

State of New Hampshire
Supreme Court

NO. 2022-0114

2022 TERM
NOVEMBER SESSION

S.D.

v.

N.B.

RULE 7 APPEAL OF FINAL DECISION OF THE
LACONIA DISTRICT COURT

Brief of *Amici Curiae*, in support of Plaintiff, S.D., by:
New Hampshire Coalition Against Domestic and Sexual Violence
National Network to End Domestic Violence
National Alliance to End Sexual Violence
Battered Women's Justice Project
Victim Rights Law Center

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STATEMENT OF INTEREST OF *AMICI CURIAE*

The New Hampshire Coalition Against Domestic and Sexual Violence (NHCADSV or Coalition) is a not-for-profit organization committed to creating safe and just communities through advocacy, prevention, and empowerment of anyone affected by sexual violence, domestic violence, and stalking in New Hampshire.

This mission is accomplished by the Coalition along with its twelve independent community-based member programs, which provide free and confidential services, located throughout New Hampshire:

- RESPONSE to Sexual & Domestic Violence, Berlin/Lancaster/Colebrook;
- Turning Points Network, Claremont, Newport;
- Crisis Center of Central New Hampshire, Concord;
- Starting Point: Services for Victims of Domestic & Sexual Violence, Conway/Wolfeboro;
- Sexual Harassment & Rape Prevention Program (SHARPP), Durham (UNH);
- Monadnock Center for Violence Prevention (MCVP), Keene/Peterborough;
- New Beginnings - Without Violence and Abuse, Laconia;
- WISE, Lebanon;
- REACH at YWCA New Hampshire, Manchester/Derry;
- Bridges: Domestic & Sexual Violence Support, Nashua/Milford;
- Voices Against Violence, Plymouth;
- HAVEN, Portsmouth/Rochester/Epping.

In the 2018-2019 biennial, these twelve regional crisis centers served 1,695 victims of stalking.

The Coalition has an interest in this matter because our mission of creating safe and just communities for everyone leads us to advocate for effective and comprehensive remedies, including protective orders, for victims of all forms of stalking, including cyberstalking.

The National Network to End Domestic Violence (NNEDV) represents the 56 state and U.S. territorial coalitions against domestic violence. NNEDV is dedicated to creating a social, political, and economic environment in which domestic violence no longer exists. NNEDV works to make domestic violence a national priority, change the way society responds to domestic violence, and strengthen domestic violence advocacy at every level. NNEDV was instrumental in the passage and implementation of the Violence Against Women Act and its successive reauthorizations. NNEDV has a strong interest in protecting the ability of victims to get orders of protection that apply to both stalking and cyberstalking, as stalking via technology is both extremely harmful for victims and increasingly common.

The National Alliance to End Sexual Violence (NAESV) is the voice in Washington for the 56 state and territorial sexual assault coalitions and 1,500 rape crisis centers working to end sexual violence, and support survivors. The rape crisis centers in NAESV's network see every day the widespread and devastating impacts of sexual assault and stalking upon survivors. We oppose any impediments to survivors feeling safe to come forward, receive services, and seek justice.

The Battered Women's Justice Project (BWJP) serves as a national resource center on the civil and criminal legal responses to gender-based violence, and promotes systemic change within these systems to create an effective and just response to victims, perpetrators, as well as the children exposed to gender-based violence.

BWJP provides resources and training to advocates, victims, legal system personnel, policymakers, and others engaged in the justice system's response to gender-based violence. BWJP is an affiliated member of the Domestic Violence Resource Network, a group of national resource centers primarily funded by the United States Department of Health and Human

Services since 1993.

BWJP also serves as a designated technical assistance provider for the Office on Violence Against Women of the United States Department of Justice. Among BWJP's many national centers, its National Center on Protection Orders and Full Faith and Credit supports the effective enforcement of protection orders, protection-order related issues, and addresses legislation on firearms prohibitions related to domestic violence.

BWJP has an interest in this matter because protection orders must be able to prohibit stalking and harassment wherever it occurs, including online, and in virtual and social media spaces. To find otherwise creates enormous vulnerabilities for the victims its serves.

The **Victim Rights Law Center (VRLC)** was founded in 2003 as the first non-profit agency in the U.S. dedicated to meeting the legal needs of rape and sexual assault survivors and to promote a national movement to transform the legal response to sexual violence. In Massachusetts and Oregon, the VRLC provides free civil legal services to more than 1,000 adult and minor rape and sexual assault survivors annually. VRLC's Massachusetts office represents stalking survivors where there is sexualized content, including with civil protection orders. The VRLC also delivers training, consulting, mentoring, and legal resources to thousands of legal professionals working to respond to and prevent gender-based violence. Through our legal representation as well as our national work, civil protection orders have proven to be critical for stalking survivors to address the fear, privacy, and safety concerns as well as the re-traumatization caused by stalking.

