

By: Representative Moak

To: Judiciary A

HOUSE BILL NO. 1495

1 AN ACT TO CREATE THE TORT OF STALKING WHICH INCLUDES THE USE
2 OF ELECTRONIC COMMUNICATION DEVICES; TO PROHIBIT MAKING THREATS
3 WITH ELECTRONIC COMMUNICATION DEVICES; TO PROVIDE PENALTIES FOR
4 VIOLATIONS; TO AMEND SECTION 97-3-107, MISSISSIPPI CODE OF 1972,
5 IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

7 **SECTION 1.** It is the intent of this act to clarify that
8 electronic communications are included in the actions that can
9 constitute the crimes of harassment and stalking. It is not the
10 intent of the Legislature by adoption of this act, to restrict in
11 any way the types of conduct or actions that can constitute
12 harassment or stalking.

13 **SECTION 2.** (1) A person is liable for the tort of stalking
14 when the plaintiff proves all of the following elements of the
15 tort:

16 (a) The defendant engaged in a pattern of conduct the
17 intent of which was to follow, alarm or harass the plaintiff. In
18 order to establish this element, the plaintiff shall be required
19 to support his or her allegations with independent corroborating
20 evidence.

21 (b) As a result of that pattern of conduct, the
22 plaintiff reasonably feared for his or her safety, or the safety
23 of an immediate family member. For purposes of this paragraph,
24 "immediate family" means a spouse, parent, child, any person
25 related by consanguinity or affinity within the second degree, or
26 any person who regularly resides or, within the six (6) months
27 preceding any portion of the pattern of conduct, regularly
28 resided, in the plaintiff's household.

29 (c) One of the following:

30 (i) The defendant, as a part of the pattern of
31 conduct specified in paragraph (a) made a credible threat with the
32 intent to place the plaintiff in reasonable fear for his or her
33 safety, or the safety of an immediate family member and, on at
34 least one (1) occasion, the plaintiff clearly and definitively
35 demanded that the defendant cease and abate his or her pattern of
36 conduct and the defendant persisted in his or her pattern of
37 conduct.

38 (ii) The defendant violated a restraining order,
39 including, but not limited to, any order issued pursuant to
40 Section 97-3-107, prohibiting any act described in subsection (1).

41 (2) For the purposes of this section:

42 (a) "Pattern of conduct" means conduct composed of a
43 series of acts over a period of time, however short, evidencing a
44 continuity of purpose. Constitutionally protected activity is not
45 included within the meaning of "pattern of conduct."

46 (b) "Credible threat" means a verbal or written threat,
47 including that communicated by means of an electronic
48 communication device or a threat implied by a pattern of conduct
49 or a combination of verbal, written or electronically communicated
50 statements and conduct, made with the intent and apparent ability
51 to carry out the threat so as to cause the person who is the
52 target of the threat to reasonably fear for his or her safety or
53 the safety of his or her immediate family.

54 (c) "Electronic communication device" includes, but is
55 not limited to, telephones, cellular telephones, computers, video
56 recorders, fax machines, or pagers. "Electronic communication"
57 has the same meaning as the term defined in subsection 12 of
58 Section 2510 of Title 18 of the United States Code.

59 (d) "Harass" means a knowing and willful course of
60 conduct directed at a specific person which seriously alarms,
61 annoys, torments or terrorizes the person, and which serves no

62 legitimate purpose. The course of conduct must be such as would
63 cause a reasonable person to suffer substantial emotional
64 distress, and must actually cause substantial emotional distress
65 to the person.

66 (3) A person who commits the tort of stalking upon another
67 is liable to that person for damages, including, but not limited
68 to, general damages, special damages and punitive damages.

69 (4) In an action pursuant to this section, the court may
70 grant equitable relief, including, but not limited to, an
71 injunction.

72 (5) The rights and remedies provided in this section are
73 cumulative and in addition to any other rights and remedies
74 provided by law.

75 (6) This section shall not be construed to impair any
76 constitutionally protected activity, including, but not limited
77 to, speech, protest and assembly.

78 **SECTION 3.** (1) Any person who willfully threatens to commit
79 a crime which will result in death or great bodily injury to
80 another person, with the specific intent that the statement, made
81 verbally, in writing or by means of an electronic communication
82 device, is to be taken as a threat, even if there is no intent of
83 actually carrying it out, which, on its face and under
84 circumstances in which it is made, is so unequivocal,
85 unconditional, immediate and specific as to convey to the person
86 threatened, a gravity of purpose and an immediate prospect of
87 execution of the threat and thereby causes that person reasonably
88 to be in sustained fear for his or her own safety or for his or
89 her immediate family's safety shall be punished by imprisonment in
90 the county jail not to exceed one (1) year or by imprisonment in
91 the State Penitentiary.

