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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.

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.