BRIEF OF *AMICI CURIAE*

Stalking targets specific victims to intentionally create fear. Stalking includes in-person and physical proximity tactics, phone calls and text messages, and cyberstalking – using the internet to stalk. Stalking, including cyberstalking, can be perpetrated through multiple and evolving methods of victimization, and affects victims financially, physically, emotionally, and psychologically. Stalking is associated with increased risk of lethality, and increased partner homicide.

Victims, however, already face barriers to getting protection in both criminal and civil actions. Eliminating the authority for courts to grant the “relief necessary to bring about a cessation” of cyberstalking – as the appellant requests – is contrary to the legislature’s intent, social science data, and the prevention-focused initiatives of the Coalition and its crisis centers, and will harm thousands of stalking victims and their families in New Hampshire.

I. Stalking Defined

A. Stalking is a Crime of Inflicted Terror

Stalking is a crime of inflicted terror in which the victim is unable to enjoy the serenity associated with freedom and autonomy. Stalking, much like intimate partner violence, encompasses a pattern of behavior where the perpetrator utilizes fear to cause the victim emotional distress, in turn, manipulating and controlling the victim's actions.

The incessant and unpredictable nature of the conduct causes the victim to remain in a constant state of hyper-vigilance, attempting to be prepared for the next incident no matter when or where it occurs.

Stalking as a crime in New Hampshire is defined by statute, RSA 633:3-a.¹

¹I. RSA 633:3-a provides:

A person commits the offense of stalking if such person:

(a) Purposely, knowingly, or recklessly engages in a course of conduct targeted at a specific person which would cause a reasonable person to fear for his or her personal safety or the safety of a member of that person's immediate family, and the person is actually placed in such fear;

(b) Purposely or knowingly engages in a course of conduct targeted at a specific individual, which the actor knows will place that individual in fear for his or her personal safety or the safety of a member of that individual's immediate family; or

(c) After being served with, or otherwise provided notice of, a protective order pursuant to RSA 173-B, RSA 458:16, or paragraph III-a of this section, or an order pursuant to RSA 597:2 that prohibits contact with a specific individual, purposely, knowingly, or recklessly engages in a single act of conduct that both violates the provisions of the order and is listed in paragraph II(a).

II. As used in this section:

(a) "Course of conduct" means 2 or more acts over a period of time, however short, which evidences a continuity of purpose. A course of conduct shall not include constitutionally protected activity, nor shall it include conduct that was necessary to accomplish a legitimate purpose independent of making contact with the targeted person. A course of conduct may include, but not be limited to, any of the following acts or a combination thereof:

(1) Threatening the safety of the targeted person or an immediate family member.

(2) Following, approaching, or confronting that person, or a member of that person's immediate family.

(continued...)

The statute also authorizes civil protective orders:

A person who has been the victim of stalking ... may seek relief by filing a civil petition in the district court.... Upon a showing of stalking by a preponderance of the evidence, the court shall grant such relief as is necessary to bring about a cessation of stalking.

RSA 633:3-a, III-a.

B. In-Person Stalking

Perpetrators use a virtually endless array of tactics to stalk victims.

Victims who are stalked in person may experience the perpetrator approaching the victim uninvited in public places, or leaving physical objects as a disturbing reminder that the perpetrator was there and could reappear at any time.

In-person stalking terrorizes the victim as it gives confirmation that the perpetrator knows where the victim lives, works, or spends time, and could be close enough to cause physical harm at any point. Many victims find refuge by moving a great distance from the area where the incidents transpired. Baum, Catalano, Rand & Rose, *STALKING VICTIMIZATION IN THE UNITED STATES*, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT (NCJ 224527, 2009),

¹(...continued)

(3) Appearing in close proximity to, or entering the person's residence, place of employment, school, or other place where the person can be found, or the residence, place of employment or school of a member of that person's immediate family.

(4) Causing damage to the person's residence or property or that of a member of the person's immediate family.

(5) Placing an object on the person's property, either directly or through a third person, or that of an immediate family member.

(6) Causing injury to that person's pet, or to a pet belonging to a member of that person's immediate family.

(7) Any act of communication, as defined in RSA 644:4, II.

(b) "Immediate family" means father, mother, stepparent, child, stepchild, sibling, spouse, or grandparent of the targeted person, any person residing in the household of the targeted person, or any person involved in an intimate relationship with the targeted person.

