

STALKING PREVENTION AND VICTIM PROTECTION ACT OF
1999

NOVEMBER 5, 1999.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. HYDE, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 1869]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1869) amending title 18, United States Code, to expand the prohibition on stalking, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Stalking Prevention and Victim Protection Act of 1999”.

SEC. 2. EXPANSION OF THE PROHIBITION ON STALKING.

(a) IN GENERAL.—Section 2261A of title 18, United States Code, is amended to read as follows:

“§ 2261A. Stalking

“(a) Whoever—

“(1) for the purpose of stalking an individual, travels or causes another to travel in interstate or foreign commerce, uses or causes another to use the mail or any facility in interstate or foreign commerce, or enters or leaves, or causes another to enter or leave, Indian country; or

“(2) within the special maritime and territorial jurisdiction of the United States or within Indian country, stalks an individual;

shall be punished as provided in section 2261.

“(b) For purposes of this section—

“(1) a person stalks an individual if that person engages in conduct—

“(A) with the intent to injure or harass the individual; and

“(B) that places the individual in reasonable fear of the death of, or serious bodily injury (as defined for the purposes of section 2119) to, that individual or a member of that individual’s immediate family; and

“(2) the term ‘member of that individual’s immediate family’ means that individual’s parent, child, sibling, or spouse or intimate partner.

“(c) The court shall at the time of sentencing for an offense under this section issue an appropriate protection order designed to protect the victim from further stalking by the convicted person, to remain in effect until otherwise ordered by the court after notice to the victim and opportunity for a hearing.”.

(b) DETENTION PENDING TRIAL.—Section 3156(a)(4)(C) of title 18, United States Code, is amended by inserting “, or section 2261A” after “117”.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 110A of title 18, United States Code, is amended by striking the item relating to section 2261A and inserting the following:

“2261A. Stalking.”.

PURPOSE AND SUMMARY

The purpose of H.R. 1869, the “Stalking Prevention and Victim Protection Act of 1999,” is 1) to expand the reach of the Federal stalking statute to prosecute stalkers who are currently beyond the reach of Federal law enforcement but are deserving of Federal prosecution, and 2) to better protect stalking victims by authorizing pretrial detention for alleged stalkers and mandating the issuance of civil protection orders against convicted stalkers. The bill would make several significant changes or additions to current law. First, it would expand Federal jurisdiction over stalking to reach stalkers who use the mail or any facility in interstate or foreign commerce to stalk their victims. Second, H.R. 1869 would require that a Federal court, when sentencing a defendant convicted of stalking, issue a protection order designed to protect the victim from further stalking. Third, H.R. 1869 would permit a Federal court to order the detention of an alleged stalking defendant pending trial in order to assure the safety of the community or the defendant’s appearance at trial.

BACKGROUND AND NEED FOR THE LEGISLATION

The first anti-stalking law was passed only nine years ago in California. Since then, all 50 States have enacted stalking statutes of one form or another. Congress passed the first Federal stalking law in 1996 as part of the National Defense Authorization Act for Fiscal Year 1997. That law states in pertinent part that:

Whoever travels across a State line or within the special maritime and territorial jurisdiction of the United States with the intent to injure or harass another person, and in the course of, or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury . . . to, that person or a member of that person's immediate family . . . shall be punished. . . ." 18 U.S.C. § 2261A.

Federal jurisdiction over a stalking crime is triggered when a stalker travels across a State line with the intent to injure or harass a person and his conduct places that person in reasonable fear of death or bodily injury.¹ The physical travel requirement precludes the Federal prosecution of stalkers who use other means of communication to stalk their victims. Under current law, a stalker is not subject to Federal for using the mail, the telephone, or Internet to threaten or harass another person. With the explosive growth of the Internet and other telecommunications technologies, there is evidence that cyberstalking—stalking using advanced communications technologies—is becoming a serious problem. A 1999 Department of Justice report entitled *Cyberstalking: A New Challenge for Law Enforcement and Industry* estimated that "there may be potentially tens or even hundreds of thousands of victims of recent cyberstalking incidents in the United States." The report defined cyberstalking and explained why it poses a very real threat to its victims:

Although there is no universally accepted definition of cyberstalking, the term is used in this report to refer to the use of the Internet, e-mail, and other electronic communications devices to stalk another person. Stalking generally involves harassing or threatening behavior that an individual engages in repeatedly, such as following a person, appearing at a person's home or place of business, making harassing phone calls, leaving written messages or objects, or vandalizing a person's property. Most stalking laws require that the perpetrator make a credible threat of violence against the victim; others include threats against the victim's immediate family; and still others require only that the alleged stalker's course of conduct constitute an implied threat. While some conduct involving annoying or menacing behavior might fall short of illegal stalking, such behavior may be a prelude to stalking and violence and should be treated seriously.

