Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB1516

By: Peterson of the House and David of the Senate

Title: Crimes and punishments; defining certain term; effective date.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its Amendments; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,
HB1516 CCR (A)

HOUSE CONFEREES

Biggs, Scott

Billy, Lisa

Cleveland, Bobby

Cooksey, Marian

Grau, Randy

McCullough, Mark

O'Donnell, Terry

Peterson, Pam

Sherrer, Ben

Tadlock, Johnny

Williams, Cory
SENATE CONFEREES
David
Barrington
Griffin
Shaw
Floyd
Pittman
Treat

House Action _________________ Date __________ Senate Action _________________ Date __________
Add as coauthor Representative Bennett
An Act relating to crimes and punishments; amending 21 O.S. 2011, Section 1173, which relates to the crime of stalking; updating language; defining certain term; amending 21 O.S. 2011, Section 2002, as amended by Section 2, Chapter 409, O.S.L. 2014 (21 O.S. Supp. 2014, Section 2002), which relates to forfeiture of unlawful proceeds; modifying circumstances for forfeiture; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 21 O.S. 2011, Section 1173, is amended to read as follows:

Section 1173. A. Any person who willfully, maliciously, and repeatedly follows or harasses another person in a manner that:
1. Would cause a reasonable person or a member of the immediate family of that person as defined in subsection F of this section to feel frightened, intimidated, threatened, harassed, or molested; and

2. Actually causes the person being followed or harassed to feel terrorized, frightened, intimidated, threatened, harassed, or molested, upon conviction, shall be guilty of the crime of stalking, which is a misdemeanor punishable by imprisonment in a county jail for not more than one (1) year or by a fine of not more than One Thousand Dollars ($1,000.00), or by both such fine and imprisonment.

B. Any person who violates the provisions of subsection A of this section when:

1. There is a permanent or temporary restraining order, a protective order, an emergency ex parte protective order, or an injunction in effect prohibiting the behavior described in subsection A of this section against the same party, when the person violating the provisions of subsection A of this section has actual notice of the issuance of such order or injunction; or

2. Said person is on probation or parole, a condition of which prohibits the behavior described in subsection A of this section against the same party or under the conditions of a community or alternative punishment; or

3. Said person, within ten (10) years preceding the violation of subsection A of this section, completed the execution of sentence
for a conviction of a crime involving the use or threat of violence against the same party, or against any member of the immediate family of such party, upon conviction, shall be guilty of a felony punishable by imprisonment in the State Penitentiary custody of the Department of Corrections for a term not exceeding five (5) years, or by a fine of not more than Two Thousand Five Hundred Dollars ($2,500.00), or by both such fine and imprisonment.

C. Any person who commits a second act of stalking within ten (10) years of the completion of sentence for a prior conviction under subsection A of this section, upon conviction thereof, shall be guilty of a felony punishable by imprisonment in the State Penitentiary custody of the Department of Corrections for a term not exceeding five (5) years, or by a fine of not more than Two Thousand Five Hundred Dollars ($2,500.00), or by both such fine and imprisonment.

D. Any person who commits an act of stalking within ten (10) years of the completion of execution of sentence for a prior conviction under subsection B or C of this section, upon conviction thereof, shall be guilty of a felony punishable by a fine of not less than Two Thousand Five Hundred Dollars ($2,500.00) nor more than Ten Thousand Dollars ($10,000.00), or by imprisonment in the State Penitentiary custody of the Department of Corrections for
a term not exceeding ten (10) years, or by both such fine and imprisonment.

E. Evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact, as defined in subsection F of this section, with the victim after having been requested by the victim to discontinue the same or any other form of unconsented contact, and to refrain from any further unconsented contact with the victim, shall give rise to a rebuttable presumption that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

F. For purposes of this section determining the crime of stalking, the following definitions shall apply:

1. "Harasses" means a pattern or course of conduct directed toward another individual that includes, but is not limited to, repeated or continuing unconsented contact, that would cause a reasonable person to suffer emotional distress, and that actually causes emotional distress to the victim. Harassment shall include harassing or obscene phone calls as prohibited by Section 1172 of this title and conduct prohibited by Section 850 of this title. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose;

2. "Course of conduct" means a pattern of conduct composed of a series of two (2) or more separate acts over a period of time,
however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct";

3. "Emotional distress" means significant mental suffering or distress that may, but does not necessarily require, medical or other professional treatment or counseling;

4. "Unconsented contact" means any contact with another individual that is initiated or continued without the consent of the individual, or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Constitutionally protected activity is not included within the meaning of unconsented contact. Unconsented contact includes but is not limited to any of the following:

a. following or appearing within the sight of that individual,

b. approaching or confronting that individual in a public place or on private property,

c. appearing at the workplace or residence of that individual,

d. entering onto or remaining on property owned, leased, or occupied by that individual,

e. contacting that individual by telephone,

f. sending mail or electronic communications to that individual, and
g. placing an object on, or delivering an object to, property owned, leased, or occupied by that individual; and

5. "Member of the immediate family", for the purposes of this section, means any spouse, parent, child, person related within the third degree of consanguinity or affinity or any other person who regularly resides in the household or who regularly resided in the household within the prior six (6) months; and

6. "Following" shall include the tracking of the movement or location of an individual through the use of a Global Positioning System (GPS) device or other monitoring device by a person, or person who acts on behalf of another, without the consent of the individual whose movement or location is being tracked; provided, this shall not apply to the lawful use of a GPS device or other monitoring device by a law enforcement agency or the parent or guardian of a minor child who uses such device for the purpose of tracking such minor child.

