

**2015 HOUSE JUDICIARY**

**HB 1321**

# 2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1321  
1/28/2015  
22740

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature



.Relating to stalking and the use of electronic devices.

**Minutes:**

Testimony 1, 2

**Chairman K. Koppelman:** Opened the hearing with testimony in support.

**Rep. Haak:** Introduced this bill. (See testimony #1) (1:00-5:23)

**Rep. G. Paur:** That definition you provided us is under the commercial driver's licenses. Maybe it would be in this section.

**Rep. Haak:** I would be open for amendments.

**Chairman K. Koppelman:** The section of code is under the stocking section. Is the penalty for this offense a Class C felony?

**Rep. Haak:** No it is a Class A misdemeanor.

**Chairman K. Koppelman:** In the case you talked about in New York the person had participated in this kind of activity was the murder eventually. So this is trying to help prevent this.

**Rep. Haak:** Yes

**Janelle Moos, Executive Director of CAWS ND:** (See testimony #2) (7:20-11:30)

**Rep. L. Klemin:** I think what we are talking about is electronic tracking device. The section you refer to talks about various electronic devices like cellular phone, pager, computer or other device used to send and receive and read text. I am not sure what that has to do with following someone? Maybe if this was amended to say global positioning system or other electronic tracking device that might be more appropriate.

**Janelle Moos:** I understand your point. In terms of cell phones an offender could download an app or have an app on someone's cell phone so that could be used as a tracking device. Our intent was any electronic device that could be used to track someone's movements.

**Rep. L. Klemin:** I am trying to get the correct reference.

**Janelle Moos:** We can clarify that section and it will strengthen that. Offenders can track into someone's emails too. We will work with the committee to get this correct.

**Rep. D. Larson:** Maybe just leaving it open the way this is worded currently just through global positioning system or other electronic device if someone is able to use this to stalk someone or track them I don't know if we would necessarily need to define it?

**Janelle Moos:** I think we could pigeon hole ourselves if we do define that.

**Rep. D. Larson:** This example of one place it is defined doesn't necessarily mean we should define it everywhere?

**Janelle Moos:** I can see both sides of the coin. We want to look at any electronic device used specifically in stalking or whether or not we want to mention it in code like Rep. Haak played out or if we want to further define it somewhere else the intent is around stalking.

**Rep. Brabandt:** Page 2 of the bill line 3 it says global positioning system or other electronic device. Should other be changed to any?

**Janelle Moos:** I would be open to that then it would include any device used for tracking.

**Rep. Karls:** Let's go over a scenario: Would it be considered stalking if you put a device on their child's vehicle just to make sure they knew where they were at all times?

**Janelle Moos:** The intent is not to limit parent's ability to know where their children are or prohibit law enforcement from using these types of things. It is aimed at the conduct that is outlined in the stalking statute.

**Chairman K. Koppelman:** As I look at the bill it appears the subsection being amended really has to do with prosecution and defense under this section. What the added language does is define the definition follow and that is the only place I see the word follow. The word follow isn't even in the stalking section. We may need to look at this because it does not seem to be very effective way to do that.

**Janelle Moos:** We could work with Legislative Counsel and however they feel to tighten that piece up we would be happy to work with them.

**Chairman K. Koppelman:** It talks about unauthorized tracking of the person's movements or location through the use of a global positioning system or other electronic device. Would the mere position of a GPS device constitute a violation like Garman? Had you considered any of that or discussed it?

**Janelle Moos:** We need to go back to a course of conduct that is used to threaten or harm someone and that is what we need to be focused on.

**Rep. L. Klemin:** I have this App on my cell phone and it shows my wife went to Minot so on page 1, line 4. So really if she says to me I don't want you using my app to find my phone am I going to be violating this section? If my wife says to me I don't want you using that app to find my phone I could be in violation of this section.

**Janelle Moos:** I think the important piece that the victim has told the offender I do not want to be followed. That is often where we get hung up with stalking cases.

**Rep. L. Klemin:** In this section the word follow as used in Subsection 3; which only has to do with what happens in a prosecution and whether certain conduct is a defense or not.

**Janelle Moos:** I think we could clean this up by adding follow into the definition.

**Rep. Mary Johnson:** That app only indicates that her phone went to Minot. I don't think we are seeing the entirety of this. Immediate family members; this doesn't affect them. I agree we should not pigeon hole ourselves.

Opposition: None

Neutral: None

Hearing closed.

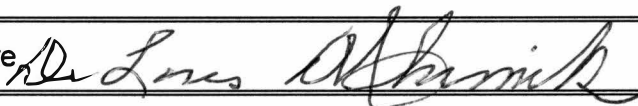
# 2015 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1321  
2/10/2015  
23606

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



## Minutes:

Proposed amendment #1 & #2

**Chairman K. Koppelman:** opened the meeting on HB 1321.

**Rep. Mary Johnson:** In the testimony on this bill Rep. Klemin brought up on page 2 on the original bill the underscored verbiage because follow included something and there was no definition prior to that. After working with legislative counsel I just handed out the proposed amendment. (See proposed amendment #1) Went over the proposal. (1:34-3:28) Spoke to Rep. Haak and we added to track individual's movement by electronic means and Rep. Haak was OK with them.

**Rep. Lois Delmore:** The bankers and credit union were a little concerned that it could affect things they might use to track stolen vehicles etc. so there is also one more amendment.

**Chairman K. Koppelman:** Should we exempt parents? I would agree but some courts and privacy advocates might not.

**Motion made to move the amendment by Rep. Mary Johnson: Seconded by Rep. Lois Delmore:**

**Rep. L. Klemin:** This language which serves no legitimate purpose is in here twice now. Is that intended to be that way in lines 15 & 16? Then we have a new b that serves a no legitimate purpose?

**Rep. Mary Johnson:** Yes I intended it to reflect the general definition of stalk because b is truly cyber stalking. I took the language out of 1 that says experienced a form of fear, intimidation or harassment. It is in regard a reflection of a.

**Chairman K. Koppelman:** So a becomes that language on lines 14-18 and b becomes what you have underscored in the bill?

**Rep. Mary Johnson:** Yes. Stock is more person to person; and b is cyber stalking is what Rep. Haak wanted to get to, which includes the tracking.

**Chairman K. Koppelman:** So it is electronic naming devices basically in this amendment.

**Rep. K. Wallman:** Is it pretty well understood when we talk about cyber stalking that an electronic communication is a tracking device.

**Rep. Mary Johnson:** Tracking device is something you put something on some ones car and it communicates back to an individual and it is broad because it is fashions to keep up with the times.

**Rep. D. Larson:** I think this is a good bill. Law enforcement knows very well when stalking is being somebody that is bothering somebody else and is becoming threatening to them. This only updates the language to include new technology and it doesn't substantially change what is going on in the law for stalking.

