



February 16, 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

Thank you for another opportunity to discuss with you the proposed changes to the Vermont stalking statute as written in H.818. For the purposes of today's testimony, I have submitted to the committee a copy of the National Center for Victims of Crime Model Stalking Code which was rewritten last in 2007.

In 1993, Congress directed the National Institute of Justice (NIJ) at the U.S. Department of Justice to develop a model anti-stalking code to encourage states to adopt anti-stalking measures and to provide them with direction in drafting such laws. NIJ entered into a cooperative agreement with the National Criminal Justice Association (NCJA) to research existing stalking laws and develop model legislative language.

Since the 1993 model anti-stalking code was developed, much more is known about the behavior of stalkers and the effectiveness of state stalking laws. We have witnessed an alarming rise in the use by stalkers of sophisticated—yet widely available—tracking and monitoring technology. We also now possess quantifiable national data that documents the prevalence and severity of stalking. It is for these reasons that the 2007 model anti-stalking code was developed.

The National Center for Victims of Crime began this project by reviewing each state's stalking law and analyzing several elements in the laws, including:

- Prohibited acts
- Level of intent (general or specific)
- Type of fear required (reasonable person, actual fear, or both)
- Degree of fear (e.g., serious bodily injury or emotional distress)
- Target of stalker's acts (victim, victim's family, other third parties)
- Threat requirements
- Coverage of technology and surveillance
- Other miscellaneous or innovative provisions

These elements make up the core of almost all stalking laws. The Model Stalking Code drafting committee compared each state's treatment of the above elements. The goal of this project was to highlight common issues for states to consider in modifying or develop stalking laws.

The National Center's extensive stalking policy and training experience, and its regular interaction with law enforcement professionals, victim service providers, and victims of crime, have provided a unique insight into the inadequacies of the nation's current body of stalking laws. We've learned that:

- Stalkers often can “get away” with their criminal behavior and continue to wreak havoc on a victim's life with little or no risk of intervention by law enforcement.
- The burden of proof is so high under many stalking laws that it is extremely difficult to secure convictions.
- In most jurisdictions, stalking is only a misdemeanor crime, and sentences longer than a few days or weeks are rare.
- Statutory provisions written with the “stranger” stalker in mind restrict the types of stalking behavior that can be prosecuted when the stalker and victim are in a relationship.
- Without a full appreciation of the role of context in a stalking situation, many stalking behaviors can be viewed as harmless, when in fact the behaviors may terrify the victim.
 - A love letter left on the doorstep of a victim's apartment, for example, might seem benign to a law enforcement officer. Without knowing the context, the officer cannot fully appreciate how terrifying that apparently harmless gesture is for a victim who believed her stalker did not know where she was.
- Current state laws do not address the full range of stalking behaviors, making it virtually impossible to arrest and prosecute an offender for many of those behaviors.
 - Consider a situation in which a stalker is constantly watching and monitoring a victim's daily activities and has posted information about the victim on the Internet, but has never communicated directly with the victim. If, as is often the case, the applicable statute requires proof of some type of communication or threatening contact by the stalker, it is unlikely that a stalking charge could be brought.
 - Many state stalking laws simply do not address surveillance by stalkers with newer forms of technology that do not require proximity to or communication with the victim.

Many of these concerns are also evident in our own stalking statute as it reads currently. The Vermont Network supports H.818 because it effectively addresses these inadequacies.

Thank you for your time and consideration.