

**SUBJECT:** Eliminating requirement for previous report for stalking offense

**COMMITTEE:** Criminal Jurisprudence — favorable, without amendment

**VOTE:** 8 ayes — Place, Talton, Farrar, Hudson, Nixon, Pickett, Pitts, Solis  
0 nays  
1 absent — Greenberg

**SENATE VOTE:** On final passage, February 9 — 28-0

**WITNESSES:** None

**BACKGROUND:** It is a Class A misdemeanor under harassment to, on more than one occasion, engage in certain conduct directed specifically toward another person, including following the person. The conduct must be reasonably likely to harass, annoy, alarm, abuse, torment or embarrass the person, and on at least one occasion the offender must have threatened bodily injury or to commit an offense against the person, the person's family or the person's property. Another element of the offense is that at least one occasion occurred after the victim had reported the conduct to a law enforcement agency. Repeat offenses are third-degree felonies.

**DIGEST:** SB 126 would eliminate the requirement for meeting the definition of harassment that at least one occasion of the harassment had taken place after the victim had reported the offense to a law enforcement agency. The bill also would move the portion of the harassment offense dealing with stalking to a new section of the Penal Code specifically governing stalking.

It would be an affirmative offense to prosecution that the defendant was engaged in conduct that consisted of activity in support of constitutionally or statutorily protected rights.

SB 126 would take effect September 1, 1995.

**SUPPORTERS  
SAY:**

SB 126 would close a loophole in the 1993 stalking law that gives stalkers "one free stalk." Victims now must have notified law enforcement authorities at least once before an offense takes place. This requirement endangers victims, because police do not arrest suspects until the second time the victim calls for help. The stalking law was designed to protect persons before they were harmed or badly injured by stalkers, and the "one free stalk" provision limits its effectiveness. SB 126 would help protect victims by allowing a suspect to be arrested when the law enforcement authorities are called the first time. The Senate Interim Committee on Domestic Violence recommended this change to the 74th Legislature. SB 126 proposes a step in removing artificial barriers to prosecution and implications that the criminal justice system does not trust victims.

Because a pattern of behavior and a threat of injury would still have to be present, this bill would not affect behavior other than the criminal offense of stalking and would not result in mere arguments or disagreements falling under the stalking statutes. The law would continue to safeguard the constitutional rights of individuals engaged in lawful demonstrations or certain occupations such as reporting or private investigating.

Moving stalking into a separate Penal Code section would clear up confusion over what constitutes an offense and would make it easier to collect and track stalking statistics separately from other forms of criminal harassment.

**OPPONENTS  
SAY:**

The requirement that at least one previous stalking incident be reported to law enforcement authorities was designed to limit abuses and false reports. Eliminating this requirement could increase the chance that an alleged stalking victim could have an innocent suspect arrested. The current requirement ensures that an alleged victim may not call the police in the heat of an argument and have a person arrested for some non-criminal act, such as being outside on a sidewalk outside the alleged victim's house.

**NOTES:**

Also on today's calendar are SB 127 by Moncrief, which would require attempts to notify stalking victims before the release from jail of a person charged with stalking, and SB 129 by Moncrief, which would allow a magistrate to issue an emergency 30-day protective order in some domestic violence and stalking cases.