* * *

Although online harassment and threats can take many forms, cyberstalking shares important characteristics with off-

¹Jurisdiction is also triggered when a defendant stalks an individual within the special maritime and territorial jurisdiction of the United States.

line stalking. Many stalkers—online or off—are motivated by a desire to exert control over their victims and engage in similar types of behavior to accomplish this end.

* * *

The fact that cyberstalking does not involve physical contact may create the misperception that it is more benign than physical stalking. This is not necessarily true . . . Finally, as with physical stalking, online harassment and threats may be a prelude to more serious behavior, including physical violence.

The Subcommittee on Crime heard testimony on the increasing incidence of cyberstalking and how it can escalate to physical stalking and violence. H.R. 1869 would be the first amendment to the Federal stalking statute since its enactment in 1996 and would help Federal prosecutors respond to predatory stalking behavior that is presently beyond their reach, such as cyberstalking and stalking using the mail and telephone.

H.R. 1869 would also amend the Federal stalking statute to require that a Federal judge, when sentencing a defendant convicted of stalking, issue a civil protection order designed to protect the victim from further stalking by the defendant. Research has shown that some stalkers remain interested in their target(s) for years, even after they have been prosecuted, convicted and incarcerated for stalking. A civil protection order would permit a Federal court to maintain jurisdiction over a convicted stalker after the completion of the sentence imposed for the crime, both to reduce the threat of future stalking by the defendant and to provide an enforcement mechanism should the order be violated.

Research has also shown that stalking victims run a higher risk of being assaulted or even killed immediately after the criminal justice system intervenes; that is, when the stalker is arrested. H.R. 1869 seeks to reduce this risk to stalking victims by permitting a Federal court to order the detention of an alleged stalker pending trial in order to assure the safety of the victim and the community as well as the defendant's appearance at trial.

HEARINGS

The Subcommittee on Crime held a one day legislative hearing on H.R. 1869 on September 29, 1999. Testifying on the bill was Robert Fein, Forensic Psychologist for the National Threat Assessment Office, U.S. Secret Service; David Beatty, Director of Public Policy, National Center for Victims of Crime; and Jayne A. Hitchcock, a victim of stalking.

COMMITTEE CONSIDERATION

On October 13, 1999, the Subcommittee on Crime met in open session and ordered favorably reported the bill H.R. 1869 with one amendment by voice vote, a quorum being present. On November 2, 1999, the committee met in open session and ordered reported favorably the bill H.R. 1869 with one amendment in the nature of a substitute by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

Mr. McCollum offered an amendment in the nature of a substitute that made a number of substantive changes to bill. The amendment was agreed to by voice vote. The chairman moved to favorably report H.R. 1869, as amended, to the House. The motion was agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based in oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the committee sets forth, with respect to the bill H.R. 1869, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 4, 1999.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1869, the Stalking Prevention and Victim Protection Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226-2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

H.R. 1869—Stalking Prevention and Victim Protection Act of 1999.

CBO estimates that implementing H.R. 1869 would not result in any significant cost to the Federal Government. Because enactment of H.R. 1869 could affect direct spending and receipts, pay-as-you-go procedures would apply to the bill. However, CBO estimates

that any impact on direct spending and receipts would not be significant. H.R. 1869 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments.

H.R. 1869 would expand the current federal laws against stalking. As a result, the Federal Government would be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that any increase in federal costs for law enforcement, court proceedings, or prison operations would not be significant, however, because of the small number of cases likely to be involved. Any such additional costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under H.R. 1869 could be subject to criminal fines, the Federal Government might collect additional fines if the bill is enacted. Collections of such fines are recorded in the budget as governmental receipts (revenues), which are deposited in the Crime Victims Fund and spent in subsequent years. CBO expects that any additional receipts and direct spending would be less than \$500,000 each year.

The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226–2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the committee finds the authority for this legislation in Article I, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Sec. 1. Short Title.

This section provides that the Act may be cited as the “Stalking Prevention and Victim Protection Act of 1999.”

Sec. 2. Expansion of the prohibition on stalking.