SECTION 2. AMENDATORY 21 O.S. 2011, Section 2002, as amended by Section 2, Chapter 409, O.S.L. 2014 (21 O.S. Supp. 2014, Section 2002), is amended to read as follows:

Section 2002. A. Any commissioned peace officer of this state is authorized to seize any currency, negotiable instrument, monetary instrument, equipment or property used or involved in, used to facilitate, delivered derived from or traceable to a violation of
Section 2001 of this title. The seized item may be held as evidence until a forfeiture has been declared or a release ordered.

Forfeiture actions under this section may be brought by the district attorney or Attorney General in the proper county of venue as petitioner; provided, in the event the district attorney or Attorney General elects not to file such action, or fails to file such action within ninety (90) days of the date of the seizure of the item, the item shall be returned to the owner.

B. Notice of seizure and intended forfeiture proceeding shall be filed in the office of the clerk of the district court for the county wherein the item is seized and shall be given all owners and parties in interest.

C. Notice shall be given according to one of the following methods:

1. Upon each owner, lienholder, or party in interest whose name and address is known, served in the manner of service of process in civil cases prescribed by Section 2004 of Title 12 of the Oklahoma Statutes; or

2. Upon all other owners, whose addresses are unknown, but who are believed to have an interest in the property by one publication in a newspaper of general circulation in the county where the seizure was made.

D. Within sixty (60) days after the mailing or publication of the notice, the owner of the property and any other party in
interest or claimant may file a verified answer and claim to the
item described in the notice of seizure and of the intended
forfeiture proceeding.

E. If at the end of sixty (60) days after the notice has been
mailed or published there is no verified answer on file, the court
shall hear evidence upon the fact of the unlawful use and may order
the item forfeited to the state, if such fact is proven.

F. If a verified answer is filed, the forfeiture proceeding
shall be set for hearing.

G. Proceedings under this section shall be special proceedings.

H. At the hearing the petitioner shall prove by a preponderance
of the evidence that property was used in the attempt or commission
of an act specified in subsection A of this section with knowledge
by the owner of the item.

I. The claimant of any right, title, or interest in the item
may prove the lien, mortgage, or conditional sales contract to be
bona fide and that the right, title, or interest created by the item
was created without any knowledge or reason to believe that the item
was being, or was to be, used for the purpose charged.

J. In the event of such proof, the court may order the item
released to the bona fide or innocent owner, lienholder, mortgagee,
or vendor if the amount due such person is equal to, or in excess
of, the value of the item as of the date of the seizure, it being
the intention of this section to forfeit only the right, title, or interest of the purchaser.

K. If the amount due to such person is less than the value of the item, or if no bona fide claim is established, the item may be forfeited to the state and may be sold pursuant to judgment of the court, as on sale upon execution, and as provided in Section 2-508 of Title 63 of the Oklahoma Statutes, except as otherwise provided for by law.

L. A seized item taken or detained pursuant to this section shall not be repleviable, but shall be deemed to be in the custody of the petitioner or in the custody of the law enforcement agency. The petitioner shall release the seized item to the owner of the item if it is determined that the owner had no knowledge of the illegal use of the item or if there is insufficient evidence to sustain the burden of showing illegal use of the item. If the owner of the property stipulates to the forfeiture and waives the hearing, the petitioner may determine if the value of the item is equal to or less than the outstanding lien. If such lien exceeds the value of the item, the item may be released to the lienholder. A seized item which has not been released by the petitioner shall be subject to the orders and decrees of the court or the official having jurisdiction thereof.

M. Attorney fees shall not be assessed against the state or the petitioner for any actions or proceeding pursuant to this section.
N. The proceeds of the sale of any property shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser, conditional sales vendor, or mortgagee of the item, if any, up to the amount of the interest of that person in the property, when the court declaring the forfeiture orders a distribution to such person;

2. To the payment of the actual reasonable expenses of preserving the item;

3. To the victim of the crime to compensate the victim for any loss incurred as a result of the act for which the item was forfeited; and

4. The balance to a revolving fund in the office of the county treasurer of the county wherein the property was seized, to be distributed as follows: one-half (1/2) to the investigating law enforcement agency and one-half (1/2) to the district attorney to be used to defray any lawful expenses of the office of the district attorney. If the petitioner is not the district attorney, then the one-half (1/2) which would have been designated to that office shall be distributed to the petitioner.

O. If the court finds that the item was not used in the attempt or commission of an act specified in subsection A of this section and was not an item subject to forfeiture pursuant to subsection B of this section, the court shall order the item released to the owner as the right, title, or interest as determined by the court.
P. No vehicle, airplane, or vessel used by a person as a common carrier in the transaction of business as a common carrier shall be forfeited pursuant to the provisions of this section unless it shall be proven that the owner or other person in charge of such conveyance was a consenting party or privy to the attempt or commission of an act specified in subsection A or B of this section. No item shall be forfeited pursuant to the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, and by any person other than such owner while the item was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state.

Q. Whenever any item is forfeited pursuant to this section, the district court having jurisdiction of the proceeding may order that the forfeited item may be retained for its official use by the state, county, or municipal law enforcement agency which seized the item.

SECTION 3. This act shall become effective November 1, 2015.