

2023 HOUSE JUDICIARY

HB 1268

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1268
1/23/2023

Relating to the definition of stalking and domestic violence protection orders; and to provide a penalty.

Chairman Klemin opened the hearing on HB 1268 at 10:00 AM.

Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, Rep. Vetter

Discussion Topics:

- Domestic violence
- Household member
- Protection order
- Victim's protection

Rep. Ista: Introduced the bill. Testimony #14971

Seth O'Neil, CAWSND: Testimony #14873, #14870, #14871, #14872

Travis Finck, Executive Director, NDCLCI, testified in opposition to HB 1268.

Jackson Lofgren, ND resident, testified in opposition to HB 1268.

Additional written testimony:

Laura Frish, Executive leadership team at CVIC: Testimony #14997

Yvonne Griffin: Testimony #15463

Hearing closed at 10:45 AM

Delores Shimek, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1268
1/30/2023

Relating to the definition of stalking and domestic violence protection orders; and to provide a penalty.

Chairman Klemin opened the meeting on HB 1268 at 3:35 PM.

Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, Rep. Vetter

Discussion Topics:

- Amendment

Rep. Ista: Presented a proposed amendment. Testimony #27126

Rep. Vetter moved the amendment 23.0395.02001.
Seconded by Rep. Shannon Roers Jones

Roll call vote:

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	Y
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	N
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

Motion carries. 12 Yes 1 No 0 Absent

Rep. Vetter moved a Do Pass as Amended;
Seconded by Rep. Olson

Roll call vote:

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	Y
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	N
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	N
Representative Steve Vetter	Y

Motion carries. 11 Yes 2 No 0 Absent

Carrier: Rep. S. Olson

Meeting closed at 3:44 PM

Delores Shimek, Committee Clerk

A 1-30-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1268

Page 2, line 11, after the first period insert "Service of the hearing notice, for a protection order under this section or for an ex parte temporary protection order under section 14-07.1-03, must be attempted by personal service before service by publication under rule 4 of the North Dakota Rules of Civil Procedure may be attempted."

Page 2, line 11, after the comma insert "or if additional time is required to complete service by publication."

Page 2, line 11, remove "The protection order"

Page 2, remove lines 12 and 13

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1268: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1268 was placed on the Sixth order on the calendar.

Page 2, line 11, after the first period insert "Service of the hearing notice, for a protection order under this section or for an ex parte temporary protection order under section 14-07.1-03, must be attempted by personal service before service by publication under rule 4 of the North Dakota Rules of Civil Procedure may be attempted."

Page 2, line 11, after the comma insert "or if additional time is required to complete service by publication."

Page 2, line 11, remove "The protection order"

Page 2, remove lines 12 and 13

Renumber accordingly

2023 SENATE JUDICIARY

HB 1268

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

HB 1268
3/28/2023

A bill relating to the definition of stalking and domestic violence protection orders; and to provide a penalty.
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9:01 AM Chairman Larson opened the meeting.

Chairman Larson and Senators Myrdal, Luick, Estenson, Sickler, Paulson and Braunberger were present.

Discussion Topics:

- Victims
- Relationships
- Amendments
- Intimidation
- Harassment

9:01 AM Representative Ista introduced the bill and testified #26813, #26812, #26811.

9:14 AM Seth O'Neil, CAWS of North Dakota testified in favor #26671.

9:21 AM Laura Frisch, Community Violence Intervention Center, Grand Forks, testified in favor #26577.

9:28 AM Todd Ewell, Deputy Director, North Dakota Commission on Legal Counsel for Indigents spoke neutral on the bill.

Additional written testimony:

Travis Finck #26780

9:29 AM Chairman Larson closed the public hearing.

9:29 AM Senator Luick moved to adopt amendment LC 23.0395.03001.
Senator Myrdal seconded the motion.

9:30 AM Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passes 7-0-0.

9:30 AM Senator Luick moved to Do Pass the bill as Amended.
Motion is seconded by Senator Myrdal.

9:30 AM Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passes 7-0-0.

Senator Braunberger will carry the bill.

This bill does not affect workforce development.

9:29 AM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

March 27, 2023

OR
171
3-28-23

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1268

Page 1, line 1, after "to" insert "create and enact a new subsection to section 14-07.1-02 of the North Dakota Century Code, relating to the definition of domestic violence and stalking; to"

Page 1, line 1, remove "section 14-07.1-01 and"

Page 1, line 2, remove "the definition of stalking and"

Page 1, remove lines 5 through 24

Page 2, remove lines 1 through 7

Page 2, after line 15, insert:

"SECTION 2. A new subsection to section 14-07.1-02 of the North Dakota Century Code is created and enacted as follows:

As used in this section and in section 14-07.1-03:

- a. "Domestic violence" has the meaning provided in section 14-07.1-01 and includes stalking.
- b. "Stalking" has the meaning provided for in the term "stalk" in section 12.1-17-07.1."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1268, as engrossed: Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1268 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 1, after "to" insert "create and enact a new subsection to section 14-07.1-02 of the North Dakota Century Code, relating to the definition of domestic violence and stalking; to"

Page 1, line 1, remove "section 14-07.1-01 and"

Page 1, line 2, remove "the definition of stalking and"

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Page 2, after line 15, insert:

"SECTION 2. A new subsection to section 14-07.1-02 of the North Dakota Century Code is created and enacted as follows:

As used in this section and in section 14-07.1-03:

- a. "Domestic violence" has the meaning provided in section 14-07.1-01 and includes stalking.
- b. "Stalking" has the meaning provided for in the term "stalk" in section 12.1-17-07.1."

Renumber accordingly

TESTIMONY

HB 1268

STALKING & INTIMATE PARTNER VIOLENCE: FACT SHEET



There is a real and frighteningly significant connection between stalking and intimate partner violence. Stalking often co-occurs with intimate partner violence and can be an indicator of other forms of violence. Stalking can be a way to exert power and control during and/or after an abusive relationship.

DID YOU KNOW?

- 40% of stalking victims are stalked by current or former intimate partners.^A
- 57% of intimate partner stalking victims are stalked during the relationship.^B
- 74% of those stalked by a former intimate partner report violence and/or coercive control during the relationship.^C
- 81% of women stalked by a current or former husband or cohabitating partner were also physically assaulted by that partner.^D
- 31% of women stalked by an intimate partner were also sexually assaulted.^E
- 41% of victims stalked by a current intimate partner and 35% stalked by a former intimate partner experience threats of harm, compared to 24% stalked by a non-intimate partner.^F
- The average length of partner stalking is 2.2 years (longer than the average of just over 1 year for non-intimate partner cases).^G

STALKING & PARTNER HOMICIDE

- Stalking increases the risk of intimate partner homicide by three times.^H
- The most common use of the criminal justice system prior to attempted or completed intimate partner homicide was reporting intimate partner stalking.^I
- Among female victims of attempted and completed intimate partner homicide by male partners, in the 12 months prior to the attack:^J
 - 85% of attempted and 76% of completed homicide victims were stalked.
 - 91% of attempted and 89% of completed homicide victims who had been physically abused during the relationship had also been stalked.
 - 46% of attempted and 54% of completed homicide victims reported stalking before the attack, most commonly to police.

INTIMATE PARTNER STALKING OFFENDERS

- Abusive partners who stalk are more likely (than abusive partners who do not stalk) to verbally degrade, threaten, use a weapon to attack, sexually assault, and/or physically injure their victims.^K
- Intimate partner stalkers are more likely (than stalkers who are not intimate partners) to:
 - Use the widest range of stalking tactics.^L
 - Contact and approach victims more frequently.^M
 - Assault their victims.^N
 - Be insulting and interfere in the victim's life.^O
 - Escalate the frequency and intensity of pursuit more often.^P
 - Threaten victims with weapons or actually use weapons on their victims.^Q
 - Be threatening to their victims and reoffend.^R
 - Follow through on threats of violence.^S One study found that among stalking victims threatened, 71% of intimate partner victims were actually assaulted compared to 33% of non-intimate partner victims.^T
 - Assault third parties.^U
 - Reoffend after a court intervention and reoffend more quickly.^V
- The risk of physical violence is heightened when the intimate partner stalker:^W
 - Issues direct threats of violence;
 - Expresses jealousy of the victim's relationships with others during the relationship; and
 - Uses illegal drugs.

