



North Dakota House of Representatives

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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.

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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.