**Rep. L. Klemin:** Line 16 after purpose we are putting in this new subdivision b and then it goes on to say page 1 after line 16 insert 2 so if we look at line 16 right now the course of conduct maybe directed toward that person or 2 so where does line 17 & 18 go?

**Rep. Mary Johnson:** 2 becomes the course of conduct that was in the original bill where it starts the course of conduct maybe directed toward that person or a member of that person's family.

**Rep. L. Klemin:** So you wanted the 2 to come after the word purpose in the amendment you just put in. This 2 comes directly after b somewhere; not after line 16.

**Chairman K. Koppelman:** It is confusing.

**Rep. Mary Johnson:** That describes both stalking and electronic stalking.

**Chairman K. Koppelman:** So the one contains two descriptions under a and b of what stalking is and then 2 is descriptive of either under the definition of stalk.

**Rep. L. Klemin:** What we are trying to do is put the 2 in front of the word the on line 16. Let's say on line 16, before the insert.

**Chairman K. Koppelman:** What we are saying is under stalk we now have two letters, a and b directed is the first and that goes through the word purpose and b starts with this inserted language after that and then immediately after that we have the "2".

**Voice Vote Carried.**

**Rep. Lois Delmore:** (proposed amendment #2) Went over her proposed amendment. Credit unions and banks do electronic tracking if someone takes a pickup or whatever so that is why this is put in there.

**Rep. Mary Johnson:** The alternative is to put it with the other somewhat exempting factors on the second page.

**Rep. Lois Delmore:** I don't think they care exactly where it goes. They are just concerned that it would not be misconstrued that something that they were doing would be called stalking or trying to intimidate someone when they have a legitimate lien against it.

**Rep. Mary Johnson:** Somewhere within 4 and 5 to include another section that provides the particular information regarding secured creditors etc.

**Rep. G. Paur:** Isn't it a common practice for trucking companies to have systems which track their trucks; speeds and everything else about it. Would that be a concern in this bill?

**Rep. Lois Delmore:** This would be for companies that do that as well.

**Rep. G. Paur:** But it limits it to collateral which has been pledged to secure repayment.

**Chairman K. Koppelman:** I think we should leave it broader.

**Rep. L. Klemin:** On amendment #2 this would probably be a new subdivision D.

**Chairman K. Koppelman:** Do we really want to go down the road of double protecting? If the committee believes the legitimate purpose phase protects any legitimate purpose then we need not build a laundry list of what might be legitimate purposes and then adding to it.

**Rep. L. Klemin:** If we just come out and say this then we don't have to get out and say this as a defense.

**Chairman K. Koppelman:** If somebody says I am a prosecutor in Burleigh County and I am going to go after this bank because they are stalking this person then somebody is going to say that is not true.

**Rep. L. Klemin:** Maybe the borrower who bought the car would be objectionable about being followed.

**Rep. K. Wallman:** I can't imagine that a bank doesn't tell them when they buy a truck for \$50,000 it is going to have a device like that. We don't have a law that they ought to. It defines clearly what stalking is and I don't begrudge the bank for wanting to not have to worry with this but it says harass that person and serves no legitimate purpose. I think it is acceptable for a bank to harass a person if they are not making payments on the truck to get it back.

**Rep. Lois Delmore:** We have changed the language of stalking so I told them I would present this. I don't have any problem with not doing that so this bill passes and they can look at it and we can go conference committee if we need to. I think the stalking definition is much clearer and it is not so susceptible for somebody saying they are intimidating and harassing and frightening me by trying to get property back that belongs to them.

House Judiciary Committee

HB 1321

February 10, 2015

Page 4

**Chairman K. Koppelman:** Rep. Delmore declines to present the proposed amendment #2 to muck it up further.

**Do Pass As Amended Motion Made by Rep. D. Larson: Seconded by Rep. Lois Delmore:**

**Roll Call Vote: 13 Yes 0 No 0 Absent Carrier: Rep. Mary Johnson:**



February 10, 2015

*DL*  
*2/10/15*

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1321

Page 1, line 2, replace "devices" with "communication"

Page 1, line 14, after "c." insert "(1)"

Page 1, line 14, overstrike "directed" and insert immediately thereafter ":

(a) Directed"

Page 1, line 15, overstrike the second "that" and insert immediately thereafter "which"

Page 1, line 16, overstrike the period and insert immediately thereafter " or

(b) To communicate, or cause to be communicated, to a specific individual, words, images, or language by or through the use of electronic mail or electronic communication, or to track that individual's movement by electronic means, which frightens, intimidates, or harasses that individual and which serves no legitimate purpose.

(2)"

Page 1, line 19, overstrike "No" and insert immediately thereafter "A"

Page 1, line 19, after "may" insert "not"

Page 2, line 1, remove "As used in this subsection, "follow" includes the"

Page 2, remove lines 2 and 3

Renumber accordingly

Date: 2-10-  
Roll Call Vote #: /

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1321

House **JUDICIARY** Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: 15. 0702. 01002. 02000

Recommendation: ☒ Adopt Amendment  
☐ Do Pass    ☐ Do Not Pass    ☐ Without Committee Recommendation  
☐ As Amended    ☐ Rerefer to Appropriations  
Other Actions: ☐ Reconsider    ☐

Motion Made By Rep. M. Johnson Seconded By Rep. Helmreich

[illegible]

Total (Yes)                      No                     

Absent

## Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 2-10-15  
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1321

House JUDICIARY Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: 15.0702.0100d.02000

Recommendation: ☒ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☒ As Amended ☐ Rerefer to Appropriations  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Rep. Larson Seconded By Rep. Delmore

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	✓		Rep. Pamela Anderson	✓	
Vice Chairman Karls	✓		Rep. Delmore	✓	
Rep. Brabandt	✓		Rep. K. Wallman	✓	
Rep. Hawken	✓				
Rep. Mary Johnson	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. D. Larson	✓				
Rep. Maragos	✓				
Rep. Paur	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. M. Johnson

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1321: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1321 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "devices" with "communication"

Page 1, line 14, after "c." insert "(1)"

Page 1, line 14, overstrike "directed" and insert immediately thereafter ":

(a) Directed"

Page 1, line 15, overstrike the second "that" and insert immediately thereafter "which"

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Page 2, line 1, remove "As used in this subsection, "follow" includes the"

Page 2, remove lines 2 and 3

Renumber accordingly

**2015 SENATE JUDICIARY**

**HB 1321**

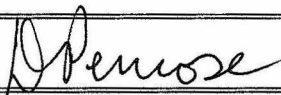
# 2015 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB 1321  
3/17/2015  
25025

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



**Minutes:**

1,2

Ch. Hogue: We will open the hearing on HB 1321.