STALKING & SEPARATION

- Victims stalked by violent partners report more separation attempts than partner violence victims who were not stalked.^X
- Intimate partner stalking made victims more likely to want to leave the relationship than other factors, including psychological aggression and injury.^Y
- Stalking after a separation may increase the risk of violence.^ZAABB

STALKING & INTIMATE PARTNER VIOLENCE: FACT SHEET

SOURCES

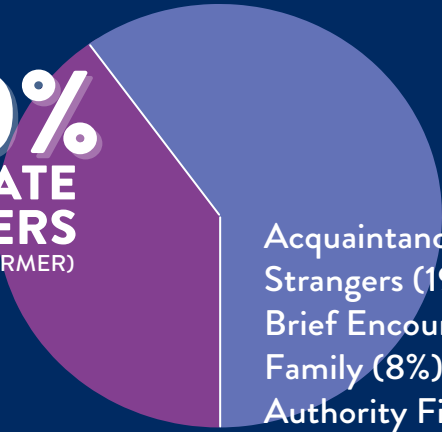
- ^A Smith, S.G., Basile, K.C., & Kresnow, M. (2022). The National Intimate Partner and Sexual Violence Survey (NISVS): 2016/2017 Report on Stalking. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.
- ^B Tjaden, P. & Thoennes, N. (1998). Stalking in America: Findings from the national violence against women survey (NCJ# 169592). Washington, DC: National Institute of Justice Centers for Disease Control and Prevention.
- ^C Brewster, M. (2003). Power and control dynamics in pre-stalking and stalking situations. *Journal of Family Violence*, 18(4), 207-217.
- ^D Tjaden, P. & Thoennes, N. (1998). Stalking in America: Findings from the national violence against women survey (NCJ# 169592). Washington, DC: National Institute of Justice Centers for Disease Control and Prevention.
- ^E Ibid.
- ^F Brady, P. (2022). *Analysis of threats and violence by stalker relationship*. [2016 Supplemental Victimization Survey to the National Crime Victim Survey]. Bureau of Justice Statistics. <https://bjs.ojp.gov/library/publications/stalking-victimization-2016>
- ^G Brewster, M. (2003). Power and control dynamics in pre-stalking and stalking situations. *Journal of Family Violence*, 18(4), 207-217.
- ^H Spencer, C.M. & Stith, S.M. (2018). Risk Factors for Male Perpetration and Female Victimization of Intimate Partner Homicide: A Meta-Analysis. *Trauma, Violence, & Abuse*, 21(3): 527-540.
- ^I McFarlane, J., Campbell, J.C., & Watson, K. (2001). The Use of the Justice System Prior to Intimate Partner Femicide. *Criminal Justice Review*, 26(2): 193-208.
- ^J McFarlane, J., Campbell, J.C., Wilt, S., Ulrich, Y., & Xu, X. (1999). Stalking and Intimate Partner Femicide. *Homicide Studies*, 3(4), 300-316.
- ^K Logan, T.K., Shannon, L., & Cole, J. (2007). Stalking Victimization in the Context of Intimate Partner Violence. *Violence Vict.*, 22(6), 669-683.
- ^L Johnson, M. & Kercher, G. (2009). Identifying predictors of negative psychological reactions to stalking victimization. *Journal of Interpersonal Violence*, 24(5), 886-882.
- ^M Davis, K., Ace, A., & Andra, M. (2000). Stalking perpetrators and psychological maltreatment of partners: Anger, jealousy, attachment insecurity, need for control, and break-up context. *Violence and Victims*, 15(4), 407-425.
- ^N James, D. & Farnham, F. (2003). Stalking and serious violence. *Journal of the American Academy of Psychiatry and the Law*, 31, 432-439.
- ^O Mohandie, K., Meloy, J., McGowan, M., & Williams, J. (2006). The RECON typology of stalking: Reliability and validity based upon a large sample of north American stalkers. *Journal of Forensic Science*, 51(1), 147-155.
- ^P Ibid.
- ^Q Ibid.
- ^R Palarea, R., Zona, M., Lane, J. & Langhinrichsen-Rohling, J. (1999). The dangerous nature of intimate relationship stalking: Threats, violence and associated risk factors. *Behavioral Sciences and the Law*, 17, 269-283.
- ^S Ibid.
- ^T Thomas, S., Purcell, R., Pathé, M., & Mullen, P. (2008). Harm associated with stalking victimization. *Australian and New Zealand Journal of Psychiatry*, 42, 800-806.
- ^U Sheridan, L. & Davies, G. (2001). Violence and the prior victim-stalker relationship. *Criminal Behavior and Mental Health*, 11, 102-116.
- ^V Rosenfeld, B. (2003). Recidivism in stalking and obsessional harassment. *Law and Human Behavior*, 27(3), 251-265.
- ^W Roberts, K. (2005). Women's Experience of Violence During Stalking by Former Romantic Partners: Factors Predictive of Stalking Violence. *Violence Against Women*, 11(1), 89-114.
- ^X Logan, TK, Shannon, L., & Cole, J. (2007). Stalking victimization in the context of intimate partner violence. *Violence and Victims*, 22(6), 669-683.
- ^Y Matlow, R.B. & DePrince, A.P. (2015). The Impact of Appraisals and Context on Readiness to Leave a Relationship Following Intimate Partner Abuse. *Violence Against Women*, 21(9): 1043-1064.
- ^Z Logan, TK, Walker, R., Jordan, C., & Campbell, J. (2004). An integrative review of separation and victimization among women: Consequences & Implications. *Violence, Trauma, & Abuse*, 5(2), 143-193.
- ^{AA} Logan, TK, Walker, R., Shannon, L., & Cole, J. (2008). Factors associated with separation and ongoing violence among women with civil protective orders. *Journal of Family Violence*, 23, 377-385.
- ^{BB} Mechanic, M., Uhlmansiek, M., Weaver, T. & Resick, P. (2000). The impact of severe stalking experienced by acutely battered women: An examination of violence, psychological symptoms and strategic responding. *Violence and Victims*, 15(4), 443-458.

STALKING & DOMESTIC VIOLENCE

All stalkers can be dangerous. On average, intimate partner stalkers pose the greatest threats to their victims.

STALKING OFFENDERS¹

40%
INTIMATE PARTNERS
(CURRENT OR FORMER)



Acquaintances (42%)
Strangers (19%)
Brief Encounters (8%)
Family (8%)
Authority Figures (4%)



2 YEARS is the average duration of intimate partner stalking.²

Victims of intimate partner stalking have



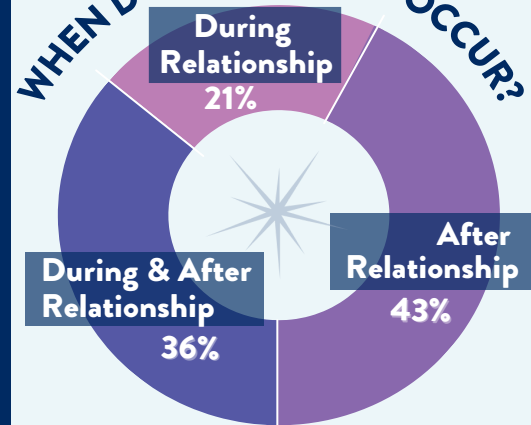
MORE SEPARATION ATTEMPTS

than victims of intimate partner violence alone.⁴

85% of attempted
76% of completed
INTIMATE PARTNER FEMICIDES

were preceded by **stalking** in the prior year³

WHEN DOES STALKING OCCUR?⁶



Stalking can occur before, during, and/or after a relationship.