<<https://www.justice.gov/sites/default/files/ovw/legacy/2012/08/15/bjssstalking-rpt.pdf>> (one in seven victims move as a result of their victimization).

Nonetheless, many say that the fear and hyper-vigilance remain no matter how many miles separate victim and perpetrator.

C. Cyberstalking

While at least half of stalking victims report in-person stalking behaviors, most report multiple modes of stalking, and 80 percent report being stalked both in-person and through technology. Morgan & Truman, STALKING VICTIMIZATION, 2019, Bureau of Justice Statistics 2 (2022), <<https://bjs.ojp.gov/content/pub/pdf/sv19.pdf>>. Many offenders leverage the internet to enhance or facilitate their in-person tactics; for example, a stalker may track a victim using a GPS device and then show up where they are, or use the internet to purchase a disturbing item and have it sent to the victim's home.

Technology and social media allow victims to access services, resources, and online communities of support, yet these same forums can become dangerous and harmful when misused by stalkers. Offenders often access these networks, gain personal information, and publish victims' locations and routines, ultimately lowering their threshold of privacy. Cyberstalking is unique in that perpetrators can continue their efforts despite distance, and can continue to traumatize victims from any geographic location – much like how the online content they post has no geographic boundary to prevent the material from following the victim everywhere they go.

Experts agree that stalkers both increase the fear they cause and simultaneously decrease their chances of being caught when they use technology to terrorize victims. Dr. Scott Hampton, a psychologist based in Dover, New Hampshire, has worked with thousands of perpetrators and victims of interpersonal violence, including stalking, over the past 30 years, in part by running lengthy abuser intervention programs, both in the community and

within correctional facilities. He has served on New Hampshire's Fatality Review Team since its inception a quarter century ago. This has given him an in-depth view of what happens when stalking and other forms of abuse are not adequately addressed. Dr. Hampton reported: "One advantage, from the perpetrator's perspective, of stalking, and particularly cyberstalking, is that it's done at a safe distance, that is safe for the stalker since he is less likely to get caught."

Cyberstalking can take many different forms, including direct messages through online platforms, and location tracking through apps and social media updates. Technology affords perpetrators several additional methods to terrorize their victims without making direct contact. Many stalkers publicly post content pertaining to the victim, such as derogatory remarks or sensitive personal information, without actually contacting the victim.

The majority of stalkers use (or misuse) technology to monitor, watch, contact, control, threaten, sabotage, isolate, and frighten victims, as well as to damage victims' credibility or reputation.

Smith, Basile & Kresnow, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2016/2017 REPORT ON STALKING – UPDATED RELEASE, National Center for Injury Prevention and Control Centers for Disease Control and Prevention (2022), <<https://www.cdc.gov/violenceprevention/pdf/nisus/nisvsStalkingReport.pdf>>. An advocate² from a New Hampshire crisis center stated, "they'll make posts without naming names, but the terminology and the content of the post makes the victim well aware the post is about them."

Another advocate from one of New Hampshire's crisis centers described

²Interviews with victims, NHCADSV crisis center advocates, and experts, excerpts of which are reported herein, were conducted by this brief's co-author, Kristen Barnett, between October 20 and 27, 2022.

their experience supporting victims of cyberstalking: “In some circumstances the trauma is just as bad if not worse as with physical or direct stalking.” “Victims of technology-facilitated stalking often report higher levels of fear than individuals who experience in-person stalking, and are just as concerned for their safety.” Fissel & Reynolds, *The Aftermath of Cyberstalking: School, Work, Social, and Health Costs of Victimization*, 45 AM. J. OF CRIM. JUST., 70-87 (2020). The increased level of fear may stem from the fact that there is no sanctuary to which the victim can retreat to avoid cyberstalking. The perpetrator intentionally exploits the intrusive nature of the internet to ensure the victim cannot escape the content, and that it follows them into their home – the one place typically considered safe – looming over the victim at every moment.

The nature of stalking – whether in-person, cyberstalking, or both – leads the victim to a state of hyper-vigilance where they are constantly in fear. Robert Frechette was a law enforcement officer for twenty-two years in Rochester, New Hampshire, and now is the Chief Investigator for the Strafford County Attorney’s Office. He served 16 years on the Special Victims Unit, was a member of the New Hampshire Attorney General’s Domestic Violence Fatality Review Committee, and co-authored its Domestic Violence Protocol for Law Enforcement. Frechette stated, “the number one concern that victims have in these cases is the fear of what will happen next.”