Rep. Jessica Haak: Sponsor, support (see attached 1).

Ch. Hogue: Can you tell us what the difference is between this version and the original bill.

Rep. Jessica Haak: The first version simply added the word "electronic device" to the stalking code so if you had placed an electronic device and it was discovered after you had been a victim of stalking and were tracking it, then in itself would be an illegal action. They tighten it up.

Sen. Armstrong: Would you be opposed to making sure there is preclusion on it so that parents can still stalk their children without their consent.

Rep. Jessica Haak: As a stepmother of two children, absolutely not.

Sen. Luick: I see it is a class C felony, in section 6a, but it's a misdemeanor in portions of this bill. Is the violation increasing if they do it multiple times?

Rep. Jessica Haak: Yes. It's a misdemeanor if you're caught once and that adds the unauthorized tracking in there; and if that, or another portion listed on page 2, lines 18-26 as well, makes it a felony. You have to have two incidents to be a felony or one to be a misdemeanor.

Ch. Hogue: Is there any technology out there that allows the recipient of the electronic communications to just block all of their unwanted email messages, Text messages or any of that.

Rep. Jessica Haak: I know that when I was in college, and I contacted my phone carrier to try to block someone from texting me, they told me that wasn't possible. I could block them from calling me, but not from texting me. As far as email I think you can block an email address, but that's not to stop someone from creating a new email address to keep contacting you.

Sen. Armstrong: Was there any talk about mobile spyware, like applications that go on mobile phones and do you think the language, either in the original form or in the new and more interesting form cover mobile application spyware, to place an app. on your ex-girlfriend's phone.

Rep. Jessica Haak: I would hope that we would adopt language that would include that because since the proposal of this bill, I've had two phone calls from people that have been victims of stalking, that have received a picture on their phone or they send an email and they open it up on the phone, then the person can infiltrate their system and stalk them to find out where they are.

Ch. Hogue: Thank you. Further testimony in support.

Janelle Moos, Exec. Dir. Of CAWS North Dakota: Support (see attached #2). The intent was to look around at other states that have added GPS or electronic devices that are used to stalk.

Sen. Grabinger: Was this modeled after another state, do you know.

Janelle Moos: I don't know if Rep. Haak had other sample language but I do have other sample states law that we could look to. I think Vonette helped draft this original bill. I can provide other language if that would be helpful.

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition. Neutral testimony. We will close the hearing.


# 2015 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB 1321  
3/24/2015  
25365

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



**Minutes:**

Ch. Hogue: Let's take a look at HB 1321.

Sen. Armstrong: Explained the amendments related to tracking people without their knowledge. (#1)

Sen. Grabinger: I move the amendments.

Sen. Luick: Second the motion.

Ch. Hogue: We will take a voice vote. Motion carried. We now have the bill before us as amended.

Sen. Grabinger: I move a Do Pass as Amended.

Sen. Luick: Second the motion.

**6 YES 0 NO 0 ABSENT**

**DO PASS AS AMENDED**

**CARRIER: Sen. Grabinger**



March 24, 2015

M  
3/24/15

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1321

Page 1, line 2, replace "communication" with "devices"

Page 1, line 14, remove "(1)"

Page 1, line 14, remove the overstrike over "directed"

Page 1, line 14, remove the colon

Page 1, line 15, remove "(a) Directed"

Page 1, line 16, remove the overstrike over the overstruck period

Page 1, line 16, remove "or"

Page 1, remove lines 17 through 22

Page 2, line 1, remove "(2)"

Page 2, line 3, after the period insert "Stalking includes the unauthorized tracking of the person's movements or location through use of a global positioning system or other electronic device."

Renumber accordingly

Date: 3/24/15  
Voice Vote # 1

2015 SENATE STANDING COMMITTEE  
VOICE VOTE  
BILL/RESOLUTION NO. 1321

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: Armstrong Amendment (#1)

Recommendation: ☒ Adopt Amendment

☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation

☐ As Amended ☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Sen. Grabinger Seconded By Sen. Luick

Senators	Yes	No	Senators	Yes	No
Ch. Hogue			Sen. Grabinger		
Sen. Armstrong			Sen. C. Nelson		
Sen. Casper					
Sen. Luick					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Voice Vote: Motion Carried

Date: 3/24/15

Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTE

BILL/RESOLUTION NO. 1321

Senate JUDICIARY Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment

☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation

☒ As Amended ☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Sen. Grabinger Seconded By Sen. Luick

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Grabinger

**REPORT OF STANDING COMMITTEE**

**HB 1321, as engrossed: Judiciary Committee (Sen. Hogue, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1321 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "communication" with "devices"

Page 1, line 14, remove "(1)"

Page 1, line 14, remove the overstrike over "directed"

Page 1, line 14, remove the colon

Page 1, line 15, remove "(a) Directed"

Page 1, line 16, remove the overstrike over the overstruck period

Page 1, line 16, remove "or"

Page 1, remove lines 17 through 22

Page 2, line 1, remove "(2)"

Page 2, line 3, after the period insert "Stalking includes the unauthorized tracking of the person's movements or location through use of a global positioning system or other electronic device."

Renumber accordingly

**2015 CONFERENCE COMMITTEE**

**HB 1321**

# 2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee  
Prairie Room, State Capitol

HB 1321  
4/15/2015  
26144

☐ Subcommittee  
☒ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to stalking and the use of electronic communication.

## Minutes:

**Chairman K. Koppelman:** Opened the conference committee meeting on HB 1321. All the members were present. We have the engrossed 3000 version before us. Would the Senate explain its amendments?

**Senator Armstrong:** Some of our issues with the language in subsection b it is somewhat duplicative to the harassment statute which sets right above it in the code. We wanted a clear definition that electronic tracking devices would be considered stalking. If think there is a very valid argument to be made that the currently are under the stalking code. If we wanted to make exceptions it should come in another line item. This was a place holder amendment so we would get to the place and have this conversation. It is to add language for the purpose of intent, harass or disarray under the language or to add a subsection further down in the code as to what would be protected tracking exceptions to it. If you have it in two sections of code you are allowing someone whose it guilty of harassment to be prosecuted under the stalking statute and the first time that happens it is not a big distinction; the second time it happens it could be a very big distinction. The House wanted to narrow it to make sure that you take out some of those non-pharos reasons why some of this would occur, but that language going there now allows essentially choice and charging from the prosecution standpoint.

**Rep. Mary Johnson:** Part of the thought process was we removed stalking includes the unauthorized tracking of a person's movements so we were becoming more definitive on that sort of thing because I brought up my 87 year old mother who insists on driving and tries to get to her home in east Grand Forks to the hospital and ends up in Glibly so if I put a tracking device on her car is am stalking her so that is why we took out that portion. Then we tried to become more definitive on what cyber stalking is and we took some language out for those things. You are saying Senator Armstrong is up here in the harassment?