This section would rewrite the Federal stalking statute, 18 U.S.C. section 2261A, and divide the new section 2261A into three paragraphs. Subparagraph (1) of paragraph (a) of section 2261A would expand jurisdiction over stalking to enable the prosecution of individuals who are currently beyond the reach of Federal law enforcement but deserving of Federal prosecution. Under current law, Federal jurisdiction over a stalking crime is triggered when a stalker travels across a State line with the intent to injure or harass an individual and his or her conduct places that individual in reasonable fear of death or bodily injury.² As amended by H.R. 1869, a stalker could also be prosecuted if he or she uses, or causes another to use, the mail or any facility of interstate or foreign commerce—such as the Internet—to stalk an individual.³

² Jurisdiction is also triggered when a defendant stalks an individual within the special maritime and territorial jurisdiction of the United States.

³ Federal jurisdiction would also be expanded to stalkers who enter or leave Indian Country or cause another to enter or leave Indian Country in the course of committing a stalking offense.

Subparagraph (2) of paragraph (a) of section 2261A would explicitly expand Federal jurisdiction over stalking offenses that occur within Indian country.

Subparagraph (1) of paragraph (b) would define conduct that constitutes stalking. That is, a person stalks an individual if he or she engages in conduct with the intent to injure or harass an individual and that conduct places the individual in reasonable fear of death or serious bodily injury or the death or serious bodily injury of a member of that individual's immediate family.

Subparagraph (2) of paragraph (b) would define the term "member of that individual's immediate family" to mean that individual's parent, child, sibling, or spouse or intimate partner. The material change to current law would be the inclusion of the term "intimate partner"—such as a boyfriend or girlfriend—within the definition. Current law, 18 U.S.C. section 2266, defines the term "spouse or intimate partner" as: a) a spouse, a former spouse, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited with the abuser as a spouse; and b) any other person similarly situated to a spouse who is protected by domestic or family violence laws of the State in which the injury occurred or where the victim resides.

Paragraph (c) of section 2261A would require that a Federal judge, when sentencing a defendant convicted of stalking, issue a protection order designed to protect the victim from further stalking by the defendant. Such a protection order would run concurrently with any "stay away" order made a part of the sentence entered against the defendant following his conviction, and it would remain in effect until otherwise ordered by the court after notice to the victim and an opportunity for a hearing.

Paragraph (b) of H.R. 1869 would amend the term "crime of violence," as defined by 18 U.S.C. section 3156(4)(C), to permit a court to order the detention of an alleged stalking defendant pending trial in order to assure the safety of the community or the defendant's appearance at trial pursuant to the pretrial detention statute 18 U.S.C. section 3142(f).

Paragraph (c) of H.R. 1869 would make one clerical amendment to Chapter 110A of Title 18, United States Code.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

PART I—CRIMES

* * * * *

CHAPTER 110A—DOMESTIC VIOLENCE AND STALKING

Sec.
2261. Interstate domestic violence.
[2261A. Interstate stalking.]
2261A. Stalking.

* * * * *

[§ 2261A. Interstate stalking

[Whoever travels across a State line or within the special maritime and territorial jurisdiction of the United States with the intent to injure or harass another person, and in the course of, or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury (as defined in section 1365(g)(3) of this title) to, that person or a member of that person’s immediate family (as defined in section 115 of this title) shall be punished as provided in section 2261 of this title.]

§ 2261A. Stalking

(a) Whoever—

(1) for the purpose of stalking an individual, travels or causes another to travel in interstate or foreign commerce, uses or causes another to use the mail or any facility in interstate or foreign commerce, or enters or leaves, or causes another to enter or leave, Indian country; or

(2) within the special maritime and territorial jurisdiction of the United States or within Indian country, stalks an individual;

shall be punished as provided in section 2261.

(b) For purposes of this section—

(1) a person stalks an individual if that person engages in conduct—

(A) with the intent to injure or harass the individual; and

(B) that places the individual in reasonable fear of the death of, or serious bodily injury (as defined for the purposes of section 2119) to, that individual or a member of that individual’s immediate family; and

(2) the term “member of that individual’s immediate family” means that individual’s parent, child, sibling, or spouse or intimate partner.

(c) The court shall at the time of sentencing for an offense under this section issue an appropriate protection order designed to protect the victim from further stalking by the convicted person, to remain in effect until otherwise ordered by the court after notice to the victim and opportunity for a hearing.

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PART II—CRIMINAL PROCEDURE

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**CHAPTER 207—RELEASE AND DETENTION PENDING
JUDICIAL PROCEEDINGS**

* * * * *

§ 3156. Definitions

(a) As used in sections 3141–3150 of this chapter—

(1) * * *

* * * * *

(4) the term “crime of violence” means—

(A) * * *

* * * * *

(C) any felony under chapter 109A, 110, or 117, or *section 2261A*; and

* * * * *