92 (2) For the purposes of this section, "immediate family"
93 means any spouse, whether by marriage or not, parent, child, any
94 person related by consanguinity or affinity within the second

95 degree or any other person who regularly resides in the household
96 or who, within the prior six (6) months, regularly resided in the
97 household.

98 (3) "Electronic communication device" includes, but is not
99 limited to, telephones, cellular telephones, computers, video
100 recorders, fax machines or pagers.

101 (4) "Electronic communication" has the same meaning as the
102 term defined in subsection 12 of Section 2510 of Title 18 of the
103 United States Code.

104 **SECTION 4.** Section 97-3-107, Mississippi Code of 1972, is
105 amended as follows:

106 97-3-107. (1) Any person who willfully, maliciously and
107 repeatedly follows or harasses another person, or who makes a
108 credible threat, with the intent to place that person in
109 reasonable fear of death or great bodily injury is guilty of the
110 crime of stalking, and upon conviction thereof shall be punished
111 by imprisonment in the county jail for not more than one (1) year
112 or by a fine of not more than One Thousand Dollars (\$1,000.00), or
113 by both such fine and imprisonment. A violation of this
114 subsection by a person required to register as a sex offender for
115 a sex offense listed in Section 45-33-23, in this state or another
116 jurisdiction, whether state, federal or military, where the victim
117 is under the age of eighteen (18) years, is a felony subject to a
118 fine of Two Thousand Dollars (\$2,000.00) and imprisonment for two
119 (2) years in the State Penitentiary.

120 (2) Any person who violates subsection (1) of this section
121 when there is a valid temporary restraining order, ex parte
122 protective order, protective order after hearing, court approved
123 consent agreement, or an injunction issued by a municipal,
124 justice, county, circuit or chancery court, federal or tribal
125 court or by a foreign court of competent jurisdiction in effect
126 prohibiting the behavior described in subsection (1) of this
127 section against the same party, shall be punishable by

128 imprisonment in the county jail for not more than one (1) year and
129 by a fine of not more than One Thousand Five Hundred Dollars
130 (\$1,500.00). A violation of this subsection by a person required
131 to register as a sex offender for a sex offense listed in Section
132 45-33-23, in this state or another jurisdiction, whether state,
133 federal or military, where the victim is under the age of eighteen
134 (18) years, is a felony subject to a fine of Three Thousand
135 Dollars (\$3,000.00) and imprisonment for two (2) years in the
136 State Penitentiary.

137 (3) A second or subsequent conviction occurring within seven
138 (7) years of a prior conviction under subsection (1) of this
139 section against the same victim, and involving an act of violence
140 or "a credible threat" of violence as defined in subsection (5) of
141 this section, shall be punishable by imprisonment for not more
142 than three (3) years and by a fine of not more than Two Thousand
143 Dollars (\$2,000.00). A second or subsequent conviction under this
144 subsection by a person required to register as a sex offender for
145 a sex offense listed in Section 45-33-23, in this state or another
146 jurisdiction, whether state, federal or military, where the victim
147 is under the age of eighteen (18) years, is punishable by
148 imprisonment for six (6) years in the State Penitentiary and a
149 fine of Four Thousand Dollars (\$4,000.00).

150 (4) For the purposes of this section, "harasses" means a
151 knowing and willful course of conduct directed at a specific
152 person which seriously alarms, annoys, or harasses the person, and
153 which serves no legitimate purpose. The course of conduct must be
154 such as would cause a reasonable person to suffer substantial
155 emotional distress, and must actually cause substantial emotional
156 distress to the person. "Course of conduct" means a pattern of
157 conduct composed of a series of acts over a period of time,
158 however short, evidencing a continuity of purpose.
159 Constitutionally protected activity is not included within the
160 meaning of "course of conduct."

161 (5) For the purposes of this section, "a credible threat"
162 means a threat, including the use of an electronic communication
163 device, or a threat implied by a pattern of conduct or a
164 combination of verbal, written or electronically communicated
165 statements and conduct made with the intent and the apparent
166 ability to carry out the threat so as to cause the person who is
167 the target of the threat to reasonably fear for his or her safety.

168 (6) For purposes of this section, the term "electronic
169 communication device" includes, but is not limited to, telephones,
170 cellular phones, computers, video recorders, fax machines or
171 paggers. "Electronic communication" has the same meaning as the
172 term defined in subsection 12 of Section 2510 of Title 18 of the
173 United States Code.

174 **SECTION 5.** This act shall take effect and be in force from
175 and after July 1, 2007.