**Senator Armstrong:** It is similar language and it is setting at my desk. The harassment statute is 12.1-17 7 or 6 and it is right above it in the code. Maybe we should tighten it up at

the end or do an exception. We had this conversation about parents tracking their children and whether or not that would be allowed. Parenting is the constitutional protected activity so I think Rep. Johnson's situation is already covered. We are trying to get at the bad actors and this cyber stalking can be significantly more invasive than regular stalking. You don't have to leave your home to track somebody's movements wherever they are.

**Rep. P. Anderson:** Why don't we use the term cyber stalking in the bill which is phone, GPS, camera, computer software? I think everyone knows what cyber stalking is and we should be able to use that term.

**Senator Armstrong:** I think the Senate's position is if we get it tailored to the point. My concern is when you start doing a lot of verbiage you get into problems with prosecution and actual practical effects on how the cases proceed forward. If you get it separate and narrowly tailored I don't think we would have an issue with that. In the criminal code you still have to define what it is and one of the reasons we used other electronic device is the way technology is improving on a daily basis we would be amending this bill every two years. This is to make sure the code specifically lists it. You could prosecute for stalking for using those things right now. This would make it easier to prosecute those cases and that is why the bill is brought forward, but we only want to prosecute the bad guys; not the good guys.

**Rep. Mary Johnson:** The second portion of the struck language or to track that individuals movement by electronic means; that we had the big discussion of what is a device. What is an application so we went to electronic means, but is it the first portion to communicate or cause to be communicated; do you find that language applicable of harassment? Is it just that first portion? It is not the following part? I can go back to Legislative Counsel and get away from what is harassment and what is cyber stalking.

**Senator Armstrong:** That first portion is very duplicative of the harassment statute. If you get it separate I don't think we would have an issue with that. You may be able to say after this which serves no legitimate purpose. In the criminal code you still have to define it every two years.

**Chairman K. Koppelman:** I think it wouldn't hurt to have some language in there even something like stalking may also include under the same circumstances stalking may include the unauthorized. Something like that that ties it a little tighter so we know that is what we are referring to rather than just the act of tracking someone without their permission. It seems to focus upon the reaction to the act. That language rests solely on how that activity is perceived by the recipient of it. Is there anything we should be thinking about of the intent of the perpetrator?

**Senator Armstrong:** This language is not unique to the stalking statute. There are various different areas in the code where those types of fear and this language are not unique to the stalking statute. Maybe there should be a way to look at that terrorizing where you are talking about the perpetrators intent being equally as important as the feeling on the victim, but this language is consistent with these other types of crimes as they exist.

**Chairman K. Koppelman:** Maybe just applying a reasonable person to be frightened standard? Maybe the changes the focus a little bit.

**Senator Armstrong:** I am not sure I disagree with you. We hadn't discussed that because it wasn't a part of any of the amendments.

**Chairman K. Koppelman:** I am not sure that emails could be considered stalking.

**Senator Armstrong:** This needs to be for the bad actors and people like that.

**Rep. Mary Johnson:** Is harassment prosecuted like continuity of conduct and ongoing repeated offense?

**Senator Armstrong:** The biggest difference between stalking and harassment can occur to people you don't know, but if I ask you to stop that is harassment. It is repeated.

**Rep. Mary Johnson:** Under here a,b, and d are truly are on the harassment.

**Senator Armstrong:** Stalking is more of a pattern of conduct. Harassment happens a lot more often among the same gender. Stalking it almost always happens in a relationship situation or an infatuation situation.

**Rep. Mary Johnson:** In your estimate they can't be charged under two crimes for the same conduct so why can't we just say stalking is not harassment? Then charge it under one or the other?

**Senator Armstrong:** I have had cases where they are charged for stalking and harassment. You want to make for sure there is a distinction what the two things are. Stalking is a gateway crime and that is why it is a C felony. That is why we have the enhancement to a C felony in stalking. A lot of times harassment is just a grouchy person who is mad at people. Stalking can get to be a scary situation.

**Chairman K. Koppelman:** I think we are of the same mind on where we want to go with this and just tightening up the language on this a bit.

**Senator Armstrong:** Do you want to make an extension of the sentence of the sentence that is in there or an exclusion underneath?

**Chairman K. Koppelman:** We need to clarify stalking in the Senate amendment. You can almost harass someone by acquiescing them of stalking.

**Senator Luick:** On C 14 it goes into the definition of stalking. Rep. Mary Johnson you mentioned your mother having an issue if you were to put a device on her car, but in the paragraph it identifies something that you should be aware of that the next paragraph down nullifies that because it is a legitimate purpose. That legitimate purpose could also be your minor child, if you as a parent wished to put a device on their vehicle.

**Rep. Mary Johnson:** I want it defined somehow more defined. That is a defense.



**Senator Armstrong:** The reasonable person already exists in the code. Part of it might be where it was located. We could just do a, b, c and d and just repeat the language as it relates to the reasonable person and cyber stalking.

**Senator Grabinger:** Item D stalking includes the use of a global positioning systems or electronic applications in an effort to track a person's movements without a legitimate purpose.

**Chairman K. Koppelman:** This section clearly talks about stalking clearly talks about other things like the intimidation and harassment etc.

**Senator Armstrong:** I you would get the reasonable person standard on it the second sentence of the language that we deleted from your original bill maybe very close and I think that is what Rep. Johnson was talking about.

**Chairman K. Koppelman:** Rep. Johnson and Senator Armstrong could work on this and come back together.

Adjourned.

# 2015 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1321  
4/16/2015  
26174

☐ Subcommittee  
☒ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to stalking and the use of electronic devices.

## Minutes:

Proposed amendment #1. Engrossed bill 02002 #2

**Chairman K. Koppelman:** Opened the conference committee meeting on HB 1321.  
All members were present.

**Rep. Mary Johnson:** (See proposed amendment #1 and engrossed bill 02002) Went over the proposal.

**Senator Luick:** Would somebody identify a reasonable person to me?

**Senator Armstrong:** It is a legal standard that makes it essentially bad, but it is not based on a particular victim. If you have an overly sensitive person they are not going to base the standard on that particular person's issue. Reasonable means normal and what a reasonable person would feel. It is a fact issue for the court to figure out and it is the prosecutor's issue to determine it so you don't an overly sensitive person becoming a criminal.

**Chairman K. Koppelman:** We could have approached this if we had looked at the intent of the stalker; then you would have to prove ill intent in order to charge someone or convict someone at least. If we were to just leave it at the action of the person who feels they were being stalked and were paranoid about it and so that might be over reaction so the reasonable person standard is normal or reasonable person going to conclude with this set of facts.

