

**Minority Report**  
**Conference Committee to SB1633**  
**harassment; aggravated harassment; offense**  
**May 5, 2022**

I oppose SB1633 as it is overly broad, likely violates the First Amendment, and creates practical concerns for constitutionally protected political activities that both candidate campaigns and advocacy groups often engage in. It invites litigation, and its expansion of the existing, well-established framework of the criminal harassment statute is not narrowly tailored to any discernable purpose.

First and foremost, the bill eliminates from the criminal harassment statute the need to prove intent, which is a foundational requirement of criminal law. This means that now, the gravamen for a harassment claim is simply whether a person *felt* annoyed or harassed - not whether the defendant intended to commit harassment.

The bill then removes the requirement that, in order to be convicted of harassment for following or surveilling a person, the defendant must do so with "no legitimate purpose." By removing both the intent element, and the protections for surveillance conducted for a legitimate purpose, this exposes a much broader category of constitutionally protected activities to criminal liability. This would almost certainly expose political trackers (including campaign staff or interns assigned to follow an opponent at events) to a felony charge that carries a mandatory minimum penalty of six months in prison. This has serious implications for campaigns on both sides of the aisle.

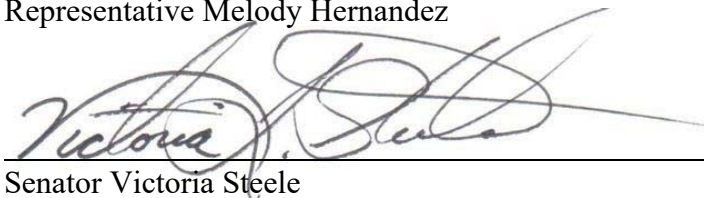
The scope of the bill's application is vague and invites a legal challenge. Under the bill, an act does not require repetition in order to be considered harassment: Sections A(1)1 and (2), when read in harmony, provide that: "A person commits harassment if the person knowingly [...] contacts or causes communication with another person (verbally, electronically or in writing) [...] or continues to follow another person around a public place after being asked to desist." This is followed by the qualifier that such an act must be committed "in a manner that harasses." However, it is not clear if "a manner that harasses" is tied to, or has the same definition as the word "harass" in Section E (which provides: "'Harass' means conduct that is directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed, humiliated or distressed and the conduct in fact seriously alarms, annoys, humiliates or mentally distresses the person."). The lack of continuity between the use of the words "harass" and "a manner that harasses" is a source of vagueness that muddies the possible application of the bill and invites litigation.

Under this language, a single instance of surveilling or contacting a person "in a manner that harasses" (the definition of which is murky) could expose someone to a Class 6 felony. The amendment fails to address any of these concerns, and in fact broadens the application of the statute by making it aggravated harassment to commit an act of harassment, as specified above, in violation of an order of protection. For those reasons oppose SB1633 as amended by the conference committee.



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Representative Melody Hernandez



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Senator Victoria Steele