

Memo: March 8, 2016

To: Honorable Maxine Grad, Chair House Judiciary Committee

From: Brian J. Grearson, Chief Superior Judge

Subject: H. 818

Summary of comments from trial judges in response to H. 818

1. The current version tips its hat to constitutional protections concerning speech. The proposed draft deletes that acknowledgment and looks like it expands our role into the realm of potential speech regulation. The line between lawful speech and harmfully bullying behavior will be hard to see.
2. It certainly opens the door to a host of activity that is not now regulated, and it may be casting too wide of a net, i.e., covering behaviors that are merely awkward and not truly menacing. Not requiring a link to physical harm, viewing the conduct through the eyes of the particular plaintiff and his/her history, and not having any defense regarding whether the contact is welcome, casts a very wide net over human interactions. It would seem to preclude someone from leaving roses for another a few times as a secret admirer if the other person had been the victim of a stalker in the past and was very emotionally fragile. Having wooed my wife in such a manner over a number of months, I'm probably a bit oversensitive....
3. I would think that the revisions would result in even more filings—and a greater expectation on the part of plaintiffs that they are entitled to an order—with little change in the actual effectiveness of protection provided, and a higher number of people with disappointed expectations.
4. This will be a substantial problem for the judiciary as it opens the door to petty grievances and a sea of filings from people trying to avoid collections actions from landlords pursuing rent payments (even by lawful means), couples separating through divorce or other means arguing about property and custody. Life involves enduring emotional distress, it is only unreasonable emotional distress that should be prohibited
5. My experience is that about half of the stalking filings relate to bickering between neighbors, or teenagers and young adults saying dreadful things to and about one another, usually on Facebook. The true stalking cases will not receive the attention they deserve if the court must address frivolous filings.
6. Without trying to sound alarmist, including “emotional distress” will greatly increase the number of civil stalking cases, and will also increase the criminal case load, and the probation case load. Also, “aggravated stalking” under 13 V.S.A. 1063 is a felony, and

this includes conduct which “violates a court order that prohibits stalking and is in effect at the time of the offense.”

7. What is concerning to me is the additional language allowing someone to obtain an order not only if he or she has reasonable fear for his or her own safety, but this includes being fearful for the “safety of another.” So, the person allegedly being “stalked” may not be fearful, but a relative or other person may. This has the potential to create real standing issues in these cases. How does a judge go about ignoring protected activity to find one has stalked another?
8. The present stalking statute deals with the cases that need such relief. This expansion would cause a serious expansion of such cases. There are things and people that are going to upset us and frustrate us, but this amendment will have neighbor disputes, former and present boyfriend or girlfriend disputes, even landlord/tenant disputes ending up with orders and then probably resulting criminal cases. Finally, there is no reason someone has to file on behalf of another.