**Senator Luick:** I asked that because this is already identified.

**Motion made that the Senate recede from Senate amendments and amend as follows by Senator Grabinger; Seconded by Rep. P. Anderson:**

**Roll Call Vote:** 6 Yes 0 No 0 Absent

House Judiciary Committee  
HB 1321  
April 16, 2015  
Page 2

**Motion Carried.**

**Chairman K. Koppelman: Conference Committee adjourned on HB 1321.**

SB  
4/16/15

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1321

That the Senate recede from its amendments as printed on pages 1219 and 1220 of the House Journal and page 925 of the Senate Journal and that Engrossed House Bill No. 1321 be amended as follows:

Page 1, line 14, overstrike "to engage" and insert immediately thereafter ":

(a) To engage"

Page 1, line 14, remove the overstrike over "~~directed~~"

Page 1, line 14, remove the underscored colon

Page 1, line 15, remove "(a) Directed"

Page 1, line 16, overstrike the comma

Page 1, line 16, remove the overstrike over the overstruck period

Page 1, line 16, remove ":", or"

Page 1, remove lines 17 through 22

Page 2, line 1, remove "(2)"

Page 2, line 3, after "harassment" insert ":", or

(b) The unauthorized tracking of the person's movements or location through the use of a global positioning system or other electronic means that would cause a reasonable person to be frightened, intimidated, or harassed and which serves no legitimate purpose"

Renumber accordingly

Date: 4-16-15  
Roll Call Vote #: 1

2015 HOUSE CONFERENCE COMMITTEE  
ROLL CALL VOTES

BILL/RESOLUTION NO. 1321 as (re) engrossed

House Judiciary Committee

- Action Taken ☐ HOUSE accede to Senate Amendments  
☐ HOUSE accede to Senate Amendments and further amend  
☐ SENATE recede from Senate amendments  
☒ SENATE recede from Senate amendments and amend as follows
- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Sen Grabinger Seconded by: Rep. Anderson

Representatives	<u>4/15</u>	<u>4/16</u>		Yes	No		Senators	<u>4/15</u>	<u>4/16</u>		Yes	No
Rep. K. Koppelman (Chair)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			Senator Armstrong	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Rep. M. Johnson	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			Senator Luick	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Rep. P. Anderson	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			Senator Grabinger	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Total Rep. Vote							Total Senate Vote					

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier NO CARRIER Senate Carrier NO CARRIER

LC Number 15 0702 . 02002 of amendment

LC Number \_\_\_\_\_ . 04000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

HJ 1219. 1220 pages

**REPORT OF CONFERENCE COMMITTEE**

**HB 1321, as engrossed:** Your conference committee (Sens. Armstrong, Luick, Grabinger and Reps. K. Koppelman, M. Johnson, P. Anderson) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1219-12220, adopt amendments as follows, and place HB 1321 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1219 and 1220 of the House Journal and page 925 of the Senate Journal and that Engrossed House Bill No. 1321 be amended as follows:

Page 1, line 14, overstrike "to engage" and insert immediately thereafter ":

(a) To engage"

Page 1, line 14, remove the overstrike over "~~directed~~"

Page 1, line 14, remove the underscored colon

Page 1, line 15, remove "(a) Directed"

Page 1, line 16, overstrike the comma

Page 1, line 16, remove the overstrike over the overstruck period

Page 1, line 16, remove " ; or"

Page 1, remove lines 17 through 22

Page 2, line 1, remove "(2)"

Page 2, line 3, after "harassment" insert " ; or

(b) The unauthorized tracking of the person's movements or location through the use of a global positioning system or other electronic means that would cause a reasonable person to be frightened, intimidated, or harassed and which serves no legitimate purpose"

Renumber accordingly

Engrossed HB 1321 was placed on the Seventh order of business on the calendar.

**2015 TESTIMONY**

**HB 1321**

#1  
HB 1321  
128-15  
1-3

Mr. Chairman and members of the Judiciary Committee I am here to introduce House Bill 1321 that would add language to the current stalking statute.

Many modern electronic devices can identify where we are at any moment, technology allows an app to let a taxi driver know where to pick us up, it allows parents to keep an eye on their children's whereabouts. Technology allows caregivers to make sure patients are safe and it allows businesses to monitor company vehicles. This bill would not affect any of those actions, what it would address is how stalkers are using technology to intimidate their victims. Technology has become so affordable and available that stalkers can place GPS tracking devices in cars or in a backpack or purse to track their victim's whereabouts.

I am thrilled to be here this morning to introduce what has been dubbed as "Jackie's Law". This law was named after Jacqueline Wisniewski from New York whose surgeon ex-boyfriend Timothy Jorden stalked and killed her in 2012 after putting a GPS tracking device in her car. In March 2012, Jackie discovered a GPS tracking device that Timothy Jorden had installed on her car to stalk her and constantly follow her movement and location. Although Jorden was clearly stalking Wisniewski with the use of GPS technology, this specific action could not be deemed criminal due to a gap in state law. Just months later, in June 2012, Jorden shot and killed Wisniewski in a stairwell at the hospital where she worked.

Since the incident, a law was enacted to add unauthorized GPS tracking as a crime to the New York's anti-stalking law. Several other states, at least 10 the last time I checked, have prohibited unauthorized tracking. This bill would add North Dakota to that list.

The change to the stalking statute is on Page 2 of the bill where it adds the language "As used in this subsection, 'follow' includes the unauthorized tracking of the person's movements of location through the use of a global positioning system or other electronic device". It would make this action in itself a class A misdemeanor.

Now I have looked up in statute and "electronic device" is defined in code under Chapter 39-06.2-.2 number 15 where Electronic device includes a cellular telephone, personal digital assistant, pager, computer, or any other device used to input, write, send, receive, or read text. This definition, along with the inclusion of GPS will suffice to tracking devices until technology advances.

Today the U.S. Justice Department estimates that 1 in 4 stalking cases involve technology and 1 in 13 involve electronic monitoring or GPS tracking. The language in House Bill 1321 would help law enforcement pursue criminal charges against those who use GPS or other electronic devices to stalk their victims. The most important aspect is that it provides help to victims who are being frightened, harassed, and in cases like Jackie's tracked for intent to harm. We can help these victims by giving this legislation a do pass recommendation. I appreciate your time in hearing this bill and would be happy to stand for any questions.

