



February 5, 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

Thank you for the opportunity to speak to you regarding House Bill 818, a bill proposing to amend the definitions related to civil orders of protection against stalking and sexual assault and the criminal stalking law, and to establish prohibited defenses in a criminal stalking case.

Stalking is a crime of intimidation, threat, and harassment. Like sexual violence, stalking is often committed by someone the victim knows. 66% of female victims and 41% of male victims of stalking are stalked by a current or former intimate partner.<sup>1</sup> This particular statistic shows, for example, that stalking is often linked closely with intimate partner violence. As you are aware, the most dangerous time for a victim, is when s/he leaves an abusive relationship. At that time, the risk of violence actually increases because the victim has challenged the perpetrator's unilateral exercise of power and control. Stalking laws are critical in these instances because appropriate employment of them can prevent further escalation and possible violence.

Stalkers are often trying to force a relationship with someone who is unwilling. The stalker may go to great lengths in order to know what the person they are stalking is doing at all times. Stalking behaviors can cause the victim emotional distress or fear for her or his personal safety or the safety of her or his family. Stalkers may be current or former intimate partners and stalking behavior is often linked with domestic violence. However, stalkers may also be someone the victim went on just a few dates with, someone the victim works with or someone the victim has only met briefly.

Stalkers may intimidate a person in a number of ways such as:

- Following the victim.
- Watching the victim's home or place of employment.
- Writing letters or sending unwanted gifts to the victim or their family.
- Spreading rumors.
- Making repeated and unwanted phone calls, texts, emails, or contacts through social networking websites.
- Threatening to commit physical or sexual violence.
- Threatening to harm themselves as a way to intimidate the person they're stalking.
- Using GPS, cell phone tracking and other technology to constantly track the victim's location.

Stalking can affect a victim's life dramatically by interfering with work, home, and social situations, as well as affecting the lives of friends and family. Stalking can also get worse over time and can lead to violence. Stalkers can destroy the lives of victims, terrorizing them through a course of conduct that may

include monitoring, following, threatening, or harassing victims in a variety of ways. Stalking victims, are often forced to make drastic changes in their lives for the sake of their safety, including relocating to another state and changing their identities. 1 in 8 employed stalking victims lose time from work as a result of their victimization and more than half lose 5 days of work or more. 1 in 7 stalking victims move as a result of their victimization.<sup>ii</sup>

Research indicates that **1 in 6 women and 1 in 19 men** have experienced stalking victimization at some point during their lifetime, when they felt very fearful or believed that they or someone close to them would be harmed or killed.<sup>iii</sup>

### **Statutory Changes to Stalking**

#### **1. Clarification of statute needed: In Vermont, 3 out of every 4 Stalking Civil Protection Order filings are denied.<sup>iv</sup>**

Advocates throughout the Vermont Network report that victims rarely receive the stalking civil protection orders they request for reasons related to the misinterpretation of the statute by investigating law enforcement and presiding judges. This observation is further verified in the 2015 Annual Statistical Report of the Vermont Judiciary which states that requests for civil protections orders against Stalking and Sexual Assault have remained fairly constant over the last 5 years averaging about 700 filings annually. Furthermore:

Of the 705 cases disposed in FY15, a temporary restraining order was granted in 62% of the cases, but a final order was granted in only 25% of the cases filed... The vast majority of the complaints in this area are based on a claim that the defendant is “stalking” the plaintiff. *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”.*<sup>v</sup>

#### **2. Clarification of “threatening behavior” needed:**

Advocates report that victims are often told there is no ability to pursue a protection order because no overt threat has been used by the alleged perpetrator. In understanding stalking, it is vital that one appreciate the role of context. The private meaning of actions, words or behaviors may be only known to the stalker's victim. For example, when a stalker leaves a rose on his victim's door step, it can be viewed by a law enforcement officer as a harmless gesture, but it can also be an indication to the victim that the stalker now knows where she lives.

Stalkers often do not make overt threats, or they may make veiled threats in what appears to be innocent language. For example, the phrase “One day, I know we will be just like Romeo and Juliet” can have two very different meanings, depending upon the context. For this reason, an overt threat requirement – such as a written death threat, can limit the success of prosecutions, leaving victims unprotected and further terrorized.

For this reason H.818 proposes that the term “threatens” is one possible action a stalker may commit in a “course of conduct,” but does not require an offender to make a threat to meet the statutory definition of stalking.

#### **3. Redefinition of “course of conduct”:**

The current statute's language in the definition of stalking is vague and confusing, making judicial rulings more difficult. The proposed definition clarifies in plain language, what is meant by a course of conduct

and the definition necessarily includes clear attention to method, means and actions. See Sec. 2 §5131 (1): “Course of Conduct” means “two or more acts in which a person follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person’s property. This definition shall apply to acts conducted by the person directly, indirectly, or through third parties and by any action, method, device, or means.” With this clearer and more thorough definition of “course of conduct” it is no longer necessary to define “following” or “lying in wait”. This shortens and simplifies the statute.

#### **4. Clarification regarding intent:**

H.818 proposes that no intent be required for a stalking conviction. Stalking behaviors are not typically reasoned and purposeful. In fact, requiring intent demands that the prosecutors somehow know what was in the stalker’s mind when stalking his victim. Far too often stalkers will claim no intention to cause fear. For this reason, H.818 removes the need for intent, clarifying that the mere fact that the stalker chose to engage in this course of conduct is ample evidence.

#### **5. Inclusion of current and future technology**

Victims report that stalkers have sophisticated and various technological means of tracking, intimidating and harassing their victims. H. 818 includes a definition of “course of conduct” intended to encompass stalking behavior that is accomplished by or through the use of “any action, method, device, or means” in order to include current and future technology or surveillance methods that stalkers may use to monitor, track, or terrorize victims in the future.

#### **Statutory Changes to Sexual Assault**

In addition to the statutory changes to Stalking, H.818 proposes to amend the definition of sexual assault to add the listed crime of lewd and lascivious conduct. Advocates report that a variety of sexually assaultive behaviors fall under this category.

#### **Additional Recommendation regarding Stalking and Sexual Assault Orders**

Advocates report that far too often, sexual assault protection orders are denied, because it is too difficult to predict the future behavior of defendant, as currently required in the statute. Therefore, to bring the sexual assault and stalking statutory requirements in line with each other, we recommends amending 12 V.S.A.. §5133 (d) to strike (1) and (2) and replace it with the following:

(d) If the court finds by a preponderance of evidence that the defendant has stalked or has sexually assaulted the plaintiff, or the defendant has been convicted of stalking or sexually assaulting the plaintiff, the court shall order the defendant to stay away from the plaintiff or the plaintiff's children, or both, and may make any other such order it deems necessary to protect the plaintiff or the plaintiff's children, or both.

Thank you for your consideration.

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<sup>i</sup> Michele C. Black et al., “The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report,” (Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 2011).

<sup>ii</sup> Katrina Baum et al., “Stalking Victimization in the United States,” (Washington, DC: Bureau of Justice Statistics, 2009).

<sup>iii</sup> Michele C. Black et al., “The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report,” (Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 2011).

<sup>iv</sup> Vermont Judiciary Statistical Report FY 2015, Appendix 1.

<sup>v</sup> Vermont Judiciary, 2015 Annual Statistical Report, p.34.