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## FISCAL IMPACT REPORT

SPONSOR Leavell DATE TYPED 02/08/05 HB \_\_\_\_\_

SHORT TITLE Cyberstalking as Harassment and Stalking SB 99

ANALYST McSherry

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI		Indeterminate	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files  
 Corrections Department  
 Department of Public Safety  
 Office of the Attorney General  
 Administrative Office of the Courts  
 Public Defender

### SUMMARY

#### Synopsis of Bill

Senate Bill 99 proposes to amend the existing “Harassment and Stalking Act” to include the use of electronic devices (computer, pager, cell phone, fax machine, telephone, audio equipment or an device that can produce an electronically generated image, message or signal) as a form of stalking and harassment.

The definition of stalking is proposed to be amended to require the alleged stalker to “intentionally act in a way that would place a reasonable person in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint,” rather than the current statute which requires a person to “intend to place another person in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint.

The bill proposes that the location of offense when an electronic device is used to commit an offense could be considered either the location from which the harassment was sent, or the location the harassment was received.

Significant Issues

The Public Defender (PD) asserts that currently, harassment and stalking are specific intent crimes, meaning that a person must do the acts with the intent to place another in reasonable apprehension of death, bodily harm, etc. PD further points out that the proposed bill would remove the intent requirement, and that simply performing the described acts, and doing them in a way that would place a reasonable person in fear, would be illegal. This proposed change would expand the category of persons who may be criminally liable under the statute even though they had no intent to place another in fear.

The penalty for a first violation of the act is a misdemeanor. The penalty for a second or subsequent violation is a fourth degree felony.

New criminal laws may increase the caseload of the state courts, the Corrections Department, the Public Defender and the Public Safety Department.

According to the Attorney General's Office (AGO), the inclusion of electronic communication in the Harassment and Stalking Act does not present any significant issues, because the law as it appears without the amendment does not prohibit a person from being convicted for using an electronic device.

**PERFORMANCE IMPLICATIONS**

According to AGO, the proposed change in statute language to "intend to place" from intentionally act will make it easier to secure convictions in stalking situations.

**FISCAL IMPLICATIONS**

The Public Defender predicts that the enacting of this bill would result in more people being subjected to criminal liability, although the exact number cannot be known at this time.

There is no appropriation in the bill.

The Corrections Department (CD) predicts that enactment of the bill could increase costs to the Department as a result of the new crime. While the Department cites that currently, the number of convictions is likely to be minimal, the Department further predicts that as technology develops, the violations of this offense could increase. CD asserts that virtually all prosecutions would result in Probation and Parole involvement that could lead to a significant impact upon the Department in the future.

The contract/private prison annual costs of incarcerating an inmate is \$20,720 per year for males. The cost per client to house a female inmate at a privately operated facility is \$26,313 per year. Because state owned prisons are essentially at capacity, any net increase in inmate population will be housed at a contract/private facility.

The cost per client in Probation and Parole for a standard supervision program is \$1,452 per year.

The cost per client in Intensive Supervision programs is \$2,852 per year. The cost per client in department-operated Community Corrections programs is \$4,371 per year. The cost per client in privately-operated Community Corrections programs is \$9,151 per year. The cost per year for male and female residential Community Corrections programs is \$20,725.

AOC cites that there will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions.

### **ADMINISTRATIVE IMPLICATIONS**

The Corrections Department reports that the Department would be able to absorb the additional burden due to the fact that the numbers of persons convicted would be minimal.

New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts.

### **TECHNICAL ISSUES**

The Public Defender states that by lowering the intent requirement from the specific intent to place another in fear, to intent to perform an act, the number of persons who may be criminally liable would increase and convictions become easier to obtain. For example, a person who does an act which he or she means as a joke but which actually puts another in fear could be found guilty of stalking. Because the person intended the act, even if without a desired effect, if it causes another to fear harm, the person could be found guilty of stalking.

According to the Office of the Attorney General, The Uniform Jury Instructions may need to be revised.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

According to AGO, under current statute if a stalker who truly believes his activity is not causing the victim fear of death, bodily harm, or sexual assault arguably this stalker would not be convicted.

### **POSSIBLE QUESTIONS**

1. Is the intent of the bill to change the currently held “intent” requirement as well as to add the additional electronic communication device harassment and stalking?

**EM/njw**