District 12 Rep. Jessica Haak

/



#7  
HB1321  
1-28-15

**CHAPTER 39-06.2**  
**COMMERCIAL DRIVER'S LICENSES**

**39-06.2-01. Uniform Commercial Driver's License Act.**

The purpose of this chapter is to implement the federal Commercial Motor Vehicle Safety Act of 1986 [title XII of Pub. L. 99-570, 49 U.S.C. 2701, repealed] and Motor Carrier Safety Improvement Act of 1999 [Pub. L. 106-159; 113 Stat. 1748; 49 U.S.C. 113 et seq.] and reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by:

1. Permitting commercial drivers to hold only one license;
2. Disqualifying commercial drivers who have committed certain serious traffic violations or other specified offenses; and
3. Strengthening commercial driver's licensing and testing standards.

This chapter is a remedial law which should be liberally construed to promote the public health, safety, and welfare. To the extent that this chapter conflicts with general driver's licensing provisions, this chapter prevails. Where this chapter is silent, the general driver's licensing provisions apply.

**39-06.2-02. Definitions.**

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Alcohol" means any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.
2. "Alcohol concentration" means:
  - a. The number of grams of alcohol per one hundred milliliters of blood;
  - b. The number of grams of alcohol per two hundred ten liters of breath; or
  - c. The number of grams of alcohol per sixty-seven milliliters of urine.
3. "Commercial learner's permit" means a permit issued under subsection 4 of section 39-06.2-07.
4. "Commercial driver's license" means a license issued under this chapter which authorizes an individual to drive a class of commercial motor vehicle.
5. "Commercial driver's license information system" means the information system established under the Commercial Motor Vehicle Safety Act to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.
6. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles designed or used to transport passengers or property:
  - a. If the gross combination weight rating or gross combination weight is twenty-six thousand one pounds [11793.86 kilograms] or more, whichever is greater, provided the towed unit has a gross vehicle weight rating or gross vehicle weight of more than ten thousand pounds [4536 kilograms], whichever is greater;
  - b. If the vehicle has a gross vehicle weight rating or gross vehicle weight of more than twenty-six thousand pounds [11793.40 kilograms], whichever is greater;
  - c. If the vehicle is designed to transport sixteen or more passengers, including the driver; or
  - d. If the vehicle is transporting hazardous materials and is required to be placarded in accordance with 49 CFR part 172, subpart F or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.
7. "Controlled substance" means any substance so classified under section 802(6) of the Controlled Substances Act [21 U.S.C. 802(6)], and includes all substances listed on schedules I through V, of 21 CFR part 1308, as they may be revised from time to time.
8. "Conviction" means an unvacated adjudication of guilt, or a determination that an individual has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the individual's appearance in court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

#1  
HB1321  
1-28-15

9. "Disqualification" means a withdrawal of the privilege to drive a commercial motor vehicle.
10. "Downgrade" means:
  - a. A state allows the driver to change the driver's self-certification to interstate, but operating exclusively in transportation or operation excepted from 49 CFR part 391, as provided in 390.3(f), 391.2, 391.68, or 398.3;
  - b. A state allows the driver to change the driver's self-certification to intrastate only, if the driver qualifies under the state's physical qualification requirements for intrastate only;
  - c. A state allows the driver to change the driver's certification to intrastate, but operating exclusively in transportation or operations excepted from all or part of the state driver's qualification; or
  - d. A state removes the commercial driver's license privilege from the driver's license.
11. "Drive" means to drive, operate, or be in physical control of a motor vehicle.
12. "Driver" means an individual who drives, operates, or is in physical control of a commercial motor vehicle, or who is required to hold a commercial driver's license.
13. "Driver's license" means a license issued by a state to an individual which authorizes the individual to drive a motor vehicle.
14. "Drug" means any drug or substance or combination of drugs or substances which renders an individual incapable of safely driving, and includes any controlled substance.
15. "Electronic device" includes a cellular telephone, personal digital assistant, pager, computer, or any other device used to input, write, send, receive, or read text.
16. "Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns an individual to drive a commercial motor vehicle.
17. "Fatality" means the death of an individual as a result of a motor vehicle accident.
18. "Felony" means any offense under state or federal law which is punishable by death or imprisonment for a term exceeding one year.
19. "Foreign jurisdiction" means any jurisdiction other than a state of the United States.
20. "Gross vehicle weight rating" means the value specified by the manufacturer as the maximum loaded weight of a single or a combination or articulated vehicle. The gross vehicle weight rating of a combination or articulated vehicle, commonly referred to as the "gross combination weight rating", is the gross vehicle weight rating of the power unit plus the gross vehicle weight rating or actual weight of the towed unit or units.
21. "Hazardous materials" means any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.
22. "Imminent hazard" means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment.
23. "Mobile telephone" means a mobile communication device that falls under or uses any commercial mobile radio service, as defined in regulations of the federal communications commission in 47 CFR 20.3. The term does not include two-way and citizens band radio services.
24. "Motor vehicle" means every vehicle that is self-propelled, and every vehicle that is propelled by electric power obtained from overhead trolley wires but not operated upon rails, except vehicles moved solely by human power and motorized wheelchairs.
25. "Noncommercial motor vehicle" means a motor vehicle or combination of motor vehicles not defined by the term commercial motor vehicle.



#9  
HB 1321  
1-28-15

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Testimony on HB 1321  
House Judiciary Committee  
January 28, 2015

My name is Janelle Moos and I am the Executive Director of CAWS North Dakota. Our Coalition is a membership based organization that consists of 20 crisis centers that provide services to victims of domestic violence, sexual assault, and stalking in all 53 counties and the reservations in North Dakota. I'm speaking this morning on their behalf and to urge your favorable consideration of HB 1321.

January is Stalking Awareness Month. 7.5 million people are stalked in one year in the United States and 46% of stalking victims experience at least one unwanted contact per week. One victim's experience with stalking is outlined in the following excerpt from a NY Times article: "I found it impossible to escape my ex-boyfriend. He would follow me when I was driving to work or doing errands. He would inexplicably show up next to me at stoplights and even showed up at a bar she was visiting for the first time on a date. I started to think he wasn't acting alone." And it turns out he wasn't. Police arrested her ex-boyfriend after finding a satellite tracking device on her car. Her story is not rare. According to the U.S. Department of Justice, today, one in four stalking cases involves some sort of technology, and one in 13 involves electronic monitoring or GPS tracking.

Stalking is defined under North Dakota Chapter 12.1-17-07.1 and means to engage in an intentional course of conduct directed at a specific person which frightens, intimidates, or harasses that person, and that serves no legitimate purpose. The course of conduct may be directed toward that person or a member of that person's immediate family and must cause a reasonable person to experience fear, intimidation, or harassment. HB 1231 expands subsection 3 of the statute to now include the use of technology in stalking, specifically, GPS or another electronic device.

When legislators started drafting the first stalking laws in the 1990's very few would have been able to anticipate the widespread use of email, the Internet, websites, global positioning systems (GPS) cells phones or digital cameras to stalk. All 50 states have stalking laws. Roughly one third of the states have incorporated into their stalking statutes through electronic means.

