



February 24, 2016

TO: Rep. Maxine Grad, Chair
Rep. Willem Jewett, Vice-Chair
House Judiciary Committee

FROM: Auburn Watersong, Associate Director of Public Policy

RE: H.818 - Stalking Bill

Dear Rep. Grad, Rep. Jewett, and Committee members,
I regret that I will not be able to attend the hearings on H.818 on Thursday and Friday of this week as I will be travelling out of state. In lieu of an appearance, I am sending you this written testimony which Cara Cookson of The Center for Crime Victim Services has agreed to deliver so that you are aware of the Network's continuing concerns regarding H.818 – the Stalking bill.

1. "No overt threat of harm is required.":

- **Clarification for courts:** We have heard from victims and victim advocates that this piece is critical in Vermont. Victims seeking orders and protection under the current stalking statutes, including the victim from whom you heard testimony, report that law enforcement and courts refuse orders because there appears to be no overt threat. The inclusion of the wording: "No overt threat of harm is required" clarifies this issue.
- **No first amendment implication:** In *State v. Albarelli*, 2011 VT 24, the Vermont Supreme Court held in a disorderly conduct case that so long as the speech targets a specific individual and could constitute an overt or implied threat to a reasonable person under the circumstances, the First Amendment is not implicated. *Albarelli* is codified in the new element requiring that the course of conduct be "*directed at a specific person.*"

2. Emotional distress:

See: Stalking definition: "... the course of conduct would cause a reasonable person to fear for his or her safety or the safety of a third person, or suffer other emotional distress."

- **"Emotional distress" is in existing Title 12 statute.**
- **Early and better protection:** In order to provide earlier and better protection for stalking victims, it is critical that this piece in the stalking definition be included (in all Titles: 13 - criminal, 12 – civil protection orders, and 15 – the RFA statute).

- **No concern that an innocent person could face criminal charges:** H.818 incorporates the inclusion of two statutory prongs: (1) that a reasonable person would fear for his or her safety or the safety of a third person; or (2) that a reasonable person would suffer other emotional distress. The “reasonable person” standard provides a protective mechanism to ensure that an overly sensitive neighbor, for example, could not successfully lodge a false stalking complaint against an individual who walks by his or her house every day.
- **Must decrease confusion and provide clarity and consistency:** There is a stated desire by the Judiciary to remove “emotional distress” from Title 12 only. This is unnecessary and confusing. By ensuring that stalking is defined the same way once throughout all three titles (criminal, relief from abuse, and civil protection orders), courts, attorney, plaintiffs and defendants, advocates and lay people clearly understand what constitutes stalking. You may recall that in their own Vermont Judiciary Statistical Report for 2015, it was noted that a final order stalking order was granted in only 25% of the cases filed. *‘The explanation for the high percentage of denials of both temporary and final orders lies in all probability with confusion around the definition of “stalking”’.*
- **Protections should be afforded to all victims:** Retaining *emotional distress* in Title 12 will ensure that *all* victims have an opportunity to seek an order against stalking. Limiting this opportunity to only *household members* in Title 15 would deprive non-household members from claiming emotional distress as a basis for a stalking order. In addition, criminal aggravated stalking (aggravated stalking) is tied to a violation of Title 12 stalking orders (13 V.S.A. § 1063), so if we remove emotional distress from Title 12, then stalking based on causing emotional distress is no longer an element in criminal aggravated stalking.

3. Minors seeking Stalking and Sexual Assault Orders:

“A minor 16 years of age or older may seek relief on his or her own behalf...”:

- **Changing the age from 18 to 16:** Title 12 includes sexual assault as well as stalking orders and minor victims need access to both of these civil protection tools. Sexually assaulted teens need access to the tools that will empower them to manage their safety effectively as well. Let’s not forget that more than 1/3 of all sexual assaults occur when the victim is between the ages of 12 and 17.ⁱ National research indicates that teenagers are more likely to experience sexual violence than any other age group. In fact, females ages 16-24 are more vulnerable to intimate partner violence than any other age group – at a rate almost triple the national average.ⁱⁱ

Finally, I would like to add my gratitude to the committee for such effort and care in working to improve the protection available to Vermont’s victims of stalking and sexual assault.

Thank you.

ⁱ “Child Sexual Abuse: What Parents Should Know,” American Psychological Association. (<http://www.apa.org/pi/families/resources/child-sexual-abuse.aspx>) (February 19, 2014).

ⁱⁱ U.S. Department of Justice, Bureau of Justice Statistics, Special Report: Intimate Partner Violence and Age of Victim, 1993-99 (Oct. 2001, rev. 11/28/01)