
❖ The Legal Advocate ❖

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New Stalking Protective Order Available in Alaska State Courts

by Christine McLeod Pate & Rachel Johnson

In the last legislative season, the Alaska Legislature passed a bill creating a new stalking protective order. As many know, stalking has always been one of the “crimes” of domestic violence that, if a perpetrator committed, would allow the court to grant a civil protective order pursuant to AS 18.66.100 *et seq.* The problem was that victims of stalking who did not have the requisite relationship with their stalker, as set out in AS 18.66.900, were denied any relief under this section. This new legislation creates a vehicle whereby victims of stalking who do not have any of the requisite relationships for a regular domestic violence protective order, may get a civil protective order through the court system. The law has already gone into effect and the court system has developed new court forms to implement it.

Generally, stalking is a distinctive pattern of activity, characterized by escalating and threatening behaviors that inflict profound psychological trauma on the victim and, depending on the extent of the escalation, may also result in physical assault. There are over 1 million women who are stalked annually in the United States. Stalking is often a tactic utilized by perpetrators of do-

mestic violence to maintain control over their victim, especially after separation. In fact, 77% of women stalked knew the offenders and 59% of those who stalk women are, or have been, intimate partners. However it also occurs in the absence of any intimate relationship between the stalker and the victim. Stalking incidents may include spying on someone, following them, making unwanted phone calls, standing outside their place or work, recreation or residence. As the behavior escalates, the stalker may make vandalize property or make threats - both overt and symbolic. In one-fourth of stalking cases, the stalkers behavior escalates into physical or sexual assaults of the victim.

The main provisions of the new stalking law are set out at AS 18.65.850 *et seq.* Much of the law mirrors the provisions of the regular domestic violence protective order. A person who “reasonably believes” that s/he is a victim of stalking may file for a protective. A parent or guardian may file on behalf of a minor. At least 10 days notice are required to the respondent

(Continued on page 2)

Inside This Issue

	page
Meet LAP's Pro Bono Vista	3
No exception to victim advocate confidentiality privilege when working with undocumented women	4
Alaska court system case name index on internet poses safety/confidentiality concerns for victims	5
Montana Supreme Court decision offers expansive view of assault	6
ANDVSA's upcoming I&R line hours	7

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("New Stalking P.O..." continued from page 1)

and the petitioner must prove the stalking by a preponderance of the evidence. The order, if granted, remains in effect for six months. AS 18.65.850. Stalking is defined by criminal law and occurs if a "person knowingly engages in a course of conduct that recklessly places another person in fear of death or physical injury, or in fear of the death or physical injury of another family member." AS 11.41.270(a).

The remedies allowable under the stalking protective are fewer than in a domestic violence protective order. The court may prohibit the respondent from threatening to commit or committing stalking; from telephoning or contacting, or otherwise communicating directly or indirectly with the petitioner or another household member; and direct the respondent to stay away from the residence, school or place of employment of the petitioner, however, the court may only order the respondent to stay away from the respondent's own residence, school or place of employment after notice and an opportunity to be heard. AS 18.65.850(c). Notably, there is no "catch-all" remedial section as there is with the domestic violence protective order.

AS 18.65.855 provides for an ex parte and emergency protective orders for stalking. The ex parte order will be issued if the court finds probable cause that stalking has occurred and that an ex parte order is necessary to protect the petitioner from further acts of stalking. The ex parte order lapses after twenty days. Peace officers, on behalf of and with the consent of the victim, have the authority to obtain emergency stalking orders if the court finds probable cause to believe that the petitioner is in immediate danger of stalking based on a recent incident. The peace officer obtains such an order by making either an oral or written sworn statement to a judicial officer. The emergency order expires after seventy-two hours. Like domestic violence protective orders, a petitioner or a respondent may request a modification of the protective order after it issues. AS 18.65.860. Also like domestic violence protective orders, a violation of any provision of a stalking order is punishable as a misdemeanor and carries a penalty of up to one year in prison and up to a \$5,000 fine. AS 11.56.740.

Tamara Hungerford, the legal advocate at AWARE in Juneau recently helped one of her clients obtain a stalking protective order from the Juneau courts. She states that the process was "fabulous" and that her client was quite "pleased and empowered." The Court packet is relatively small, compared to the more voluminous domestic violence protective order packet. Tamara stated that her client had kept good documentation of the stalking which she was able to write in detail in her petition. Tamara felt that this was important evidence and helped the Court to make a speedy decision.

