



## MEMORANDUM

**TO:** The Pennsylvania Senate

**FROM:** Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

**DATE:** June 7, 2021

**RE: OPPOSITION TO SB 703 P.N. 787 (BAKER)**

**Bill summary:** [SB 703](#) (PN 787) amends [18 Pa. C.S. § 2709](#) to expand the definition of harassment to include the repeated use of social media or the internet under circumstances which demonstrate (i) an intent to place another person in reasonable fear of bodily injury or to cause substantial emotional distress, or (ii) an intentional, knowing or reckless placement of another in reasonable fear of bodily injury or which causes substantial emotional distress to such other person. SB 703 also expands the list of crimes considered “crimes of violence” and would enhance a first offense to a felony of a third degree if the victim was under 16 and the perpetrator was over 18 and was at least 4 years older than the victim.

**On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose Senate Bill 703.**

### **SB 703 addresses behavior that is already punishable under current statute.**

Cyberstalking is **already** a crime of harassment under [18 Pa. C.S. § 2709](#). Harassment has multiple definitions, including “communications to or about such other person any lewd, lascivious, threatening or obscene words, language, drawings, or caricatures.” 2709(a)(4). Communication includes the internet. Additionally, under 2709 (a.1) cyber-harassment of a child is also a misdemeanor. And currently, the grading also increases if the person already targeted the same person. There is no need to add additional language covering internet or social media communication.

### **SB 703 proposes two radical changes to how stalking is currently defined under Pennsylvania law.**

**Removes the requirement that the person being stalked is aware of the harassing behavior:** One of the most alarming elements of SB 703 is new language that — after defining the criminal conduct — adds “notwithstanding if the other person has knowledge of the conduct.” This proposes to eliminate the requirement that the alleged target of the harassment has any knowledge of the conduct. But stalking, *by its very definition*, is supposed to make someone else scared. If that person has no knowledge of the behavior, how can this be placing them in reasonable fear?

**Shifts the burden of proof required to prove stalking:** Currently, a defendant charged with stalking must have the intent to place another person in fear. But under SB 703, all that is required for a conviction is that the recipient experiences fear or substantial emotional distress, regardless of the defendant's intent. SB 703 expands the definition of stalking in a way that shifts the burden of proof from the defendant's intent to the recipient's experience.

### **SB 703 could criminalize the unintentional actions of those who struggle to read social cues.**

The most troubling provision in SB 703 is section (3), which broadens the definition of stalking to include repeated requests to “friend” someone — regardless of whether that person has knowledge of this or not as long as the person on the receiving end experiences fear or emotional distress. The breadth of this amended language is extremely alarming — multiple requests to friend someone would now constitute stalking if the person who experienced those requests felt threatened.

As the former director of a university women's center, I often saw well-meaning, but ill-advised attempts at pursuit develop in this way on campus. This was particularly true for students with disabilities or on the spectrum who struggled to read social cues. Resolving these situations often required an explicit conversation, telling the student "this behavior is not acceptable, the person does not want to be your friend or your girlfriend, please stop." And once the person understood, the requests stopped. Because SB 703 would no longer limit the definition of stalking to require bad intent, someone could unintentionally be guilty of stalking without ever having been told that their behavior was unwanted. Criminalizing this kind of behavior as stalking is dangerously broad and excessively punitive.

SB 703 is a perfect example of hard cases that make terrible law. In her [co-sponsorship memo](#), the bill sponsor described the experience of Madison Zezzo, a young girl stalked by her friend's father, Shane Holderer. Madison's experience was clearly frightening, but the fact that Mr. Holderer initially received probation was the decision of the district attorney — it had nothing to do with the laws on the books. We have more than enough offenses under current statute to punish his kind of behavior.

**For these reasons, we urge you to oppose Senate Bill 703.**