BOTH STALKING¹ & INTIMATE PARTNER VIOLENCE⁵ ARE PREVALENT



1 in 3 women



1 in 4 women



1 in 6 men



1 in 10 men

experience stalking in their lifetimes

are impacted by intimate partner stalking, sexual violence, and/or physical violence in their lifetimes

Citations

- 1 Smith, S.G., Basile, K.C., & Kresnow, M. (2022). *The National Intimate Partner and Sexual Violence Survey (NISVS): 2016/2017 Report on Stalking*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.
- 2 Brewster, M. (2003). Power and control dynamics in pre-stalking and stalking situations. *Journal of Family Violence*, 18, 4, 207-217.
- 3 McFarlane, J., Campbell, J.C., Wilt, S., Ulrich, Y., & Xu, X. (1999). *Stalking and Intimate Partner Femicide*. *Homicide Studies* 3 (4), 300-316.
- 4 Sheridan, L. & Davies, G.M. (2006). Violence and the Prior Victim-Stalker Relationship. *Criminal Behaviour and Mental Health* 11(2): 102-116.
- 5 Smith, S.G., Zhang, X., Basile, K.C., Merrick, M.T., Wang, J., Kresnow, M., & Chen, J. (2018). *The National Intimate Partner and Sexual Violence Survey (NISVS): 2015 Data Brief*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.
- 6 Tjaden, P. & Thoennes, N. (1998). *Stalking in America: Findings from the National Violence Against Women Survey (NCJ#169592)*. Washington, DC: National Institute of Justice Centers for Disease Control and Prevention.

NORTH DAKOTA

DOMESTIC VIOLENCE FACTS 2021

5,417 *New Victims

were served by **18** CRISIS INTERVENTION CENTERS throughout North Dakota.

OF THOSE CASES:



- **87%** of the victims were **women**.



- **94 women** were **pregnant** at the time they were assaulted.



- **18% of new victims** were people with **disabilities**. Of those, 10% were people with developmental disabilities, 36% had physical disabilities, and 54% were people with mental health disabilities.



- At least **3,895 children** were directly impacted by these incidents.



- At least **18%** of the victims were **under the age of 25**; 4% were under the age of 18.

*new = unduplicated for calendar year

A CLOSER LOOK

At least **66%** of victims served were physically abused.

Weapons were used in at least **13%** of the cases identified. Guns were used in **18%** of the cases and knives were used in **16%** of the cases involving weapons.

In at least **39%** of cases, the abuser had a history of abusive behavior with other adults including prior partners.

Alcohol use by abuser only was indicated in **28%** of the new cases. Alcohol use by both victim and offender was indicated in **5%** of the cases.



ADVOCACY

31% of the victims were self-referred to domestic violence programs; **22%** were referred by law enforcement.

Domestic violence programs provided victim assistance with **450** emergency protection orders.



March 2022. Domestic Violence Statistics are compiled by CAWS North Dakota for the State Health Department. CAWS North Dakota 521 E Main Ave, Suite 320, Bismarck, ND, 58501 | 701.255.6240 | www.cawsnorthdakota.org



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House Bill No. 1268
House Judiciary Committee
Testimony Presented by Seth O'Neill, JD, MSW
Email: soneill@cawsnorthdakota.org
January 23, 2023

Chairman Klemin and members of the Committee, my name is Seth O'Neill and I am representing CAWS North Dakota in support of HB1268. CAWS North Dakota is the statewide coalition of the domestic violence and sexual assault programs in North Dakota. In 2021, our programs served 5,417 new victims of domestic violence.

This bill would add our current definition of stalking to domestic violence for the purposes of a domestic violence protection order. These orders allow victims of domestic violence to be physically safe from their abusers.

In order for an individual to receive a domestic violence protection order they need to petition the Court. The Court must schedule a hearing within fourteen days to determine actual or imminent domestic violence has occurred. If the Court makes a finding of domestic violence, then the Court may order that the respondent refrain from contacting the petitioner and other additional remedies. If a petitioner alleges immediate and present danger of domestic violence, a court may order an ex-parte temporary order. This order remains in effect until the hearing is held. Currently, for a petitioner to receive a protection order they must prove they have experienced physical harm, bodily injury, sexual activity compelled by physical force, assault, or the threat of these things. What we are finding is domestic violence abusers are intentionally avoiding physical harm but using other methods to control their victims. Or in other situations physical harm was used in the past but is no longer needed to control the victim. By doing this,

they avoid court involvement while still gaining control over their victims life. One of the most common methods of doing this is through stalking. As our current definition states, stalking is “an intentional course of conduct directed at a specific person which frightens, intimidates, or harasses that person and which serves no legitimate purpose.” This behavior can look different depending on the situation. Perhaps one of the most glaring examples is an individual repeatedly making threatening statements to a victim but not enough to count as “imminent physical harm.” I have represented victims in cases where respondents have repeatedly told the victim they will kill her if something doesn’t go his way. In these situations, the Court has found that although the behavior is concerning, the threat is not imminent enough. The problem with this is it can be difficult to determine the imminency of a threat like this and if an order is not granted in this situation someone could die.

This bill would change that by including stalking within the domestic violence protection order process. In the situation I described above, an individual could petition that this conduct is frightening them due to the legitimate fear for their life. January is National Stalking Awareness Month and I have included with my testimony factsheets with recent statistics regarding stalking. One of the most glaring statistics is the fact that stalking increases the risk of intimate partner homicide by three times.

Due to these reasons, we encourage the committee to increase public safety for domestic violence victims by giving HB1268 a do pass recommendation. I appreciate your time and I am happy to answer any questions you may have. Thank you.



North Dakota House of Representatives

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative Zachary Ista

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COMMITTEES:
Finance and Taxation
Energy and Natural Resources

January 23, 2023

Mr. Chairman and Members of the Judiciary Committee:

For the record, Zac Ista from District 43 in Grand Forks.

HB 1268 is a bill to increase protection for victims of domestic abuse by giving courts another tool to stop that abuse before it leads to physical harm. This bill makes one substantive change—adding stalking as a basis for a domestic violence protection order—and one procedural clean-up related to service of court orders. After providing a little background, I'll walk through exactly what the bill does, with supporters behind me ready to speak to why the bill is needed.

By way of background, persons in North Dakota currently can petition our district courts for three types of protective or restraining orders: a disorderly conduct restraining order ("DCRO"), a sexual assault restraining order ("SARO"), and a domestic violence protection order ("DVPO").

A petitioner can seek a disorderly conduct restraining order against anyone, regardless of their relationship, who engages in intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of the person seeking protection from the court—in other words, disorderly conduct. If the petitioner meets his or her burden of proof, the court can enter a restraining order against the person engaging in the conduct for up to a period of two years. That is the only remedy the court can enter in its order granting the DCRO. If someone violates the DCRO, they can be charged with a class A misdemeanor.

A sexual assault restraining order covers a narrower class of offensive misconduct, namely sexual assault, which means nonconsensual sexual acts or contact. A person (or a parent on behalf of a minor) may seek an SARO against anyone committing such misconduct regardless of their relationship to the petitioner. If the petitioner meets his or her burden in court, the court may issue an order restraining the perpetrator from

harassing, stalking, or threatening the victim or having any sort of contact with the victim. That restraining order may last for up to 2 years. A violation of the SARO is a class A misdemeanor for a first offense and a class C felony for second and subsequent offenses.

