

Chapter No. 453

10/HR03/R1321SG

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## ***HOUSE BILL NO. 1309***

Originated in House Don Richardson Clerk

HOUSE BILL NO. 1309

AN ACT TO AMEND SECTION 97-3-107, MISSISSIPPI CODE OF 1972, TO REVISE THE ELEMENTS OF THE OFFENSE OF STALKING AND AGGRAVATED STALKING; TO ENACT DEFINITIONS; TO CLARIFY AND REVISE TERMS OF PUNISHMENT; TO CLARIFY VENUE FOR PROSECUTION OF THE OFFENSE; AND FOR RELATED PURPOSES.

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

**SECTION 1.** Section 97-3-107, Mississippi Code of 1972, is amended as follows:

97-3-107. (1) (a) Any person who purposefully engages in a course of conduct directed at a specific person, or who makes a credible threat, and who knows or should know that the conduct would cause a reasonable person to fear for his or her own safety, to fear for the safety of another person, or to fear damage or destruction of his or her property, is guilty of the crime of stalking.

(b) A person who is convicted of the crime of stalking under this section shall be punished by imprisonment in the county jail for not more than one (1) year or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment. \* \* \*

(c) Any person who is convicted of a violation of this section when there is in effect at the time of the commission of the offense a valid temporary restraining order, ex parte protective order, protective order after hearing, court approved consent agreement, or an injunction issued by a municipal, justice, county, circuit or chancery court, federal or tribal court or by a foreign court of competent jurisdiction \* \* \* prohibiting the behavior described in \* \* \* this section against

the same party, shall be punished by imprisonment in the county jail for not more than one (1) year and by a fine of not more than One Thousand Five Hundred Dollars (\$1,500.00). \* \* \*

(2) (a) A person who commits acts that would constitute the crime of stalking as defined in this section is guilty of the crime of aggravated stalking if any of the following circumstances exist:

(i) At least one (1) of the actions constituting the offense involved the use or display of a deadly weapon with the intent to place the victim of the stalking in reasonable fear of death or great bodily injury to self or a third person;

(ii) Within the past seven (7) years, the perpetrator has been previously convicted of stalking or aggravated stalking under this section or a substantially similar law of another state, political subdivision of another state, of the United States, or of a federally recognized Indian tribe, whether against the same or another victim; or

(iii) At the time of the offense, the perpetrator was a person required to register as a sex offender pursuant to state, federal, military or tribal law and the victim was under the age of eighteen (18) years \* \* \*.

(b) Aggravated stalking is a felony punishable as follows:

(i) Except as provided in subparagraph (ii), by imprisonment in the custody of the Department of Corrections for not more than five (5) years and a fine of not more than Three Thousand Dollars (\$3,000.00).

(ii) If, at the time of the offense, the perpetrator was required to register as a sex offender pursuant to state, federal, military or tribal law, and the victim was under the age of eighteen (18) years, by imprisonment for not more than six (6) years in the custody of the Department of Corrections and a fine of Four Thousand Dollars (\$4,000.00).

(3) Upon conviction, the sentencing court shall consider issuance of an order prohibiting the perpetrator from any contact with the victim. The duration of any order prohibiting contact with the victim shall be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim or another person.

(4) Every conviction of stalking or aggravated stalking may require as a condition of any suspended sentence or sentence of probation that the defendant, at his own expense, submit to psychiatric or psychological counseling or other such treatment or behavioral modification program deemed appropriate by the court.

(5) In any prosecution under this section, it shall not be a defense that the perpetrator was not given actual notice that the course of conduct was unwanted or that the perpetrator did not intend to cause the victim fear.

(6) When investigating allegations of a violation of this section, law enforcement officers shall utilize the Uniform Offense Report prescribed by the Office of the Attorney General in consultation with the sheriffs' and police chiefs' associations. However, failure of law enforcement to utilize the Uniform Offense Report shall in no way invalidate the crime charged under this section.

(7) For purposes of venue, any violation of this section shall be considered to have been committed in any county in which any single act was performed in furtherance of a violation of this section. An electronic communication shall be deemed to have been committed in any county from which the electronic communication is generated or in which it is received.

(8) For the purposes of this section:

\* \* \*

(a) "Course of conduct" means a pattern of conduct composed of a series of two (2) or more acts over a period of time, however short, evidencing a continuity of purpose and that

would cause a reasonable person to fear for his or her own safety, to fear for the safety of another person, or to fear damage or destruction of his or her property. Such acts may include, but are not limited to, the following or any combination thereof, whether done directly or indirectly: (i) following or confronting the other person in a public place or on private property against the other person's will; (ii) contacting the other person by telephone or mail, or by electronic mail or communication as defined in Section 97-45-1; or (iii) threatening or causing harm to the other person or a third party.

(b) \* \* \* " \* \* \* Credible threat" means a verbal or written threat \* \* \* to cause \* \* \* harm to a specific person or to cause damage to property that would cause a reasonable person to \* \* \* fear for \* \* \* the safety of that person or damage to the property

(c) "Reasonable person" means a reasonable person in the victim's circumstances.

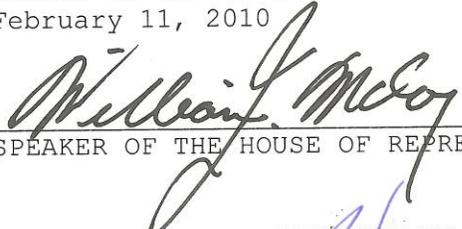
\* \* \*

(9) The incarceration of a person at the time the threat is made shall not be a bar to prosecution under this section. Constitutionally protected activity is not prohibited by this section.

\* \* \*

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2010.

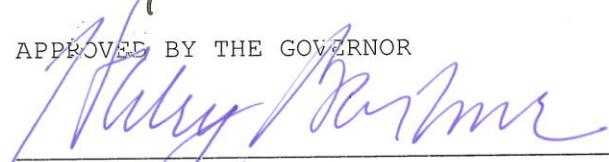
PASSED BY THE HOUSE OF REPRESENTATIVES  
February 11, 2010

  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE  
March 8, 2010

  
PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

  
GOVERNOR

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