

SUBJECT: Expanding harassment crime to include certain electronic communication

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Collier, K. Bell, Crockett, Hinojosa, A. Johnson, Murr, Vasut
2 nays — Cason, Cook

WITNESSES: For — Marilyn Willson; Matthew Willson; (*Registered, but did not testify*: M. Paige Williams, for Dallas County Criminal District Attorney John Creuzot; Linda Nuno, Dem Party, Phelobotomist; Dustin Cox, GRAV; Ray Hunt, HPOU; Elizabeth Hadley, Personal Excellence Foundation; Tom Maddox, Sheriffs Association of Texas; Susana Carranza; Samantha Chang; Jonathan Copeland; Idona Griffith; Linda Guy; Gregg Vunderink)

Against — (*Registered, but did not testify*: Jeff Miller, Disability Rights Texas; Aldo Caldo; Deana Johnston; Tony LaMarr; Zoe Russell)

On — (*Registered, but did not testify*: Thomas Parkinson)

BACKGROUND: Under Penal Code sec. 42.07, the criminal offense of harassment is committed if an individual takes certain actions with intent to harass, annoy, alarm, abuse, torment, or embarrass another. The statute lists seven types of harassment. Under sec. 42.07(a)(7), sending repeated electronic communications in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another constitutes harassment.

Offenses generally are class B misdemeanors (up to 180 days in jail and/or a maximum fine of \$2,000). Offenses under sec. 42.07(a)(7) are class A misdemeanors (up to one year in jail and/or a maximum fine of \$4,000) if committed against a child younger than 18 and with the intent that the child commits suicide or engages in conduct causing serious bodily injury to the child, or if the actor has previously violated a temporary restraining order or injunction for relief for cyberbullying of a child.

DIGEST: CSHB 818 would expand the offense of harassment so that it would be an offense for individuals to publish on an internet website, including a social media platform, repeated electronic communications in a manner reasonably likely to abuse or torment or cause emotional distress to another person, unless the communications were made in connection with a matter of public concern.

The bill would define "matter of public concern" to mean a statement or activity regarding:

- a public official, public figure, or other person who has drawn substantial public attention due to the person's official acts, fame, notoriety, or celebrity;
- a matter of political, social, or other interest to the community; or
- a subject of concern to the public.

Offenses would be class B misdemeanors, except that offenses would be class A misdemeanors if they were committed against a child younger than 18 and with the intent that the child commit suicide or engage in conduct causing serious bodily injury to the child, or if the defendant had previously violated a temporary restraining order or injunction for relief for cyberbullying of a child.

The new offense would be added to those that principals of public primary and secondary schools may report to local law enforcement authorities if, after an investigation, the principal has reasonable grounds to believe the student engaged in conduct constituting the offense.

The bill would take effect September 1, 2021, and would apply to offenses committed on or after that date.

SUPPORTERS SAY: CSHB 818 would help protect individuals against cyberbullying and online harassment by updating the offense of harassment to include indirect communications published on the internet, including on social media platforms. While current law prohibits harassment in certain forms,

including electronic communications such as text messages, it does not protect against harassment posted on the internet and not sent directly to the victim. Terrible incidents of this type of harassment through social media have not been covered by this gap in current law.

CSHB 818 would close this gap so that harassment through the internet, including on social media, was considered an offense. The bill would apply only to repeated behavior that rose to the level of harassment, and communications would have to meet the specific criteria that they were likely to abuse, torment, or cause emotional distress, rather than the broader language used for other types of harassment. This language would ensure the bill was narrowly drawn to apply to harassment. The bill would not criminalize everyday, non-harassing behavior such as getting into an online argument or saying something online that was unkind.

The bill has been carefully crafted with input from the governor after a veto of similar legislation last session to address concerns about free speech and to ensure that it would not chill political speech.

CRITICS
SAY:

The language in CSHB 818 criminalizing certain communications is too broad and could include things that should be considered free speech but would not fall under the bill's definition of matters of public concern.