As in the case before the court, victims often learn about the posts through others in the community, leaving the victim feeling vulnerable, exposed and frightened. A victim, Jane Doe,³ who experienced stalking across multiple New Hampshire counties for almost a decade, stated:

³The victim declined to be identified for fear of future victimization.

I remember feeling so violated that he was putting things online, making it about me, tagging me, so that when people searched my name, they would see it.

Stalkers take advantage of the fact that internet content is widely, publicly, and eternally accessible. Regardless of a victim's attempts to plan for their safety or avoid online spaces, abusers can continue to perpetrate harm by publishing harmful content, knowing it will eventually circle back to the victim. Because many posts are public, the victim may encounter the abuser's posts through promotions including "sharing" and "re-tweeting." An advocate from one of the New Hampshire crisis centers stated, "technology is ever changing, just as you think you're on top of something, it changes again. Sadly, the world is making it easier for people to stalk other people. Every day it is getting easier and easier to be stalked, but it's harder and harder to do anything about it."

D. Stalkers Consider Efforts Unsuccessful if Victim is Unaware

The stalker's intent is to cause the victim substantial emotional or physical distress. Their goal is to control and terrify, which they consider unachieved if the victim is unaware. Dr. Hampton quipped:

Like an invading army, the stalker seeks to occupy both the victim's consciousness and life. As reflected in these song lyrics by The Police: "every breath you take, every move you make, I will be watching you," the goal is to create (in the victim's mind) an image of the stalker as both omnipresent and omnipotent so that the victim will realize, as the song continues, "don't you see, you belong to me." Accordingly, one such victim reported, "[n]ot a moment went by when I didn't feel like I was fastened to a slide with my stalker looking down at me through a microscope. I might as well have been where he is now, in prison."

Stalkers deploy multiple tactics to achieve this goal. As many as "78% of stalkers use more than one means of approach." *See* STALKING FACT SHEET,

STALKING PREVENTION, AWARENESS, AND RESOURCE CENTER, (2022),
<https://www.stalkingawareness.org/wp-content/uploads/2019/01/SPARC_StalkingFactSheet_2018_FINAL.pdf (citing Mohandie *et al.*, *RECON Typology of Stalking: Reliability and Validity Based Upon a Large Sample of North American Stalkers*, 51 J. OF FORENSIC SCI., Issue 1, 147-55 (2006)).

Perpetrators vary their efforts, sometimes using the same methods to terrorize multiple victims, and adapt their tactics to exert the greatest impact on their victim. They also change tactics over time based on introduced restrictions, such as the victim's relocation or a protective order, to continue to traumatize the victim. Robert Frechette noted:

Changing tactics is really common. Sometimes the victim only knows about one or two, but there tend to be a lot more being utilized. [Perpetrators] know no boundaries. If a court says they can't post on social media, they'll switch to spoofed numbers, hanging fliers or creating dating profiles for the victim and giving interested parties her address.

All methods of stalking are traumatizing. New Hampshire's statute, which provides that a court should "grant such relief as is necessary to bring about a cessation of stalking," RSA 633:3-a, III-a, reflects that stalking need not be of a certain nature for it to cause harm and justify a legal remedy.

II. Frequency of Stalking and Likely Under-Reporting

Though it is criminalized in all fifty states, the District of Columbia, U.S. Territories, and at the federal level, stalking remains a pervasive offense affecting and estimated 13.5 million people per year. *See* Smith, Basile, & Kresnow, *supra*.

In 2018-2019, New Hampshire Crisis Centers served a total of 28,561 victims, of which approximately 1,695 reported experiencing stalking. *See* NEW HAMPSHIRE DOMESTIC VIOLENCE FATALITY REVIEW COMMITTEE, 2018-2019 BIENNIAL REPORT, 1, 19 chart 15 (2019), <<https://www.doj.nh.gov/criminal/victim-assistance/documents/domestic-violence-report-2019.pdf>>.

These statistics are not illustrative of the true scope of the issue, however. A nationally representative study of adults in the United States aged sixteen and older revealed that in 2019 “[l]ess than a third (29%) of all stalking victims reported the victimization to police.” *See* Morgan & Truman, *supra*.

One explanation for under-reporting is fear of dismissive reactions from systemic actors, including law enforcement. Many stalking cases, specifically where the parties were not previously involved in a relationship, begin without a history of physical violence; for these cases, victims report that law enforcement does not respond with the same level of commitment that they do when victims report other violent crimes.