The last type of protection order—a DVPO—is only available where the petitioner alleges the offensive conduct was committed by a family or household member, which we define in 14-07.1-01(4) to mean “a spouse, family member, former spouse, parent, child, persons related by blood or marriage, persons who are in a dating relationship, persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they are or have been married or have lived together at any time, and, for the purpose of the issuance of a domestic violence protection order, any other person with a sufficient relationship to the abusing person as determined by the court.” Likewise, the underlying acts that can give rise to a DVPO are limited to “domestic violence,” which we currently define to mean “physical harm, bodily injury, sexual activity compelled by physical force, assault, or the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or assault, not committed in self-defense.” If a DVPO petitioner meets his or her burden of proof, the court may order the perpetrator to stop the conduct, but the court may additionally set custody and parenting schedules between the parties, award financial support, grant temporary use or possession of property, and order the parties into counseling/treatment. Therefore, while the circumstances giving rise to a DVPO are narrower, the available relief is broader. And like with a DCRO, violation of a DVPO is a class A misdemeanor for a first offense, which is increased to a class C felony for a second or subsequent violation.

HB 1268 seeks to make one substantive change to existing DVPO law by adding “stalking” as a basis for which someone can seek and be granted a DVPO. The bill relies on the same definition of “stalking” we already have in our criminal code at section 12.1-17-07.1 (which I have appended to this testimony for your reference). As with any misconduct supporting a DVPO, this change would only extend to instance of stalking done by the complaining party’s family or household member.

The addition of stalking is appropriate, as those testifying behind me we will better explain, because stalking is a type of behavior that intimate partners may engage in as a way to harass and threaten their victims. While it may not be physically violent, it creates similar fear, discomfort, and a risk of future physical harm to the victim. Allowing courts to protect a victim of stalking before that person becomes the victim of physical violence is an appropriate and necessary expansion of our DVPO laws.

Besides this substantive change, the other change in HB 1268 is a small procedural one that would align service requirements for DCROs and SAROs with the service requirements for DVPOs. Under current law, a DCRO and SARO may be served on a respondent by publication, which may happen if more familiar means of

service (like personal service by the sheriff or service by certified mail) cannot be completed. This could include where the respondent cannot be located or is evading service. HB 1268 seeks to expressly add publication as a permissible method of service for DVPOs, too, as there are reports of some judges declining to order service in this matter when it is not expressly authorized by statute. While this method of service would be used only infrequently, it ensures victims can rely on the protection order without worrying about insufficient legal service.

Members of the Committee, HB 1268 is one small way to offer better protection for victims of intimate partner violence during a time when, sadly, such violence is on the rise. Therefore, I encourage your favorable consideration of the bill, and I look forward to your questions.

12.1-17-07.1. Stalking.

1. As used in this section:
 - a. "Course of conduct" means a pattern of conduct consisting of two or more acts evidencing a continuity of purpose. The term does not include constitutionally protected activity.
 - b. "Immediate family" means a spouse, parent, child, or sibling. The term also includes any other individual who regularly resides in the household or who within the prior six months regularly resided in the household.
 - c. "Stalk" means:
 - (1) To engage in an intentional course of conduct directed at a specific person which frightens, intimidates, or harasses that person and which serves no legitimate purpose. The course of conduct may be directed toward that person or a member of that person's immediate family and must cause a reasonable person to experience fear, intimidation, or harassment; or
 - (2) The unauthorized tracking of the person's movements or location through the use of a global positioning system or other electronic means that would cause a reasonable person to be frightened, intimidated, or harassed and which serves no legitimate purpose.
2. A person may not intentionally stalk another person.
3. In any prosecution under this section, it is not a defense that the actor was not given actual notice that the person did not want the actor to contact or follow the person; nor is it a defense that the actor did not intend to frighten, intimidate, or harass the person. An attempt to contact or follow a person after being given actual notice that the person does not want to be contacted or followed is prima facie evidence that the actor intends to stalk that person.

Page No. 3

4. In any prosecution under this section, it is a defense that a private investigator licensed under chapter 43-30 or a peace officer licensed under chapter 12-63 was acting within the scope of employment.
5. If a person claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.
6. a. A person who violates this section is guilty of a class C felony if:
 - (1) The person previously has been convicted of violating section 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2, 12.1-17-02, 12.1-17-04, 12.1-17-05, or 12.1-17-07, or a similar offense from another court in North Dakota, a court of record in the United States, or a tribal court, involving the victim of the stalking;
 - (2) The stalking violates a court order issued under chapter 14-07.1 protecting the victim of the stalking, if the person had notice of the court order; or
 - (3) The person previously has been convicted of violating this section.
- b. If subdivision a does not apply, a person who violates this section is guilty of a class A misdemeanor.

Representative Klemin and Members of the Judiciary Committee,

Good morning, my name is Laura Frisch and I serve on the executive leadership team at the Community Violence Intervention Center (CVIC) in Grand Forks, ND. I have overseen the legal services project at our agency for over 12 years. Prior to that I held roles as a certified advocate, authorized to assist with protection order paperwork, an advocacy supervisor, and therapist for victims of domestic violence and sexual assault. In total, I have been a staff member at CVIC for over 25 years.

I am here today to testify in support of House Bill 1268. The first change this bill makes is to allow the option of service by publication, something that is already available in the related sexual assault restraining order statute. This option helps victims whose former partners are evading service and preventing a hearing from being held on the matter. Unfortunately, due to pressures on court scheduling, the order may be dismissed, and the victim required to go through the entire application process again, which takes several hours and also ties up court time, once the respondent inevitably resumes their abusive behavior.

The second change in the bill is to add stalking to the definition of domestic violence in the ND century code. Stalking has long been a part of domestic violence dynamics, both during and after a relationship. Through numerous studies, it has also been identified as a lethality factor in domestic violence, meaning that this behavior indicates an increased risk of death to the victim. In fact, one study of female murder victims, who were also previous victims of domestic violence, found that nearly 89% of them had been stalked by the person who murdered them prior to their death.

In North Dakota, we have three types of civil “stay away” orders, the Domestic Violence Protection Order (DVPO), the Sexual Assault Restraining Order (SARO), and the Disorderly Conduct Restraining Order (DCRO). Advocates employed by membership agencies with the state coalition, CAWS ND, undergo extensive training and are allowed to assist with applications for DVPOs and SAROs under administrative rule 34.

One of the challenges for domestic violence survivors who escape an abusive relationship is that though their ex-partner no longer has access to them to be physically violent, stalking often becomes a major tactic of control. This may include behavior such as driving by their home, sitting outside their place of work, monitoring their mail, sending unwanted texts, letters, gifts, etc., and using technology like GPS, hacking into accounts, cell phone tracking, and social media apps to surveil, harass and otherwise intimidate their former partner. And while this onslaught of tactics inflicts terror and fear, our laws consider the behavior to be “nonviolent.” The behavior can also be very challenging to prove in criminal court, and that often means that the best remedy to stop the behavior is for victims to apply for a civil stay away order. Unfortunately, because the definition of domestic violence is focused “imminent harm or violence,” survivors are only left with the option to apply for a DCRO.

There are numerous reasons why this civil remedy is problematic. First, certified advocates like ones employed by CVIC are not authorized to assist with DCROs, leaving victims in our state in the position of trying to navigate an unfamiliar system while already being in a state of exhaustion and fear. Second, DCROs do not have temporary remedies to address issues that are common in domestic relationships, such as custody, visitation, child support, authorizing use of a vehicle, or restricting access to firearms, potentially increasing the dangerousness of the situation and leaving numerous areas unaddressed. And third, only a DVPO offers an enhanced penalty for multiple violations, increasing from a class A misdemeanor to a class C felony. This can be critical for deterring behavior that is, in some cases, obsessive and relentless.

On behalf of survivors across the state of North Dakota, I hope you vote Do Pass on HB1268. Thank you and I am happy to answer any questions.

