SUBJECT: Amending the offenses of harassment and stalking

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Herrero, Carter, Burnam, Canales, Hughes, Moody, Schaefer

0 nays

2 absent — Leach, Toth

WITNESSES: For — Patricia Baca, El Paso District Attorney's Office; Carlos Salinas, Alliance for Texas Families; Aaron Setliff, The Texas Council on Family Violence (*Registered, but did not testify:* Lon Craft, Texas Municipal Police Association; Kirsha Haverlah; Leslie Pool)

Against — None

BACKGROUND: Penal Code, sec. 42.07 defines harassment as a person committing certain acts with the intent to harass, annoy, alarm, abuse, torment, or embarrass another person. Two of the acts include initiating obscene communication or threatening in a certain alarming manner by telephone, in writing, or by electronic communication.

Penal Code, sec. 42.07 includes as one of the criteria of stalking that the actor knowingly engages in certain behavior that the actor knows or reasonably believes the other person will regard as threatening.

DIGEST: HB 1606 would remove the intent to "annoy," "alarm," or "embarrass" as conditions sufficient to constitute harassment. It also would remove repeated electronic or telephone communications that were reasonably likely to annoy, alarm, embarrass, or offend as sufficient conditions to constitute harassment. It would remove the condition that certain types of harassment be initiated by telephone, in writing, or electronic communication.

HB 1606 would add that repeated harassment would constitute stalking. The bill would change the criteria requiring that a stalking offense be perpetrated by an actor that reasonably "believed" the victim would be threatened to an actor that reasonably "should know" the victim would feel

threatened, in ways defined by the code.

HB 1606 would take effect September 1, 2013.

SUPPORTERS SAY:

HB 1606 would sensibly clean up the stalking and harassment statutes to better define the offenses and make them easier to prosecute. Currently, prosecuting stalking is difficult because a prosecutor must "get inside of the head" of the stalker to show that the stalker believed that his or her actions constituted a threat. Proving what a defendant believed can be problematic. A common defense to this standard is claiming the stalker simply had misguided affection.

The bill instead would require that the defendant reasonably should have known that his or her actions constituted a threat, which is a more standard criterion and easier to define. HB 1606 would also elevate repeated harassment to the more serious crime of stalking because repeated harassment can be just as dangerous as stalking.

In current statutes, harassment depends on the offender making the communication by telephone, in writing, or by electronic communication. HB 1606 sensibly removes this condition because harassment can happen through many different types of communication besides the three listed in law.

HB 1606 would clean up the harassment definition by removing the intentions to annoy, alarm, and embarrass as conditions for harassment. These actions are vague and have undergone repeated litigation. The law is tough enough without these unclear actions.

OPPONENTS SAY:

Removing the intentions to annoy, alarm, and embarrass as conditions for harassment is unnecessary and could weaken the harassment law by covering fewer instances of possible harassment. The Court of Criminal Appeals already has accepted the constitutionality of including these actions in statute as sufficient conditions for harassment, so there is no need to remove them from the law.