Law enforcement and other systemic actors cite the lack of previous physical assaults between the two parties as a factor which undermines the victim’s claims that the perpetrator is threatening and dangerous. Additionally, this response signals to victims that their case would be stronger or more urgently considered if the victim had suffered previous incidents of abuse – a subtle but dangerous form of victim blaming. An advocate from a New Hampshire crisis center said there are “challenges when [they’re] talking to people because they’re feeling stalked and harassed and we say, ‘it’s not criminal

yet,' and that's devastating."

Law enforcement may minimize the impact of cyberstalking because the offender may not be geographically near the victim. The nature of stalking is such that it uses psychological manipulation to cultivate an ever-present state of fear and emotional distress. But cyberstalking may be more detrimental, as the omnipresent internet makes it nearly impossible for the victim to find a place of refuge.

III. Deficiencies in Legal System to Obtaining Remedy

A. Unfamiliar Process, No Lawyer, Retraumatization

For those who choose to report their victimization, a civil protective order may seem to be the most logical safety mechanism. But the process for procuring a protective order has challenges. An initial barrier for victims is the unfamiliarity of legal proceedings and the filing process. Of the 4,200 stalking petitions filed in New Hampshire in 2018-2019, fewer than 5 percent of petitioners were represented by legal counsel. NEW HAMPSHIRE DOMESTIC VIOLENCE FATALITY REVIEW COMMITTEE, 2018-2019 BIENNIAL REPORT, chart 33 (2019). Many thus feel overwhelmed and intimidated by the unfamiliar process and discouraged about their chances of success.

In cases that proceed to trial, many victims find the process frustrating and unfulfilling. Jane Doe said:

I always had to challenge prosecutors. I stayed on them, I would call in every couple weeks. I know there's not enough of them and they work hard and probably have too much on their plate, but I couldn't allow those factors to let him get away with his behavior, so I was a very active victim, and I hate to use that word but that's what it was. I made sure I challenged the court and challenged the prosecutors to get the results that were appropriate.

Once in court, victims often find that cyberstalking is minimized by courts and law enforcement – considered less harmful or not as scary as in-person stalking – yet these victims often experience greater levels of fear than in-person stalking victims. Fissel & Reynolds, *The Aftermath of Cyberstalking: School, Work, Social, and Health Costs of Victimization*, 45 AM. J. OF CRIM. JUST. 70-87 (2020), <<https://doi.org/10.1007/s12103-019-09489-1>>.

Moreover, victims are forced to expose their trauma to strangers in a public forum, which is deterring and retraumatizing in itself.

Because petitioners are so often unassisted, it is vital that courts understand the complexities of stalking. Misconceptions about what constitutes stalking can thus have harmful consequences for victims.

B. Difficult Path to Success

In addition to the fear that they may not be believed or their experience belittled and invalidated, victims also face the reality that they may not prevail, making their efforts worthless.

Recent data from New Hampshire courts shows that police filed 2,637 criminal stalking charges in 2018-2019. EMAIL FROM CIRCUIT COURT ADMINISTRATIVE OFFICE TO NHCADSV (Oct. 27, 2022). While only about one percent of the cases disposed of during that timeframe resulted in acquittal, nearly half were *nolle prossed*, and only 30 percent resulted in conviction. *Id.*

For those in 2018-2019 seeking civil emergency and temporary stalking protective orders, 41 percent were denied. NEW HAMPSHIRE DOMESTIC VIOLENCE FATALITY REVIEW COMMITTEE, 2018-2019 BIENNIAL REPORT, chart 30 (2019). Of those that were granted, however, 58 percent were denied final protective orders. *Id.* at chart 31.

These difficulties may be because the facts of their case do not meet the standard of proof. But it may also be because victims are unable to demonstrate how their experience aligns with the statute due to a lack of knowledge of legal standards and proceedings, anxiety, or trauma.

In addition, the majority of stalking victims do not seek victim services. The lack of support for stalking victims creates additional barriers to victims talking about their victimization, knowing their options, and pursuing legal remedies. Morgan & Truman, *supra* (only 16 percent of stalking victims sought victim services; of those, 74 percent received services).

C. Poor Enforcement of Protective Orders

For victims who manage to navigate the legal proceedings and receive protection from the court, the challenges continue after issuance.

Although protective orders should act as a deterrent to the perpetrator, violations occur frequently. Dr. Scott Hampton noted:

The problem isn't that stalking orders are without teeth. The problem is when we fail to enforce them. Without enforcement, they're just a piece of paper: they can't stop a bullet, a knife, or a fist. But with consistent enforcement, they can be an effective deterrent and serve as an important element of risk assessment. In other words, if someone feels the need to get a protection order, that in and of itself is evidence of increased risk.