Good morning. My name is Yvonne Griffin, I have testified earlier in favor of CVIC. I am a survivor of DV. I have experienced DV as child and into my adulthood. I have experienced stalking in my relationships. My entire where and schedule of events were known. From the time my feet hit the floor in the morning till I laid down at night. I didn't think to much about it at first it was kind of sweet that he knew what I was doing and where I was. He wanted to make sure I was ok and safe. It got to the point of him showing up to where I was and just saying hi or wanted to see me. God forbid I was speaking to the opposite sex and he walked in. I lived in a time of having a beeper and when it had the 511 code come up I knew I needed to call because it could result in being grounded to the house. I was able that relationship. There is no worse feeling then to know that someone knows your entire schedule of events. And should they change it could be chaos for the person stalking you. I had to quit my job and find another one because of the coming into my place of work and hanging around. I found a job that had secured doors and no access to the floor which resulted in them sitting outside my job until I came out. Saying things to people that knew me and then having it repeated back to me what he said. Notes on my car with threats but of course no signature but I knew who it was. Living in fear and not able to see your enemy in front of you physically. It was almost far worse than him being in front of me.



March 28, 2023
RE: HB 1268

Chair Larson and Members of the Senate Judiciary Committee,

Good morning. For the record my name is Laura Frisch and I serve on the executive leadership team at the Community Violence Intervention Center (CVIC) in Grand Forks, ND. I have overseen the legal services project at our agency for over 12 years. Prior to that I held roles as a certified advocate, authorized to assist with protection order paperwork, an advocacy supervisor, and therapist for victims of domestic violence and sexual assault. In total, I have been a staff member at CVIC for over 25 years.

I am testifying in support of House Bill 1268. The first change this bill makes is to allow the option of service by publication, something that is already available in the related sexual assault restraining order statute, as well as other civil actions. This option helps victims whose former partners are evading service and preventing a hearing from being held on the matter. Unfortunately, due to pressures on court scheduling, the order may be dismissed if it is unable to be served. Once the respondent inevitably resumes their abusive behavior, the victim is required spend several hours to go through the entire application process again, which ties up court time and resources, and is unnecessarily taxing to persons who simply want no contact with the person who has harmed them.

To be clear, this option is used as a last resort when traditional attempts at service in-person have already failed, and the court has already rescheduled the hearing once. Service by publication is more costly and complicated than personal service, so most petitioners in protection order cases will prefer in-person service when possible. This change in the law simply clarifies that service via publication is allowable after all other conditions are met.

The second change in the bill is to add stalking to the definition of domestic violence in the ND century code. Stalking has long been a part of domestic violence dynamics, both during and after a relationship. Through numerous studies, it has also been identified as a lethality factor in domestic violence, meaning that this behavior indicates an increased risk of death to the victim. In fact, one study of female murder victims, who were also previous victims of domestic violence, found that nearly 89% of them had been stalked by the person who murdered them prior to their death.

In North Dakota, we have three types of civil “stay away” orders, the Domestic Violence Protection Order (DVPO), the Sexual Assault Restraining Order (SARO), and the Disorderly Conduct Restraining Order (DCRO). Advocates employed by membership agencies with the state coalition, CAWS ND, undergo extensive training and are allowed to assist with applications for DVPOs and SAROs under administrative rule 34.

One of the challenges for domestic violence survivors who escape an abusive relationship is that though their ex-partner no longer has access to them to be physically violent, stalking often becomes a major tactic of control. This may include behavior such as driving by their home, sitting outside their place of work, monitoring their mail, sending unwanted texts, letters, gifts, etc., and using technology like GPS, hacking into accounts, cell phone tracking, and social media apps to surveil, harass and otherwise intimidate their former partner. And while this onslaught of tactics inflicts terror and fear, our laws consider the behavior to be “nonviolent.” The behavior can also be very challenging to prove in criminal court, and that often means that the best remedy to stop the behavior is for victims to apply for a civil stay-away order. Unfortunately, because the North Dakota definition of domestic violence is focused “imminent harm or violence,” survivors are only left with the option to apply for a DCRO.

There are numerous reasons why this civil remedy is problematic. First, certified advocates like ones employed by CVIC are not authorized to assist with DCROs, leaving victims in our state in the position of trying to navigate an unfamiliar system while already being in a state of exhaustion and fear. Second, DCROs do not have temporary remedies to address issues that are common in domestic relationships, such as custody, visitation, child support, authorizing use of a vehicle, or restricting access to firearms, potentially increasing the dangerousness of the situation and leaving numerous areas unaddressed. And third, only a DVPO offers an enhanced penalty for multiple violations, increasing from a class A misdemeanor to a class C felony. This can be critical for deterring behavior that is, in some cases, obsessive and relentless.

On behalf of survivors across the state of North Dakota, I urge you to vote Do Pass on HB1268. Thank you for the opportunity to testify today and I am happy to answer any questions.



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House Bill No. 1268
Senate Judiciary Committee
Testimony Presented by Seth O'Neill, JD, MSW
Email: soneill@cawsnorthdakota.org
March 28, 2023

Chairwoman Larson and members of the Committee, my name is Seth O'Neill and I am representing CAWS North Dakota in support of HB1268.

This bill would add our current definition of stalking to domestic violence for the purposes of a domestic violence protection order. These orders allow victims of domestic violence to be physically safe from their abusers.

In order for an individual to receive a domestic violence protection order they need to petition the Court. The Court must schedule a hearing within fourteen days to determine actual or imminent domestic violence has occurred. If the Court makes a finding of domestic violence, then the Court may order that the respondent refrain from contacting the petitioner and other additional remedies. If a petitioner alleges immediate and present danger of domestic violence, a court may order an ex-parte temporary order. This order remains in effect until the hearing is held. Currently, for a petitioner to receive a protection order they must prove they have experienced physical harm, bodily injury, sexual activity compelled by physical force, assault, or the threat of these things. What we are finding is domestic violence abusers are intentionally avoiding physical harm but using other methods to control their victims. Or in other situations physical harm was used in the past but is no longer needed to control the victim. By doing this, they avoid court involvement while still gaining control over their victims life. One of the most common methods of doing this is through stalking. As our current definition states, stalking is

“an intentional course of conduct directed at a specific person which frightens, intimidates, or harasses that person and which serves no legitimate purpose.” This behavior can look different depending on the situation. Perhaps one of the most glaring examples is an individual repeatedly making threatening statements to a victim but not enough to count as “imminent physical harm.” I have represented victims in cases where respondents have repeatedly told the victim they will kill her if something doesn’t go his way. In these situations, the Court has found that although the behavior is concerning, the threat is not imminent enough. The problem with this is it can be difficult to determine the imminency of a threat like this and if an order is not granted in this situation someone could die.

This bill would change that by including stalking within the domestic violence protection order process. In the situation I described above, an individual could petition that this conduct is frightening them due to the legitimate fear for their life. I have included with my testimony factsheets with recent statistics regarding stalking. One of the most glaring statistics is the fact that stalking increases the risk of intimate partner homicide by three times.

The second portion of the bill is a language clean-up and simply clarifies the ability to serve an individual by publication if they cannot be located. This is not a requirement but just simply an option for petitioners. I have represented victims in cases where the order was forced to be dismissed because the respondent could not be located to be served and the judge did not allow service by publication. This language would prevent that from happening.

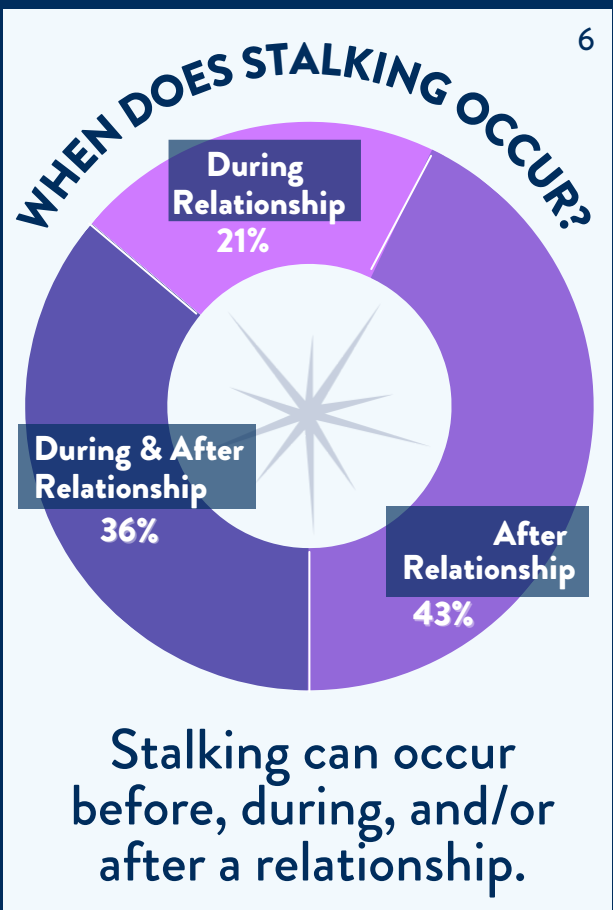
Due to these reasons, we encourage the committee to increase public safety for domestic violence victims by giving HB1268 a do pass recommendation. I appreciate your time and I am happy to answer any questions you may have. Thank you.