Because stalking can be difficult to prove, it is important to keep a detailed log of all stalking-related incidents and to keep track of all documentation of stalking-related incidents. A stalking incident and behavior log should be used to record and document all stalking-related behavior, including harassing phone calls, letters, e-mail messages, acts of vandalism, and threats communicated through third parties. When an incidence of stalking occurs, the person should record the time, date and location of the incident as well as any witnesses or reports to authorities. When the stalking incidents are reported to law enforcement, it is important to write down the officer's name and badge number in the log. Even if the officers do not make an arrest, you can ask them to make a written report and request a copy for your records. Anything entered into the log could potentially be entered as evidence so it is important to note that the information entered in the log could potentially be shared with the offender. While keeping such a log can be emotionally exhausting and upsetting, it is important to keep a detailed log to potentially be used for restraining order applica-

(Continued on page 3)

Please welcome LAP's Pro Bono Program VISTA

Rachel Johnson recently graduated from Kenyon College in Ohio where she majored in International Studies with a concentration on African Studies. She studied abroad in Senegal for a semester and later returned to Tanzania to work as an intern with a women's health organization. While in Senegal, she spent six weeks doing field research about the correlation between HIV/AIDS and prostitution in Senegal today. She hopes to return to Africa soon to continue research and work with grassroots organizations. Eventually, she hopes to pursue a career in public health in developing countries.

At Kenyon, Rachel worked as a peer counselor for rape and sexual assault victims on campus and served as a peer counselor for incoming students. She also played ice hockey for Kenyon College for four years.

Rachel moved to Sitka from Washington DC in July and is extremely excited to be living and working in Sitka. She is a wonderful addition to the Legal Advocacy Staff as the Pro Bono Program Coordinator/VISTA. Please feel free to contact her with questions about the LAP Pro Bono Program at 1-888-520-BONO (2666).



Rachel Johnson
ANDVSA Pro Bono Program Coordinator/VISTA

("New Stalking P.O. ..." continued from page 2)

tions, divorce and child custody cases, or criminal prosecution as well as helping to preserve memories about which you might later need to testify. Since keeping the log can be emotionally stressful, it is important to seek the help of an advocate in the community to provide support, information about the options available to you, and assistance with safety planning. For more information, contact the National Center for Victims of Crime; to access an example of a stalking incident and behavior log, go to www.ncvc.org/src/Help/log.html.

Attorneys and advocates who have clients who are victims of stalking should feel free to call the Legal Advocacy Project regarding questions about this new law and how to best advocate for their clients. Even with the new law, the importance of thorough safety plan with a trained legal advocate is strongly urged to provide victims with the greatest degree of safety possible. ✱

No exception to victim advocate confidentiality privilege when working with a woman who is not a U.S. Citizen and is undocumented

by Kari Robinson

There is no exception to Alaska's victim/counselor confidentiality statute when working with a woman who is not a U.S. Citizen and is undocumented. Staff should never contact Homeland Security formerly the Immigration & Naturalization Service (INS) or law enforcement regarding the status of an undocumented immigrant battered woman. Staff should contact Robin Bronen (director of the Immigration & Refugee Services Program) **immediately** with Catholic Social Services at (907) 276-5590 when they are working with an immigrant battered woman or the Legal Advocacy Project at 1-800-914-STOP (7867).

It is not a crime for a person who is not a U.S. citizen to be in the United States without documentation. There is no legal duty for advocates, prosecutors, or local law enforcement to contact Homeland Security regarding the immigration status of a person who is not a U.S. Citizen.

Immigration law is complicated and a civil divorce action, civil protective order issued against a victim, or criminal charge/prosecution can seriously jeopardize an immigrant battered women's ability to seek reme-

dies under the immigration law and remain in the United States.

Any time domestic violence/sexual assault program is contacted by Homeland Security or working with an immigrant battered woman, staff should contact Robin Bronen with IRSP immediately to determine what legal rights and protections are available to the immigrant battered woman.

Homeland Security has no authority to search a domestic violence/sexual assault program premises without a search warrant. If Homeland Security attempts to search the premises the executive director, program attorney, Legal Advocacy Project, and Robin Bronen with IRSP should be contacted immediately. Staff should not allow Homeland Security entry to domestic violence/sexual assault program premises.

If a program participant is working with the Immigration & Refugee Services Program (IRSP) and requests a staff member to write an affidavit documenting the domestic violence/sexual assault and services provided by the program, the affidavit should only be prepared in conjunction with IRSP's representation of the immigrant battered woman and all copies, notes, and working documents kept by IRSP to be protected under attorney-client work product. Advocates may also be able to help with obtaining the necessary docu-

(Continued on page 5)

(Continued from page 4)

mentation that a victim is being helpful to a criminal case under the new U Visa. Under the new U Visa a victim must provide a letter from a federal, state, or local law enforcement official, prosecutor, judge, or authority (including INS) that states that the U visa applicant is being, has been or is likely to be helpful to the investigation or prosecution of designated criminal activity. For more information on the legal rights and protections available to battered immigrant women **contact Robin Bronen with IRSP at (907) 276-5590 or the Legal Advocacy Project at 1-800-914-STOP (7867).** ❄

Mark your calendars:

**ANDVSA 6th Annual
Impact of DV on Your Legal Practice
Continuing Legal Education**

is tentatively scheduled:

**March 29th & 30th
Anchorage, Alaska**

Alaska court system case name index on internet poses safety/confidentiality concerns for victims

by Kari Robinson

All Alaska state domestic violence civil protective order petitioner and respondent names are published on the Alaska Court System's case name index. This poses safety/confidentiality concerns for some victims of domestic violence. Victim names and location can easily be tracked through the internet on the Alaska Court System case name index. The court system is currently developing a procedure so that domestic violence petitioners in civil domestic violence protective order cases can keep their name off the name index. The Legal Advocacy Project will distribute the new Alaska Court System policy/procedure for not publishing the names of petitioners/respondents in civil domestic violence protective order cases when it is available.