Despite violations, protective orders can be useful deterrents for some perpetrators because the order clarifies for the perpetrator that his behavior will not be tolerated. Dr. Hampton continued:

Typically, stalkers do not stop on their own accord, especially those who relentlessly pursue a single target for years. If successful, they will capture their target. If unsuccessful, they might threaten or attempt to terminate their target. The only other option is for the community (including, for example, law-enforcement, the courts, etc.) to deliver a clear, consistent and unambiguous message that their behavior will not be tolerated. No exceptions.

Alternatively, allowing the defendant's conduct to continue would signal that the behaviors are acceptable, and he may become emboldened to escalate his conduct. For those whose persistence surpasses any legal remedy, an effective protective order can still protect the victim, as a violation triggers criminal sanctions, which can ultimately result in the perpetrator being removed from society and the conduct may finally cease.

IV. Stalking's Impact on Victims

A. Financial, Physical, and Psychological Health

Stalking victims face numerous negative consequences in all aspects of their life as a result of their victimization.

Stalking can cause significant financial burdens. One in four women report experiencing property damage in conjunction with stalking victimization. *See* Baum, Catalano, & Rand, *supra*. More than half of stalking victims report missing five or more days of work as a result of their victimization. *Id.* Victims who pursue court action are also forced to pay for transportation, legal fees, and sometimes childcare.

Stalking victimization has also been linked to psychological distress, PTSD symptoms, depression, and suicidality. Smith *et al.*, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2016/2017 REPORT ON STALKING – UPDATED RELEASE, National Center for Injury Prevention and Control Centers for Disease Control and Prevention (2022) (*citing* Diette *et al.*, STALKING: DOES IT LEAVE A PSYCHOLOGICAL FOOTPRINT?, 95 SOC. SCI. QUARTERLY, Issue 2, 563-580 (2014)); Edwards, Gidycz, *Stalking and Psychosocial Distress Following the Termination of an Abusive Dating Relationship: a Prospective Analysis*, 20(11) VIOLENCE AGAINST WOMEN 1383-97 (2014), <<https://www.cdc.gov/violenceprevention/pdf/nisus/nisvsStalkingReport.pdf>>; Stevens, Nurse, & Arief, *supra*; Nobles, Cramer, Zottola, Desmarais, Holley, & Wright, *Prevalence Rates, Reporting, and Psychosocial Correlated of Stalking Victimization: Results from a Three-sample Cross-sectional Study*, 53 SOCIAL PSYCHIATRY AND PSYCHIATRIC EPIDEMIOLOGY 1253-63 (2018), <<https://www.cdc.gov/violenceprevention/pdf/nisus/nisvsStalkingReport.pdf>>.

Mary McGahan is a victim of multi-year stalking across Merrimack County, and now serves as a member of the Coalition's Survivors' Caucus and as a volunteer for the Crisis Center of Central New Hampshire. She reported:

I have PTSD, and those instances, they are never going to leave me. As much as you want to, and you try to get over it, it's something in you, and it never leaves, and I don't know if it will ever go away, even now that he's deceased.

Unfortunately, many victims experience physical ailments in addition to psychological distress as a result of cyberstalking. "Research has shown a relationship between stalking victimization and complaints of pain." Logan & Walker, *Toward a Deeper Understanding of the Harms Caused by Partner Stalking*, 25(4) VIOLENCE VICT. 440-55 (2010), <<https://www.cdc.gov/violenceprevention/pdf/nisus/nisvsStalkingReport.pdf>>; Morris, Bailey, Ruiz, *Pain in the Acute Aftermath of Stalking: Associations with Posttraumatic Stress Symptoms, Depressive Symptoms, and Posttraumatic Cognitions*, 26(11) VIOLENCE AGAINST WOMEN 1343-61 (2020), <<https://www.cdc.gov/violenceprevention/pdf/nisus/nisvsStalkingReport.pdf>>.

Stalking victimization has also been correlated with poor current health status, injury, and chronic disease. Davis, Coker, & Sanderson, *Physical and Mental Health Effects of Being Stalked for Men and Women*. 17(4) VIOLENCE VICT. 429-43 (2002), <<https://www.cdc.gov/violenceprevention/pdf/nisus/nisvsStalkingReport.pdf>>. Sixty one percent of cyberstalking victims experienced negative health-related outcomes as a result of their victimization. Fissel & Reynolds, *The Aftermath of Cyberstalking: School, Work, Social, and Health Costs of Victimization*, 45(1) AM. J. OF CRIM. JUST. 70-87 (2020), <<https://doi.org/10.1007/s12103-019-09489-1>>. Victims tend to experience higher rates of headaches, irritable bowel syndrome, and difficulty sleeping. See Smith, Basile, & Kresnow, *supra*. Jane Doe reported, "I would wake up with headaches, my jaw clenched so much I cracked a tooth. To this day, I still sleep with a nightguard because my body is still clenching."

