:

SB 18 could criminalize behavior that, while impolite, does not merit jail time. An office clown’s “joke-of-the-day” e-mails could be considered harassing, annoying, or offensive by co-workers. This behavior should be addressed administratively, however, rather than in a courtroom. Likewise, “spamming,” or sending out repeated, unsolicited e-mails to sell something, is annoying but should not be a criminal offense. This type of marketing is analogous to unsolicited “junk mail” that arrives in people’s mailboxes every day. The bill should limit harassment to cover electronic communication that threatens bodily injury or to commit a felony against a person or a member of the person’s family or household.

Enhancement of the harassment offense is unnecessary. The current law provides for up to six months in jail. A first-time offender might get a fine and probation, followed by jail time on a second offense. It seems extreme to subject a prank-calling teenager to a year-long jail sentence for misunderstanding the gravity of the first offense.

NOTES:

The House committee amendment to the Senate-passed version would add to the harassment offense making a threat to commit a felony against a member of the person’s household by telephone, in writing, or by electronic

communication, in a manner reasonably likely to alarm the person receiving the threat.

In the 76th Legislature, SB 962 by Barrientos, an identical bill, passed the Senate on the Local and Uncontested Calendar. It passed on second reading in the House, but on third reading was laid on the table subject to call.