STALKING & DOMESTIC VIOLENCE

All stalkers can be dangerous. On average, intimate partner stalkers pose the greatest threats to their victims.

85% INTIMATE PARTNER FEMICIDES ¹
of attempted
76% of completed were preceded by **stalking** in the prior year

2 YEARS 
is the average duration of intimate partner stalking.²



43% of female STALKING VICTIMS ARE TARGETED by (current or former) **INTIMATE PARTNERS**
32% of male

Victims of intimate partner stalking have **MORE SEPARATION ATTEMPTS** than victims of intimate partner violence alone.⁴



BOTH STALKING³ & INTIMATE PARTNER VIOLENCE⁵ ARE PREVALENT

1 in 3 women  **1 in 4 women** 

1 in 6 men  **1 in 10 men** 

experience stalking in their lifetimes are impacted by intimate partner stalking, sexual violence, and/or physical violence in their lifetimes

Citations

1 McFarlane, J., Campbell, J.C., Wilt, S., Ulrich, Y., & Xu, X. (1999). Stalking and Intimate Partner Femicide. *Homicide Studies* 3 (4), 300-316.

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3 Smith, S.G., Basile, K.C., & Kresnow, M. (2022). *The National Intimate Partner and Sexual Violence Survey (NISVS): 2016/2017 Report on Stalking*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.

4 Sheridan, L. & Davies, G.M. (2006). Violence and the Prior Victim-Stalker Relationship. *Criminal Behaviour and Mental Health* 11(2): 102-116.

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6 Tjaden, P. & Thoennes, N. (1998). *Stalking in America: Findings from the National Violence Against Women Survey (NCJ#169592)*. Washington, DC: National Institute of Justice Centers for Disease Control and Prevention.

STALKING & INTIMATE PARTNER VIOLENCE: FACT SHEET



There is a real and frighteningly significant connection between stalking and intimate partner violence. Stalking often co-occurs with intimate partner violence and can be an indicator of other forms of violence. Stalking can be a way to exert power and control during and/or after an abusive relationship.

DID YOU KNOW?

- 40% of stalking victims are stalked by current or former intimate partners.^A
- 57% of intimate partner stalking victims are stalked during the relationship.^B
- 74% of those stalked by a former intimate partner report violence and/or coercive control during the relationship.^C
- 81% of women stalked by a current or former husband or cohabitating partner were also physically assaulted by that partner.^D
- 31% of women stalked by an intimate partner were also sexually assaulted.^E
- 41% of victims stalked by a current intimate partner and 35% stalked by a former intimate partner experience threats of harm, compared to 24% stalked by a non-intimate partner.^F
- The average length of partner stalking is 2.2 years (longer than the average of just over 1 year for non-intimate partner cases).^G

STALKING & PARTNER HOMICIDE

- Stalking increases the risk of intimate partner homicide by three times.^H
- The most common use of the criminal justice system prior to attempted or completed intimate partner homicide was reporting intimate partner stalking.^I
- Among female victims of attempted and completed intimate partner homicide by male partners, in the 12 months prior to the attack:^J
 - 85% of attempted and 76% of completed homicide victims were stalked.
 - 91% of attempted and 89% of completed homicide victims who had been physically abused during the relationship had also been stalked.
 - 46% of attempted and 54% of completed homicide victims reported stalking before the attack, most commonly to police.

INTIMATE PARTNER STALKING OFFENDERS

- Abusive partners who stalk are more likely (than abusive partners who do not stalk) to verbally degrade, threaten, use a weapon to attack, sexually assault, and/or physically injure their victims.^K
- Intimate partner stalkers are more likely (than stalkers who are not intimate partners) to:
 - Use the widest range of stalking tactics.^L
 - Contact and approach victims more frequently.^M
 - Assault their victims.^N
 - Be insulting and interfere in the victim's life.^O
 - Escalate the frequency and intensity of pursuit more often.^P
 - Threaten victims with weapons or actually use weapons on their victims.^Q
 - Be threatening to their victims and reoffend.^R
 - Follow through on threats of violence.^S One study found that among stalking victims threatened, 71% of intimate partner victims were actually assaulted compared to 33% of non-intimate partner victims.^T
 - Assault third parties.^U
 - Reoffend after a court intervention and reoffend more quickly.^V
- The risk of physical violence is heightened when the intimate partner stalker:^W
 - Issues direct threats of violence;
 - Expresses jealousy of the victim's relationships with others during the relationship; and
 - Uses illegal drugs.

STALKING & SEPARATION

- Victims stalked by violent partners report more separation attempts than partner violence victims who were not stalked.^X
- Intimate partner stalking made victims more likely to want to leave the relationship than other factors, including psychological aggression and injury.^Y
- Stalking after a separation may increase the risk of violence.^{ZAABB}

STALKING & INTIMATE PARTNER VIOLENCE: FACT SHEET

SOURCES

- ^A Smith, S.G., Basile, K.C., & Kresnow, M. (2022). The National Intimate Partner and Sexual Violence Survey (NISVS): 2016/2017 Report on Stalking. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.
- ^B Tjaden, P. & Thoennes, N. (1998). Stalking in America: Findings from the national violence against women survey (NCJ# 169592). Washington, DC: National Institute of Justice Centers for Disease Control and Prevention.
- ^C Brewster, M. (2003). Power and control dynamics in pre-stalking and stalking situations. *Journal of Family Violence*, 18(4), 207-217.
- ^D Tjaden, P. & Thoennes, N. (1998). Stalking in America: Findings from the national violence against women survey (NCJ# 169592). Washington, DC: National Institute of Justice Centers for Disease Control and Prevention.
- ^E Ibid.
- ^F Brady, P. (2022). *Analysis of threats and violence by stalker relationship*. [2016 Supplemental Victimization Survey to the National Crime Victim Survey]. Bureau of Justice Statistics. <https://bjs.ojp.gov/library/publications/stalking-victimization-2016>
- ^G Brewster, M. (2003). Power and control dynamics in pre-stalking and stalking situations. *Journal of Family Violence*, 18(4), 207-217.
- ^H Spencer, C.M. & Stith, S.M. (2018). Risk Factors for Male Perpetration and Female Victimization of Intimate Partner Homicide: A Meta-Analysis. *Trauma, Violence, & Abuse*, 21(3): 527-540.
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- ^J McFarlane, J., Campbell, J.C., Wilt, S., Ulrich, Y., & Xu, X. (1999). Stalking and Intimate Partner Femicide. *Homicide Studies*, 3(4), 300-316.
- ^K Logan, T.K., Shannon, L., & Cole, J. (2007). Stalking Victimization in the Context of Intimate Partner Violence. *Violence Vict.*, 22(6), 669-683.
- ^L Johnson, M. & Kercher, G. (2009). Identifying predictors of negative psychological reactions to stalking victimization. *Journal of Interpersonal Violence*, 24(5), 886-882.
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- ^N James, D. & Farnham, F. (2003). Stalking and serious violence. *Journal of the American Academy of Psychiatry and the Law*, 31, 432-439.
- ^O Mohandie, K., Meloy, J., McGowan, M., & Williams, J. (2006). The RECON typology of stalking: Reliability and validity based upon a large sample of north American stalkers. *Journal of Forensic Science*, 51(1), 147-155.
- ^P Ibid.
- ^Q Ibid.
- ^R Palarea, R., Zona, M., Lane, J. & Langhinrichsen-Rohling, J. (1999). The dangerous nature of intimate relationship stalking: Threats, violence and associated risk factors. *Behavioral Sciences and the Law*, 17, 269-283.
- ^S Ibid.
- ^T Thomas, S., Purcell, R., Pathé, M., & Mullen, P. (2008). Harm associated with stalking victimization. *Australian and New Zealand Journal of Psychiatry*, 42, 800-806.
- ^U Sheridan, L. & Davies, G. (2001). Violence and the prior victim-stalker relationship. *Criminal Behavior and Mental Health*, 11, 102-116.
- ^V Rosenfeld, B. (2003). Recidivism in stalking and obsessional harassment. *Law and Human Behavior*, 27(3), 251-265.
- ^W Roberts, K. (2005). Women's Experience of Violence During Stalking by Former Romantic Partners: Factors Predictive of Stalking Violence. *Violence Against Women*, 11(1), 89-114.
- ^X Logan, TK, Shannon, L., & Cole, J. (2007). Stalking victimization in the context of intimate partner violence. *Violence and Victims*, 22(6), 669-683.
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- ^{AA} Logan, TK, Walker, R., Shannon, L., & Cole, J. (2008). Factors associated with separation and ongoing violence among women with civil protective orders. *Journal of Family Violence*, 23, 377-385.
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HB 1268
68th Legislative Assembly
Senate Judiciary Committee
March 27, 2023
Testimony of Travis W. Finck, Executive Director, NDCLCI