1

Protecting victims from all kinds of stalking and holding offenders accountable for their behavior are important goals of stalking laws. It's important that we enact laws to ensure that victims have the same protection from stalkers who use electronic means like GPS as we do from those who physically follow, harass or threatened them. HB 1321 provides those protections and therefore I urge a DO PASS.

Thank you.

Proposed Amendments to HB 1321

#1  
HB1321  
2-10-15  
pg 1

Page 1, line 2, replace "devices" with "communication"

Page 1, line 14, after "c." insert "(1)"

Page 1, line 14, overstrike "directed" and insert immediately thereafter ":

(a) Directed"

Page 1, line 15, overstrike the second "that" and insert immediately thereafter "which"

Page 1, line 16, after "purpose" insert "; or

(b) To communicate, or cause to be communicated, to a specific individual, words, images, or language by or through the use of electronic mail or electronic communication, or to track that individual's movement by electronic means, which frightens, intimidates, or harasses that individual and which serves no legitimate purpose"

Page 1, after line 16, insert:

"(2)"

Page 1, line 19, overstrike "No" and insert immediately thereafter "A"

Page 1, line 19, after "may" insert "not"

Page 2, line 1, remove "As used in this subsection, "follow" includes the"

Page 2, remove lines 2 and 3

Renumber accordingly

#2  
HB 1321  
2-10-15  
pg 1

HB 1321

Page 1, line 18, after the period insert, "The term "stalk" does not include the use by a secured creditor or its agent of a global positioning system or other electronic device to determine the location of collateral which has been pledged to secure repayment of an obligation to the creditor."

Alternatively,

Page 2, line 6, after "employment" insert "or that a secured creditor or its agent was using a global positioning system or other electronic device to determine the location of collateral which has been pledged to secure repayment of an obligation to the creditor"

1-1

Chairman Hogue and members of the Senate Judiciary Committee, I am here to introduce House Bill 1321 that would add language to the current stalking statute.

Many modern electronic devices can identify where we are at any moment, technology allows an app to let a taxi driver know where to pick us up, it allows parents to keep an eye on their children's whereabouts. Technology allows caregivers to make sure patients are safe and it allows businesses to monitor company vehicles. This bill would not affect any of those actions, what it would address is how stalkers are using technology to intimidate their victims. Technology has become so affordable and available that stalkers can use GPS tracking devices or electronic programs to track their victim's whereabouts.

I am thrilled to be here this morning to introduce what has been dubbed "Jackie's Law". This law was named after Jacqueline Wisniewski from New York whose surgeon ex-boyfriend Timothy Jorden stalked and killed her in 2012 after putting a GPS tracking device in her car. In March 2012, Jackie discovered a GPS tracking device that Timothy Jorden had installed on her car to stalk her and constantly follow her movement and location. Although Jorden was clearly stalking Wisniewski with the use of GPS technology, this specific action could not be deemed criminal due to a gap in state law. Just months later, in June 2012, Jorden shot and killed Wisniewski in a stairwell at the hospital where she worked.

Since the incident, a law was enacted to add unauthorized GPS tracking as a crime to the New York's anti-stalking law. Several other states, at least 10 the last time I checked, have prohibited unauthorized tracking. This bill would add North Dakota to that list.

In the House, we amended the bill to be more inclusive. We changed the wording from an electronic device to electronic communication as the committee felt this was more inclusive language. As you can see on page 1 line 17-22 that was the language that was added. This language covers a broader part of technology instead of just devices; it covers electronic communication as well.

Today the U.S. Justice Department estimates that 1 in 4 stalking cases involve technology and 1 in 13 involve electronic monitoring or GPS tracking. The language in House Bill 1321 would help law enforcement pursue criminal charges against those who use GPS or other electronic devices to stalk their victims. The most important aspect is that it provides help to victims who are being frightened, harassed, and in cases like Jackie's tracked for intent to harm. We can help these victims by giving this legislation a do pass recommendation. I appreciate your time in hearing this bill and would be happy to stand for any questions.

District 12 Rep. Jessica Haak

AB 1321  
3/17/15





2-1

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Testimony on HB 1321

Senate Judiciary Committee

March 17, 2015

Chairman Hogue and Members of the Committee,

My name is Janelle Moos and I am the Executive Director of CAWS North Dakota. Our Coalition is a membership based organization that consists of 20 crisis centers that provide services to victims of domestic violence, sexual assault, and stalking in all 53 counties and the reservations in North Dakota. I'm speaking this morning on their behalf and to urge your favorable consideration of HB 1321.

7.5 million people are stalked in one year in the United States and 46% of stalking victims experience at least one unwanted contact per week. One victim's experience with stalking is outlined in the following excerpt from a NY Times article: "I found it impossible to escape my ex-boyfriend. He would follow me when I was driving to work or doing errands. He would inexplicably show up next to me at stoplights and even showed up at a bar she was visiting for the first time on a date. I started to think he wasn't acting alone." And it turns out he wasn't. Police arrested her ex-boyfriend after finding a satellite tracking device on her car. Her story is not rare. According to the U.S. Department of Justice, today, one in four stalking cases involves some sort of technology, and one in 13 involves electronic monitoring or GPS tracking.

Stalking is defined under North Dakota Chapter 12.1-17-07.1 and means to engage in an intentional course of conduct directed at a specific person which frightens, intimidates, or harasses that person, and that serves no legitimate purpose. The course of conduct may be directed toward that person or a member of that person's immediate family and must cause a reasonable person to experience fear, intimidation, or harassment. The engrossed version of HB 1321 expands the definition of stalking on lines 17-22 to include the use of technology in stalking, specifically, electronic communication, mail or tracking someone's movement through electronic means (GPS).

When legislators started drafting the first stalking laws in the 1990's very few would have been able to anticipate the widespread use of email, the Internet, websites, global positioning



2-2

systems (GPS) cells phones or digital cameras to stalk. All 50 states have stalking laws. Roughly one third of the states have incorporated into their stalking statutes through electronic means. Protecting victims from all kinds of stalking and holding offenders accountable for their behavior are important goals of stalking laws. It's important that we enact laws to ensure that victims have the same protection from stalkers who use electronic means like GPS as we do from those who physically follow, harass or threatened them. The engrossed version of HB 1321 provides those protections and therefore I urge a DO PASS.

Thank you.

HB 1321  
3/17/15

# 1-1  
3/24/19

**PROPOSED AMENDMENTS TO HB 1321**  
**(Sen. Armstrong)**

1 A BILL for an Act to amend and reenact section 12.1-17-07.1 of the North Dakota  
2 Century Code, relating to stalking and the use of electronic devices.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 12.1-17-07.1 of the North Dakota Century  
5 Code is amended and reenacted as follows:

6 **12.1-17-07.1. Stalking.**

7 1. As used in this section:

8 a. "Course of conduct" means a pattern of conduct consisting of two  
9 or more acts evidencing a continuity of purpose. The term does  
10 not include constitutionally protected activity.

