



March 9, 2016

TO: Rep. Maxine Grad, Chair
Rep. Willem Jewett, Vice-Chair
House Judiciary Committee

FROM: Auburn Watersong, Associate Director of Public Policy

RE: H.818 - Stalking Bill

Thank you for the opportunity to provide comment on the definition of “emotional distress” as proposed on page 2 of 10 in draft 4.1 of 3/8/16 at 4:21 pm which reads as follows:

“Emotional distress” means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling; and

- (A) would cause a reasonable person to have fear of unlawful sexual conduct, unlawful restraint, bodily injury, or death; or
- (B) detrimentally impacts a person’s personal, family, or business affairs.

RECOMMENDATION:

We recommend one of the following options:

1. "Emotional distress" means a significant mental or psychological suffering, whether or not medical or other professional treatment or counseling is required.
2. “Emotional distress” means a highly unpleasant mental reaction (such as anguish, grief, fright, humiliation, or fury) that results from another person’s conduct.
3. Do not define emotional distress at all - Of the 14 states that currently have civil protection order statutes specifically against stalking, 8 of them include “emotional distress” or “substantial emotional distress” in their definition of stalking for the purposes of the orders and only 2 offer definitions (see chart below).

Consistency across Statutes

It is important to have clarity and consistency across our statutes. A review of both the civil and criminal codes of these 14 states reveals that a majority (9) of the states’ civil codes either mirror or refer directly to the criminal code definitions of “stalking”. This offers law enforcement, judges, prosecutors and defenders a clarity and consistency in application of the definitions across statutes.

STATE	Civil Protection Order includes emotional distress?	CPO statute refers to criminal statute?	Criminal statute includes use of "emotional distress"	Definition of "emotional distress"
Alaska	No	No	No	None
Florida	Yes, substantial emotional distress	Yes	No	NONE
Georgia	Yes, substantial emotional distress	Yes	No	NONE
Illinois				
Kansas	Yes, substantial emotional distress	No	No	NONE
Michigan	Refers to criminal code definition	Yes	Yes	"Emotional distress" means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.
Ohio	No	Yes	No	None
Oregon	No	No, but mirrors the stalking definition in both	No	None
Puerto Rico	No	Yes	No	None
Rhode Island	Yes, substantial emotional distress included in "harassing" definition	No	Yes, substantial emotional distress included in "harass" definition	NONE
South Dakota	No	No	No	None
Utah	Refers to criminal code definition	Yes	Yes	"Emotional distress" means significant mental or psychological suffering, whether or not medical or other professional treatment or counseling is required.
Washington	Refers to criminal code	Yes	Yes, substantial emotional distress	NONE
Wyoming	Refers to criminal code	Yes	Yes, substantial emotional distress	NONE
TOTALS	8	9	5	2

- Alaska does not include “emotional distress”.
- Florida includes “substantial emotional distress” within the definition of “harassing” under the criminal Stalking statute and does NOT define it. Civil protection order statute refers to criminal code definitions.
- Georgia: includes “substantial emotional distress” within the definition of “harassing and intimidating” under the criminal Stalking statute and does NOT define it. Civil protection order statute refers to criminal code definitions.
- Illinois: "Emotional distress" means significant mental suffering, anxiety or alarm.
- Kansas: in civil protection order statute defines “course of conduct” using “...would cause a reasonable person to suffer substantial emotional distress.” “Substantial emotional distress” is not defined in protection order statute nor in the criminal code.
- Michigan: defined in criminal code only - "Emotional distress" means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling. “Emotional distress” is used in the definition of “harassing” which is included in the definition of “stalking”. Civil protection order statute refers to criminal code definitions.
- Ohio: does not include “emotional distress” – criminal definition of “mental distress” only.
- Oregon: does not include “emotional distress” (other words with similar meanings).
- Puerto Rico: does not include “emotional distress” (other words with similar meanings).
- Rhode Island: include “substantial emotional distress” in definition of “harassing” which is included in definition of “stalking” in the protection order statute. Does NOT define “substantial emotional distress”.
- South Dakota: does not include “emotional distress” (other words with similar meanings – i.e. “seriously alarms, annoys, or harasses the person”).
- Utah: protection order definition of stalking refers to criminal definition which includes emotional distress. In criminal definition, "Emotional distress" means significant mental or psychological suffering, whether or not medical or other professional treatment or counseling is required.
- Washington: uses “substantial emotional distress” in definition of “unlawful harassment” which is included in definition of “stalking”. “Substantial emotional distress” is NOT defined. Civil protection order statute refers to criminal code definition.
- Wyoming: In criminal code - uses “substantial emotional distress” in definition of “harass” which is included in definition of “stalking”. “Substantial emotional distress” is NOT defined. Civil protection order statute refers to criminal code definitions.ⁱ

ⁱ “Stalking Orders of Protection”, Stalking Resource Center, National Center for Victims of Crime, Washington, DC.
www.victimsofcrime.org.