Madam Chair Larson, members of the Senate Judiciary Committee, my name is Travis Finck and I am the Executive Director for the North Dakota Commission on Legal Counsel for Indigents. The Commission is the state agency responsible for delivery of public defense services in North Dakota.

The Commission testified in opposition to this bill in the House. However, given the amendments made by the House Judiciary, the Commission no longer has opposition. The Commission requests the committee not change the requirement of attempting personal service prior service by publication.

Respectfully Submitted:



Travis W. Finck
Executive Director, NDCLCI



North Dakota House of Representatives

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COMMITTEES:
Finance and Taxation
Energy and Natural Resources

March 28, 2023

Madam Chair and Members of the Senate Judiciary Committee:

For the record, I am Rep. Zac Ista from District 43 (Grand Forks). I come before you today with HB 1268, which is a bill to increase protection for victims of domestic abuse by clarifying courts' ability to stop that abuse before it leads to physical harm. To do that, this bill makes one substantive change—adding stalking as a basis for a domestic violence protection order—and one procedural change related to service of notice and court orders by publication. After providing a little background, I'll walk through exactly what the bill does, with supporters behind me ready to speak to why the bill is needed and address any questions about funding.

By way of background, persons in North Dakota currently can petition our district courts for three types of protective or restraining orders: a disorderly conduct restraining order ("DCRO"), a sexual assault restraining order ("SARO"), and a domestic violence protection order ("DVPO").

A petitioner can seek a disorderly conduct restraining order against anyone, regardless of their relationship, who engages in intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of the person seeking protection from the court—in other words, disorderly conduct. If the petitioner meets his or her burden of proof, the court can enter a restraining order against the person engaging in the conduct for up to a period of two years. That is the only remedy the court can enter in its order granting the DCRO. If someone violates the DCRO, they can be charged with a class A misdemeanor.

A sexual assault restraining order covers a narrower class of offensive misconduct, namely nonconsensual sexual acts or contact (*i.e.*, sexual assault). A person (or a parent on behalf of a minor) may seek an SARO against anyone committing such misconduct regardless of their relationship to the petitioner. If the petitioner meets his or her burden in court, the court may issue an order restraining the perpetrator from harassing, stalking, or threatening the victim or having any sort of contact with the victim. That restraining order may last for up to 2 years. A violation of the SARO is a class A misdemeanor for a first offense and a class C felony for second and subsequent offenses.

The last type of protection order—a DVPO—is only available where the petitioner alleges the offensive conduct was committed by a family or household member, which we define in 14-07.1-01(4) to mean “a spouse, family member, former spouse, parent, child, persons related by blood or marriage, persons who are in a dating relationship, persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they are or have been married or have lived together at any time, and, for the purpose of the issuance of a domestic violence protection order, any other person with a sufficient relationship to the abusing person as determined by the court.” Likewise, the underlying acts that can give rise to a DVPO are limited to “domestic violence,” which we currently define to mean “physical harm, bodily injury, sexual activity compelled by physical force, assault, or the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or assault, not committed in self-defense.” If a DVPO petitioner meets his or her burden of proof, the court may order the perpetrator to stop the conduct, but the court may additionally set custody and parenting schedules between the parties, award financial support, grant temporary use or possession of property, and order the parties into counseling/treatment. Therefore, while the circumstances giving rise to a DVPO are narrower, the available relief is broader. And like with a DCRO, violation of a DVPO is a class A misdemeanor for a first offense, which is increased to a class C felony for a second or subsequent violation.

HB 1268 seeks to make one substantive change to existing DVPO law by adding “stalking” as a basis for which someone can seek and be granted a DVPO. The bill now before you does this by adding “stalking” to the definition of “domestic violence” in Chapter 14-07.1, as an act of “domestic violence” is the predicate conduct that gives rise to the availability of a DVPO. The bill relies on the same definition of “stalking” we already have in our criminal code at section 12.1-17-07.1 (which I have appended to this testimony for your reference). As with any misconduct supporting a DVPO, this change would only extend to instance of stalking done against a family or household member (the DVPO law also includes a residual provision allowing a court to issue an order outside this definition if the court finds the parties have a relationship sufficient to justify such an order).

In reviewing the bill in advance of today’s hearing, I did notice some possible unintended consequences. By re-defining “domestic violence” in § 14-07.1-01, that definition would carry through to all other sections of Chapter 14-07.1. This, therefore, would also include stalking in the definition of domestic violence referred to in §§ 14-07.1-08.1 (sentencing DV offenders to domestic violence court), 14-07.1-10 (arrest procedures of DV suspects), and 14-07.1-12, -14 (law enforcement training and guidelines requirements). While I don’t think including stalking in the DV definition in those sections would result in any negative consequences (and arguably is an appropriate inclusion), it was not the specific intent of this bill to do so. Therefore, I have prepared an amendment (23-0395.03001) that instead would limit reference to stalking to just the two subsections dealing

specifically with DVPOs (§§ 14-07.1-02, -03). If the Committee wishes to limit the effect of HB 1268 more narrowly to DVPOs only, this amendment would do so.

No matter which approach this Committee prefers, the addition of stalking as a basis for obtaining a DVPO is appropriate, as those testifying behind me will better explain, because stalking is a type of behavior that intimate partners (or former intimate partners) may engage in as a way to harass and threaten their victims without separately engaging in physical violence. While it may not be physically violent, it creates substantial fear, discomfort, and a risk of future physical harm to the victim. Allowing courts to protect a victim of stalking before that person becomes the victim of physical violence is an appropriate and necessary alignment of our DVPO law to our criminal laws.

Besides this substantive change, the other change in HB 1268 is a procedural one that would align service requirements for DCROs and SAROs with the service requirements for DVPOs. Under current law, a DCRO and SARO may be served on a respondent by publication, which may happen if other means of service (like personal service by the sheriff or service by certified mail) cannot be completed. This could include where the respondent cannot be located, has unknown whereabouts, or is evading service.