These effects do not subside when, or if, the active victimization ends;

victims may suffer adverse health effects for years or the entirety of their life.

Jane Doe reported:

Going through that experience for anyone is traumatizing. It upsets your entire world and entire life and your being, your insides, it changes who you are. You can't ever go back to not being fearful. You can never go back to moving through your life peacefully and easily. Your body has learned that fear. The other day, I was telling somebody I didn't know [my story] and I can still feel, after years, my insides ticking.

Stalking is a significant public health concern, and any ruling that allows perpetrators to continue cyberstalking would thus lead to an increase in the number of people needing medical and mental health services as a result of the physical and psychological effects of stalking.

B. Withdrawal From Society

Victims also experience a reduction in their quality of life and participation in society.

“Victims report that online stalking prevents them from continuing with their regular routines, reduces time spent outside, and has resulted in them withdrawing from online life and developing a distrust of technology as well as people.” Stevens, Nurse, & Arief, *Cyber Stalking, Cyber Harassment, and Adult Mental Health: A Systematic Review*, 24(6) *CYBERPSYCHOLOGY, BEHAVIOR, AND SOCIAL NETWORKING* 367-376 (2021), <<http://doi.org/10.1089/cyber.2020.0253>>.

As a result of cyberstalking, many victims remove themselves completely from social media – an act that can have significant personal and professional consequences – even though they should not have to. Even then, a perpetrator's campaign of terror still affects the victim. Frechette noted:

Despite the social media or other postings not being sent directly to the victim, well-meaning friends see them and contact them to say, “I saw someone post this thing about you and I am concerned about you,” which the offender is counting on.

When people beyond the victim witness cyberstalking, this compounds the fear and lack of control that victims experience. Kristyn Bernier is a former Portsmouth, New Hampshire Police Department Detective and now Criminal Investigator for the Belknap County Attorney’s Office. She spent over two decades as an investigator specializing in predatory behavior, victimology, behavioral motivation, and crimes against the person including domestic and sexual violence. She said:

No matter how many times you tell a victim “don’t pay attention to it,” it gets in their head, and that’s the whole point, it’s predatorial. It also elicits comments from anonymous people who are often cruel and victim bash – it’s cyberbullying. The point of which is to wear down the victim so they cannot go through the long court process.

Victims and survivors should not be made responsible for actively avoiding abusive and threatening behavior. Rather, the onus is on the perpetrator, as a member of our community and society, to not actively cause harm to others, and when he fails, it is the responsibility of law enforcement, the courts, and the systems designed to protect the public, to prevent the conduct and protect the innocent. Robert Frechette, co-author of the Attorney General’s Domestic Violence Protocol for Law Enforcement, worried that if “this is all free speech, we’re going to see more of this victim blaming.” That would be:

doing a huge discredit to not only the intent of the law but to every person in this country – this would essentially be depriving victims of their rights while protecting the rights of people who should be in prison.

V. Stalking as an Indicator of Risk of Harm

A perpetrator who continues to engage in conduct that has been unmistakably unrequited, and does not willingly subside, is choosing to continue causing harm to the victim. This undeterred intent is extremely dangerous, and the perpetrator's desperation demonstrates a lack of concern for the consequences of their actions.

Stalking indicates an increased risk of harm for the victim. Stalking behaviors, be it in person or through another medium, increase the risk of intimate partner homicide by three times. Spencer, & Stith, *Risk Factors for Male Perpetration and Female Victimization of Intimate Partner Homicide: A Meta-Analysis*, 21(3) TRAUMA, VIOLENCE, & ABUSE 527-540 (2018), <<https://www.stalkingawareness.org/wp-content/uploads/2018/11/Stalking-IPV-Fact-Sheet.pdf>>

Women stalked by abusive partners experienced sexual abuse at significantly higher rates compared with women not stalked by abusive partners, including:

- sexual degradation (61% stalked versus 45% not);
- sexual coercion (78% stalked versus 49 not);
- implicit threats and force (48% stalked versus 21% not);
- sexual penetration while the victim was sleeping (15 stalked versus 11% not);
- verbal pressure for sex (68% stalked versus 34% not).

Logan & Cole, *Exploring the Intersection of Partner Stalking and Sexual Abuse*, 17(7) VIOLENCE AGAINST WOMEN (2011), <<https://journals.sagepub.com/doi/10.1177/1077801211412715>>.