11 b. "Immediate family" means a spouse, parent, child, or sibling. The  
12 term also includes any other individual who regularly resides in the  
13 household or who within the prior six months regularly resided in  
14 the household.

15 c. "Stalk" means to engage in an intentional course of conduct  
16 directed at a specific person which frightens, intimidates, or  
17 harasses that person, and that serves no legitimate purpose. The  
18 course of conduct may be directed toward that person or a  
19 member of that person's immediate family and must cause a  
20 ~~✓~~ Reasonable person to experience fear, intimidation, or  
21 harassment. Stalking includes the unauthorized tracking of the  
22 person's movements or location through the use of a global  
23 positioning system or other electronic device.

24 2. ~~No~~A person may not intentionally stalk another person.

25 3. In any prosecution under this section, it is not a defense that the actor  
26 was not given actual notice that the person did not want the actor to  
27 contact or follow the person; nor is it a defense that the actor did not  
28 intend to frighten, intimidate, or harass the person. An attempt to contact  
29 or follow a person after being given actual notice that the person does not

1-2  
3/24/15  
HB 1321

- 1 want to be contacted or followed is prima facie evidence that the actor
- 2 intends to stalk that person.
- 3 4. In any prosecution under this section, it is a defense that a private
- 4 investigator licensed under chapter 43-30 or a peace officer licensed
- 5 under chapter 12-63 was acting within the scope of employment.
- 6 5. If a person claims to have been engaged in a constitutionally protected
- 7 activity, the court shall determine the validity of the claim as a matter of
- 8 law and, if found valid, shall exclude evidence of the activity.
- 9 6. a. A person who violates this section is guilty of a class C felony if:
- 10 (1) The person previously has been convicted of violating
- 11 section 12.1-17-01, 12.1-17-01.1, 12.1-17-02, 12.1-17-04,
- 12 12.1-17-05, or 12.1-17-07, or a similar offense from
- 13 another court in North Dakota, a court of record in the
- 14 United States, or a tribal court, involving the victim of the
- 15 stalking;
- 16 (2) The stalking violates a court order issued under chapter
- 17 14-07.1 protecting the victim of the stalking, if the person
- 18 had notice of the court order; or
- 19 (3) The person previously has been convicted of violating this
- 20 section.
- 21 b. If subdivision a does not apply, a person who violates this section
- 22 is guilty of a class A misdemeanor.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1321

That the Senate recede from its amendments as printed on pages 1219 and 1220 of the House Journal and page 925 of the Senate Journal and that Engrossed House Bill No. 1321 be amended as follows:

Page 1, line 14, overstrike "to engage" and insert immediately thereafter ":

(a) To engage"

Page 1, line 14, remove the overstrike over "directed"

Page 1, line 14, remove the underscored colon

Page 1, line 15, remove "(a) Directed"

Page 1, line 16, overstrike the comma

Page 1, line 16, remove the overstrike over the overstruck period

Page 1, line 16, remove ";or"

Page 1, remove lines 17 through 22

Page 2, line 1, remove "(2)"

Page 2, line 3, after "harassment" insert ";or

(b) The unauthorized tracking of the person's movements or location through the use of a global positioning system or other electronic means that would cause a reasonable person to be frightened, intimidated, or harassed and which serves no legitimate purpose"

Renumber accordingly

Senator Armstrong  
#2  
HB 1321  
4-16-15

Introduced by

Representatives Haak, Brabandt, Delmore, M. Johnson, Klemin

Senators Armstrong, Grabinger

- 1 A BILL for an Act to amend and reenact section 12.1-17-07.1 of the North Dakota Century  
2 Code, relating to stalking and the use of electronic communication.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 12.1-17-07.1 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **12.1-17-07.1. Stalking.**

7 1. As used in this section:

8 a. "Course of conduct" means a pattern of conduct consisting of two or more acts  
9 evidencing a continuity of purpose. The term does not include constitutionally  
10 protected activity.

11 b. "Immediate family" means a spouse, parent, child, or sibling. The term also  
12 includes any other individual who regularly resides in the household or who within  
13 the prior six months regularly resided in the household.

14 c. (1) "Stalk" means to engage:

15 (a) To engage in an intentional course of conduct directed;

16 (a) Directed at a specific person which frightens, intimidates, or harasses  
17 that person; and that which serves no legitimate purpose; or

18 (b) To communicate, or cause to be communicated, to a specific  
19 individual, words, images, or language by or through the use of

20 electronic mail or electronic communication, or to track that

21 individual's movement by electronic means, which frightens,

22 intimidates, or harasses that individual and which serves no legitimate

23 purpose.



1 ~~\_\_\_\_\_ (2) The course of conduct may be directed toward that person or a member of~~  
2 that person's immediate family and must cause a reasonable person to  
3 experience fear, intimidation, or harassment; or

4 (b) The unauthorized tracking of the person's movements or location  
5 through the use of a global positioning system or other electronic  
6 means that would cause a reasonable person to be frightened.  
7 intimidated, or harassed and which serves no legitimate purpose.

8 2. ~~No~~A person may not intentionally stalk another person.

9 3. In any prosecution under this section, it is not a defense that the actor was not given  
10 actual notice that the person did not want the actor to contact or follow the person; nor  
11 is it a defense that the actor did not intend to frighten, intimidate, or harass the person.  
12 An attempt to contact or follow a person after being given actual notice that the person  
13 does not want to be contacted or followed is prima facie evidence that the actor  
14 intends to stalk that person.

15 4. In any prosecution under this section, it is a defense that a private investigator  
16 licensed under chapter 43-30 or a peace officer licensed under chapter 12-63 was  
17 acting within the scope of employment.

18 5. If a person claims to have been engaged in a constitutionally protected activity, the  
19 court shall determine the validity of the claim as a matter of law and, if found valid,  
20 shall exclude evidence of the activity.

21 6. a. A person who violates this section is guilty of a class C felony if:

22 (1) The person previously has been convicted of violating section 12.1-17-01,  
23 12.1-17-01.1, 12.1-17-02, 12.1-17-04, 12.1-17-05, or 12.1-17-07, or a  
24 similar offense from another court in North Dakota, a court of record in the  
25 United States, or a tribal court, involving the victim of the stalking;

26 (2) The stalking violates a court order issued under chapter 14-07.1 protecting  
27 the victim of the stalking, if the person had notice of the court order; or

28 (3) The person previously has been convicted of violating this section.

29 b. If subdivision a does not apply, a person who violates this section is guilty of a  
30 class A misdemeanor.