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Maxine Grad, Chair
House Judiciary Committee
115 State Street
Montpelier, VT 05633

February 26, 2016

Re: Follow-up to Comments on Proposed Amendments to the Stalking Statute

Dear Representative Grad:

I am writing to follow up on my earlier letter and brief testimony on the proposed stalking law amendments. As I mentioned in my testimony, my initial letter was based upon the fact that the *civil* stalking law expressly excludes intimate partners, so the proposal seemed to be unnecessarily broadening the scope of *non-partner* cases that would be covered (e.g. neighbors, landlord/tenant, annoyed ex-best-friends). The partner cases are addressed in the Family Division. In my experience, the bulk of the Civil Division stalking docket involves cases that do not involve threatening or sexualized behavior. Judges are already concerned about the many stalking petitions that are filed based on minor slights, and we have concerns about expanding the scope of such petitions. My examples were not intended to trivialize the serious cases, but to raise concerns about bringing too many of the other matters into the courts. I certainly did not mean to minimize the importance of protecting those who legitimately require protection.

It is true that there are cases that are not covered by the current law, specifically ones where the defendant is causing severe emotional distress, but not doing things that necessarily suggest a danger of physical or sexual violence. However, it is important to keep in mind the different types of cases where this arises. The first category involves two types of cases. One is the intimate partner or ex-partner context where the partner takes actions that may not involve actual threats but in the context of the relationship are clearly intended to scare the person. The other involves the obsessive, repeated sexualized or "romantic" gestures directed at someone who has made clear they do not want them, often by a psychologically disturbed person endlessly trying to force affection upon an unwilling acquaintance. Those cases may merit additional protections.

What the current proposal also sweeps in, however, is two other categories of cases that do not involve threats of physical violence, sexual violence, unwanted "romantic" gestures, or partner-control issues. One is in the civil context: the neighbor repeatedly yelling at you to keep off what he thinks is his lawn, the landlord repeatedly saying she is going to evict you if you don't leave soon, the acquaintance telling others that you are a bad person. The other is in the family court context: parents who are constantly in court battling over custody issues. These regularly involve disputes over the mother repeatedly not returning the children with clean clothes, or the father repeatedly showing up late for exchanges of the children, and so on. People in these sorts of situations often come to court to file stalking and relief from abuse petitions: this is not merely theoretical. Even if the petitions are denied because they do not meet all the criteria of the law, they require staff and judge time to process and taking time away from the cases

where people actually do need protection.[1] I think it is important that the law distinguish between these different categories of cases.

The problem is that by adding emotional distress alone as a basis for relief, there is not a good way to distinguish the different categories of cases I have described above. Neighbors fighting over where their boundary lies can be every bit as emotional over such a dispute as any embittered former partner. Friends who feel betrayed because their best friend stole their boyfriend or girlfriend can be equally angry and emotional – and reasonably so. This can include a great deal of nastiness on social media. However, I think most of us would agree that the courts should not moderate every such personal dispute merely based on the level of anger and emotional distress. The civil law already provides for legal relief based on a claim for "intentional infliction of emotional distress" if the defendant "engaged in outrageous conduct, done intentionally or with reckless disregard of the probability of causing emotional distress, resulting in the suffering of extreme emotional distress, actually or proximately caused by the outrageous conduct." Cate v. City of Burlington, 2013 VT 64, ¶ 28, 194 Vt. 265. There is a long history of legal cases addressing this issue and carefully limiting the scope of the law's reach specifically to avoid having every situation that leads to emotional distress coming into the courts. *See, e.g.*, Restatement (Second) of Torts, § 46, cmt.d ("[P]laintiffs must necessarily be expected and required to be hardened to a certain amount of rough language, and to occasional acts that are definitely inconsiderate and unkind. There is no occasion for the law to intervene in every case where some one's feelings are hurt. There must still be freedom to express an unflattering opinion, and some safety valve must be left through which irascible tempers may blow off relatively harmless steam."). I would caution against overturning that longstanding doctrine by changing the civil stalking law.

With regard to the intimate partner setting, which is addressed in family court, judges are very familiar with the power and control issues and the escalating behaviors that are common in the cycle of violence. We know that many things that might be insignificant in other settings can be red flags for controlling behaviors that may escalate to violence. Those matters are currently addressed in the existing Relief from Abuse statute: if the escalating behaviors justify an expectation that violence may be coming, there is relief available under the current law. To the extent that there is a desire to bring cases that do not actually involve any risk of violence into the law, I am really not sure how to do that without also sweeping in hundreds of cases of warring parents fighting over custody. Those litigants already have the custody case in which to raise the issues: adding yet another separate family court case seeking relief because of the emotional aspect of those cases just does not seem necessary or a wise use of limited judicial resources.

I hope these comments are helpful. Please let me know if I can provide any further input on the proposed amendments to the statute.

Helen M. Toor
Superior Court Judge

[1] If an emergency petition is denied and the plaintiff does not request a hearing to testify in person, the case remains confidential for their protection. Thus, those outside the court system do not see them and may not be aware how many of the less serious cases we process.