Women stalked by an intimate partner experienced significant harm, including:

- 31% of women stalked by an intimate partner were also sexually assaulted by that partner. *Id.* at 904-924.
- 81% of women stalked by a current or former husband or cohabitating partner were also physically assaulted by that partner. Tjaden & Thoennes, United States Department of Justice, *Stalking in America: Findings from the National Violence Against Women Survey* (1998), <<https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1023&context=nij-rib>>.
- 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. Logan, Shannon, & Cole, *Stalking Victimization in the Context of Intimate Partner Violence*. 22(6), *Violence and Victims* 669-683 (2007), <<https://pubmed.ncbi.nlm.nih.gov/18225382/>>.
- Weapons are used to harm or threaten victims in 1 out of 5 cases. Mohandie, Meloy, McGowan, & Williams, *supra*.

Criminal Investigator Kristyn Bernier, the former Portsmouth Police Department Detective, said:

When you have individuals that find the need, or they can't help themselves to mess with a person, they are perseverating about that victim, and that's not because they want the victim back, that's the power and control. They're seeking other ways to victimize their victims other than sending them a note or a text; it's manipulative. And when someone can't contain themselves and needs to find alternative ways to go after the victim, that is absolutely tied to increased threat assessment and lethality.

Even court-ordered protection does not always mitigate the threat of violence.

Victims report significant relief after being issued a protective order, with an enhanced sense of safety and well-being. However, their fear of future harm increases after a violation of the order, and increases again after violations plus additional stalking behaviors. Logan, Walker, Hoyt, & Faragher, United

States Department of Justice, *The Kentucky Civil Protection Order Study: a Rural and Urban Multiple Perspective Study of Protective Order Violation, Consequences, Responses, & Costs* (2009). “Women who were stalked after obtaining a protective order were over 9 times more likely to experience sexual assault than women with protective orders who were not stalked.” Logan & Walker, *Civil Protective Order Outcomes: Violations and Perceptions of Effectiveness*, 24(4) J. OF INTERPERSONAL VIOLENCE 675-692 (2009), <<https://www.stalkingawareness.org/wp-content/uploads/2022/04/Stalking-Sexual-Violence-Fact-Sheet.pdf>>.

Additionally, a protective order represents the victim’s desire for separation from the perpetrator. “One thing we know with intimate partnerships is that the riskiest time for survivors is when they attempt to leave, which could include seeking a protective order, ignoring texts or phone calls, going into hiding or asking to be left alone,” said Dr. Hampton. “In his mind, the stalker has a relationship with the victim and since he doesn’t want to let go of what he views as his property, her attempting to get away is when he becomes most dangerous.”

This increased period of lethality creates an urgent need for a strong protective order that will deter the perpetrator and protect the victim.

CONCLUSION & REMEDY

Stalking targets specific victims to intentionally create fear. Stalking includes in-person and physical proximity tactics, phone calls and text messages, and cyberstalking – using the internet to stalk. Stalking, including cyberstalking, can be perpetrated through multiple and evolving methods of victimization, and affects victims financially, physically, emotionally, and psychologically. Stalking is associated with increased risk of lethality, and increased partner homicide.

Victims, however, already face barriers to getting protection in both criminal and civil actions. Eliminating the authority for courts to grant the “relief necessary to bring about a cessation” of cyberstalking – as the appellant requests – is contrary to the legislature’s intent, social science data, and the prevention-focused initiatives of the Coalition and its crisis centers, and will harm thousands of stalking victims and their families in New Hampshire.

The New Hampshire Coalition Against Domestic and Sexual Violence – including its twelve independent community-based member programs in Berlin/Lancaster/Colebrook, Claremont/Newport, Concord, Conway/Wolfeboro, Durham, Keene/Peterborough, Laconia, Lebanon, Manchester/Derry, Nashua/Milford, Plymouth, and Portsmouth/Rochester/Epping – as well as the National Network to End Domestic Violence, the National Alliance to End Sexual Violence, the Battered Women’s Justice Project, and the Victim Rights Law Center, accordingly respectfully suggest this court affirm the ruling of the court below, which protects the victim from additional harm, and will create safer communities throughout New Hampshire.

Respectfully submitted,

NHCADSV, NNEDV, NAESV,
BWJP, and VRLC,
By their Attorney,
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Dated: November 4, 2022

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CERTIFICATIONS

I hereby certify that this brief contains no more than 9,500 words, exclusive of those portions which are exempted.

I further certify that on November 4, 2022, copies of the foregoing is being filed in accordance with this court's amicus solicitation announcement.

Dated: November 4, 2022

Joshua L. Gordon, Esq.