In the House, I worked with the Judiciary Committee and North Dakota Commission on Legal Counsel for Indigents to refine this procedural change and to address concerns about someone becoming the subject of a DVPO without proper notice. The amended version of the bill before you makes clear that service of any hearing notice, initial ex parte protection order, or final DVPO first must be attempted using personal service. If—and only if—such personal service cannot be completed, then the court may order service by publication following the well-defined procedures set forth in Rule 4 of our North Dakota Rules of Civil Procedure (which require a court to find efforts were made to complete personal service but such efforts were unsuccessful). That rule, in turn, also gives a respondent a three-year window in which to petition the court to re-hear a matter if service was made by publication and the respondent can show that he or she did not have actual notice of the case (despite published service). Therefore, the publication language in the bill before you balances the due process rights of the accused to have sufficient notice of proceedings with the rights of victims to move forward without undue delay.

With that, Members of the Committee, I urge a favorable **do pass** recommendation of HB 1268. This bill is one way to offer better protection for victims of intimate partner violence during a time when, sadly, such violence is on the rise. Thank you for your consideration, and I look forward to your questions.

12.1-17-07.1. Stalking.

1. As used in this section:
 - a. "Course of conduct" means a pattern of conduct consisting of two or more acts evidencing a continuity of purpose. The term does not include constitutionally protected activity.
 - b. "Immediate family" means a spouse, parent, child, or sibling. The term also includes any other individual who regularly resides in the household or who within the prior six months regularly resided in the household.
 - c. "Stalk" means:
 - (1) To engage in an intentional course of conduct directed at a specific person which frightens, intimidates, or harasses that person and which serves no legitimate purpose. The course of conduct may be directed toward that person or a member of that person's immediate family and must cause a reasonable person to experience fear, intimidation, or harassment; or
 - (2) The unauthorized tracking of the person's movements or location through the use of a global positioning system or other electronic means that would cause a reasonable person to be frightened, intimidated, or harassed and which serves no legitimate purpose.
2. A person may not intentionally stalk another person.
3. In any prosecution under this section, it is not a defense that the actor was not given actual notice that the person did not want the actor to contact or follow the person; nor is it a defense that the actor did not intend to frighten, intimidate, or harass the person. An attempt to contact or follow a person after being given actual notice that the person does not want to be contacted or followed is prima facie evidence that the actor intends to stalk that person.

Page No. 3

4. In any prosecution under this section, it is a defense that a private investigator licensed under chapter 43-30 or a peace officer licensed under chapter 12-63 was acting within the scope of employment.
5. If a person claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.
6. a. A person who violates this section is guilty of a class C felony if:
 - (1) The person previously has been convicted of violating section 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2, 12.1-17-02, 12.1-17-04, 12.1-17-05, or 12.1-17-07, or a similar offense from another court in North Dakota, a court of record in the United States, or a tribal court, involving the victim of the stalking;
 - (2) The stalking violates a court order issued under chapter 14-07.1 protecting the victim of the stalking, if the person had notice of the court order; or
 - (3) The person previously has been convicted of violating this section.
- b. If subdivision a does not apply, a person who violates this section is guilty of a class A misdemeanor.

23.0395.03001

FIRST ENGROSSMENT

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1268

Introduced by

Representatives Ista, Cory, Hanson, Heinert, Klemin, M. Ruby, Schneider, Vetter
Senators Braunberger, Larson, Lee, Sickler

1 A BILL for an Act to create and enact a new subsection to section 14-07.1-02 of the North
2 Dakota Century Code, relating to the definition of domestic violence and stalking; to amend and
3 reenact ~~section 14-07.1-01 and~~ subsection 3 of section 14-07.1-02 of the North Dakota Century
4 Code, relating to ~~the definition of stalking and~~ domestic violence protection orders; and to
5 provide a penalty.

6 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

7 ~~SECTION 1. AMENDMENT. Section 14-07.1-01 of the North Dakota Century Code is~~
8 ~~amended and reenacted as follows:~~
9 ~~14-07.1-01. Definitions.~~
10 ~~1. "Department" means the department of health and human services.~~
11 ~~2. "Domestic violence" includes physical harm, bodily injury, stalking, sexual activity~~
12 ~~compelled by physical force, assault, or the infliction of fear of imminent physical harm,~~
13 ~~bodily injury, sexual activity compelled by physical force, or assault, not committed in~~
14 ~~self-defense, on the complaining family or household members.~~
15 ~~3. "Domestic violence sexual assault organization" means a private, nonprofit~~
16 ~~organization whose primary purpose is to provide emergency housing,~~
17 ~~twenty-four-hour crisis lines, advocacy, supportive peer counseling, community~~
18 ~~education, and referral services for victims of domestic violence and sexual assault.~~
19 ~~4. "Family or household member" means a spouse, family member, former spouse,~~
20 ~~parent, child, persons related by blood or marriage, persons who are in a dating~~
21 ~~relationship, persons who are presently residing together or who have resided~~
22 ~~together in the past, persons who have a child in common regardless of whether they~~
23 ~~are or have been married or have lived together at any time, and, for the purpose of~~
24 ~~the issuance of a domestic violence protection order, any other person with a sufficient~~

1 ~~relationship to the abusing person as determined by the court under section-~~
2 ~~14-07.1-02.~~

3 ~~5. "Law enforcement officer" means a public servant authorized by law or by a~~
4 ~~government agency to enforce the law and to conduct or engage in investigations of~~
5 ~~violations of law.~~

6 ~~6. "Predominant aggressor" means an individual who is the most significant, not~~
7 ~~necessarily the first, aggressor.~~

8 ~~7. "Stalking" has the meaning provided for the term "stalk" in section 12.1-17-07.1.~~

9 ~~8. "Willfully" means willfully as defined in section 12.1-02-02.~~

10 **SECTION 1. AMENDMENT.** Subsection 3 of section 14-07.1-02 of the North Dakota
11 Century Code is amended and reenacted as follows:

12 3. Service must be made upon the respondent at least five days prior to before the
13 hearing. Service of the hearing notice, for a protection order under this section or for
14 an ex parte temporary protection order under section 14-07.1-03, must be attempted
15 by personal service before service by publication under rule 4 of the North Dakota
16 Rules of Civil Procedure may be attempted. If service cannot be made, or if additional
17 time is required to complete service by publication, the court may set a new date.

18 **SECTION 2.** A new subsection to section 14-07.1-02 of the North Dakota Century Code is
19 created and enacted as follows:

20 As used in this section and in section 14-07.1-03:

21 a. "Domestic violence" has the meaning provided in section 14-07.1-01 and
22 includes stalking.

23 b. "Stalking" has the meaning provided for in the term "stalk" in section
24 12.1-17-07.1.

23.0395.03001
Title.

Prepared by the Legislative Council staff for
Representative Ista
March 27, 2023

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1268

Page 1, line 1, after "to" insert "create and enact a new subsection to section 14-07.1-02 of the North Dakota Century Code, relating to the definition of domestic violence and stalking; to"

Page 1, line 1, remove "section 14-07.1-01 and"

Page 1, line 2, remove "the definition of stalking and"

Page 1, remove lines 5 through 24

Page 2, remove lines 1 through 7

Page 2, after line 15, insert:

"SECTION 2. A new subsection to section 14-07.1-02 of the North Dakota Century Code is created and enacted as follows:

As used in this section and in section 14-07.1-03:

- a. "Domestic violence" has the meaning provided in section 14-07.1-01 and includes stalking.
- b. "Stalking" has the meaning provided for in the term "stalk" in section 12.1-17-07.1."

Re-number accordingly

23.0395.02001
Title.

Prepared by the Legislative Council staff for
Representative Ista
January 25, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1268

Page 2, line 11, after the first period insert "Service of the hearing notice, for a protection order under this section or for an ex parte temporary protection order under section 14-07.1-03, must be attempted by personal service before service by publication under rule 4 of the North Dakota Rules of Civil Procedure may be attempted."

Page 2, line 11, after the comma insert "or if additional time is required to complete service by publication."

Page 2, line 11, remove "The protection order"

Page 2, remove lines 12 and 13

Renumber accordingly