Out-of-state civil domestic violence protective orders that are filed with the court are not currently posted on the Alaska Court System court name index because of confidentiality/safety concerns. The Legal Advocacy Project will distribute the court system's policy on not publishing out-of-state protective orders on the name index when it is available in the next few weeks. Some of the older out-of-state protective orders were published on the name index before the policy went into effect and are still on the internet. ❄

Montana Supreme Court decision offers expansive view of assault

HELENA — Kenneth Vukasin Jr. did not have to see or touch his live-in girlfriend to be guilty of assaulting a partner, the Montana Supreme Court has ruled in upholding his convictions for that and four other crimes. Partner or family members assault can occur just by making the other person feel in danger of being injured, and that is just what Vukasin did when he went on a rampage after a night of drinking in January 2000, the unanimous court said.

Angela Zigan clearly demonstrated how scared she was of Vukasin and that provided jurors with plenty of evidence with which to convict the Great Falls man, the justices said.

The court also rejected Vukasin's claim that, because the trial judge mistakenly allowed testimony about the defendant's past abusive behavior toward Zigan, the conviction should be overturned.

The high court's ruling leaves in place Vukasin's convictions for assault on two police officers, disorderly conduct, criminal mischief and partner abuse. He was sentenced 10 years in prison.

The case arose from an incident that occurred after Vukasin had been out drinking with a friend. Zigan, fearing the kind of confrontation that had happened in the past when Vukasin was drinking, fled the couple's apartment with her dog and took refuge in the locked bathroom of a neighbor.

When Vukasin came home and found Zigan missing, he went to the neighbor and said he would trash Zigan's apartment if she did not come home. Zigan testified she then heard glass breaking and Vukasin shout he would kill her if she did not return.

Zigan called the police and officers were confronted by Vukasin ramming a knife through the door to his apartment several times, which was the basis for the two assault charges.

On appeal, Vukasin argued he could not also have been convicted of partner assault because Zigan could not have reasonably believed she was in danger. He said he neither saw nor touched Zigan during the incident at the apartment.

But the Supreme Court agreed with prosecutors that Zigan exhibited signs of being in fear for her own safety. She fled her apartment, locked herself in a neighbor's bathroom, heard Vukasin destroying her property and threatening to kill her, called the police three times and eventually ran from the apartment building, the court noted.

All those development offered the jury sufficient proof that Vukasin caused Zigan the "reasonable apprehension of bodily injury" necessary for partner abuse, Justice Jim Rice wrote for the court.

He also said Vukasin missed his opportunity to challenge on appeal the use in court of evidence of his past behavior by not objecting at the time the testimony was given in the trial.

Although the judge had ordered that no such information should be presented, Vukasin's lawyer had to object to the specific remarks from witnesses in order to raise the issue on appeal, the court said. ❄

ANDVSA's Information and Referral Hotline

Upcoming Hours:

TUESDAY, December 16, 5-7 p.m.

TUESDAY, January 13, 5-7 p.m.

TUESDAY, January 27, 5-7 p.m.

TUESDAY, February 10, 5-7 p.m.

TUESDAY, February 24, 5-7 p.m.

TUESDAY, March 9, 5-7 p.m.

TUESDAY, March 23, 5-7 p.m.

TUESDAY, April 6, 5-7 p.m.

TUESDAY, April 20, 5-7 p.m.

TUESDAY, May 4, 5-7 p.m.

Call toll-free 1-888-988-3725

WHO SHOULD CALL? VICTIMS OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT WHO WANT BASIC INFORMATION ABOUT THEIR LEGAL RIGHTS AND OPTIONS AND REFERRAL INFORMATION FROM AN ATTORNEY

WHAT TYPES OF QUESTIONS CAN THE HOTLINE ATTORNEY ANSWER? GENERAL QUESTIONS ABOUT MANY AREAS OF THE LAW, INCLUDING FAMILY AND CRIMINAL LAW

WHO WILL BE ANSWERING THE LINE? ONE OF ANDVSA'S PRO BONO PROGRAM'S VOLUNTEER ATTORNEYS

PLEASE NOTE: THE HOTLINE ATTORNEY WILL NOT BE REPRESENTING CLIENTS, BUT RATHER PROVIDING BRIEF LEGAL EDUCATION TO CALLERS AND POSSIBLE REFERRAL TO OTHER LEGAL AND SOCIAL SERVICE PROVIDERS!

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The newsletter is edited by Mary Kay MacNaughton. Questions? (907) 586-5643, x23.

The Legal Advocate

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