

CHAPTER 18 – STALKING

STATUTORY REFERENCES: **RSA 173-B (Protection of Persons from Domestic Violence)**
RSA 597:2 (Bail and Recognizances)
RSA 633:3-a (Stalking)
RSA 644:4 (Harassment)

CROSS-REFERENCE **Chapter 10 (Violations of Protective Orders and Contempt)**

INTRODUCTION

Stalking is behavior involving a course of conduct by a person that places another person in fear for his/her safety. A person who has been a victim of stalking as defined in RSA 633:3-a may seek relief by filing a civil petition in the district court or the superior court in the county or district where the defendant or plaintiff resides. Upon a finding of stalking by a preponderance of the evidence, the court shall grant such relief as is necessary to bring about a cessation of stalking. The types of relief that may be granted, the procedures and burdens of proof to be applied in such proceedings, the methods of notice, service, and enforcement of such orders, and the penalties for violation are the same as those set forth in RSA 173-B.

NOTE: If the plaintiff qualifies as a protected party under RSA 173-B, s/he should file for a Domestic Violence Protective Order rather than a stalking protective order, because stalking is one form of abuse included under RSA 173-B. Note further, however, that in the event the plaintiff does not qualify for a domestic violence protective order because the court fails to find a credible threat, the plaintiff may, nonetheless, possibly qualify for a stalking order.

The stalking statute makes specific reference to the provisions of RSA 173-B for relief (*see* RSA 633-3(a), III-a). Fisher v. Minichiello, 155 N.H. 188 (2007). Therefore, except as distinguished below, the provisions of Chapters 3-7 and 17 apply and are not repeated.

A. ELIGIBILITY TO APPLY FOR A STALKING PROTECTIVE ORDER

PROTOCOL 18-1

Any person, regardless of age, may be eligible to seek a stalking protective order under RSA 633:3-a.

COMMENT

Unlike RSA 173-B, the stalking statute does not require that there be a pre-existing relationship between the parties. The person against whom the order is sought can be a former spouse, family member or virtual stranger. No romantic involvement is required.

COMMENT

The minority of the plaintiff does not preclude the court from issuing a stalking order of protection.

B. COMMENCEMENT OF PROCEEDINGS

Except as distinguished below, the provisions of Chapters 3 through 7 and 17 apply to stalking cases.

PROTOCOL 18-2

A hearing on a petition for a stalking protective order should be scheduled promptly.

COMMENT

The notice and hearing provisions of RSA 173-B:3 should be followed whenever a petition for a stalking protective order is filed. This includes requests for an immediate hearing which, if made, shall be held no less than 3 days and no more than 5 days after the request is received by the clerk.

PROTOCOL 18-3

In order to obtain a stalking protective order, the plaintiff must demonstrate that the person against whom the order is sought:

- a. Purposely, knowingly, or recklessly engaged in a specific 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 that the person is actually placed in such fear; OR
- b. Purposely or knowingly engaged 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. Has been served with, or otherwise provided notice of, a protective order issued pursuant to RSA 173-B, RSA 458:16, RSA 461-A paragraph III-a of RSA 633:3-a, or a bail order pursuant to RSA 597:2 that prohibits contact with a specific individual, and purposely, knowingly, or recklessly engaged in a single act of conduct that both violates the order and is listed in RSA 633:3-a, II(a).

PROTOCOL 18-4

"Course of conduct" means two 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 is not limited to, any of the following acts or a combination thereof:

- a. Threatening the safety of the targeted person or an immediate family member;
- b. Following, approaching, or confronting that person, or a member of that person's immediate family;
- c. 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;
- d. Causing damage to the person's residence or property or that of a member of the person's immediate family;
- e. Placing an object on the person's property, either directly or through a third person, or that of an immediate family member;
- f. Causing injury to that person's pet, or a pet belonging to a member of that person's immediate family; and

- g. Engaging in any act of communication, as defined in RSA 644:4, II (“impart[ing] a message by any method of transmission, including but not limited to telephoning or personally delivering or sending or having delivered any information or material by written or printed note or letter, package, mail, courier service or electronic transmission, including electronic transmissions generated or communicated via a computer”).

NOTE: Thompson v. D’Errico, 163 N.H. 20,(2011); Fisher v. Minichiello, 155 N.H. 188 (2007)

PROTOCOL 18-5

“Immediate family” refers to the targeted person’s parent, step-parent, child, step-child, sibling, spouse or grandparent, any person residing in the targeted person’s household, or any person involved in an intimate relationship with the targeted person’s.

PROTOCOL 18-6

The plaintiff must prove his/her case by a preponderance of the evidence.

PROTOCOL 18-7

The court shall look at the defendant's conduct and consider whether it would cause a reasonable person to fear for his or her personal safety and if the person was actually placed in such fear. The court may also consider whether the defendant's knowledge of the plaintiff would enable him or her to know the conduct would place the plaintiff in fear for his or her personal safety. In determining whether the plaintiff has made the requisite showing of stalking, the court should not consider the alleged acts of stalking in isolation, but rather consider them in light of the relationship between the parties. Further, some of the conduct may be targeted toward the plaintiff’s immediate family, rather than the plaintiff, but still constitute stalking.

COMMENT

Conduct that might otherwise seem acceptable, such as sending flowers or leaving a piece of candy on someone’s desk, may cause a reasonable person to fear for his/her safety if that conduct is part of a series of unwanted or inappropriate attentions. Although such contact may be intended as an expression of the stalker’s feelings toward the victim, it may still cause the victim to fear for his/her safety.

PROTOCOL 18-8

The court shall determine whether the defendant had sufficient indication that the conduct was unwanted by the plaintiff. In determining whether the plaintiff has made the requisite showing of stalking, the court should consider whether the defendant had personal knowledge of the plaintiff, which would enable him/her to know that otherwise non-threatening behavior would be perceived as threatening by the plaintiff.

PROTOCOL 18-9

When the defendant has received notice of acts which would constitute stalking, either through a temporary order or through a warning from law enforcement, there shall be a presumption that subsequent acts are committed knowingly.

PROTOCOL 18-10

Unlike for a domestic violence protective order, the court need not find that there is a history of physical abuse or a credible threat of physical abuse by the defendant.

COMMENT

There is often no direct physical contact between a stalker and his/her victim. Further, some of the stalking behavior can be directed at the victim’s family in addition to the victim.

PROTOCOL 18-11

When issuing a civil stalking protective order, the court must make findings that the defendant engaged in two or more specific acts over a period of time which evidenced a continuity of purpose. See South v. McCabe, 156 N.H. 797, 943 A.2d 779 (2008) N.H. LEXIS 2008; Kiesman v. Middleton, 156 N.H. 479, 937 A.2d 917 (2007); Fisher v. Minichiello, 155 N.H. 188 (2007).

NOTE: Specific dates of the conduct need not be alleged. Despres. V. Hampsey 162 N.H. 398 (2011)

C. ISSUING THE STALKING PROTECTIVE ORDER

PROTOCOL 18-12

Prior to issuing any stalking protective order, the court should, if possible, review the defendant's history and obtain any available information concerning prior stalking or domestic violence protective orders issued against the defendant.

COMMENT

When constructing a stalking protective order, judges should have as much information about the defendant as possible. The nature of stalking is repetitive behavior. The potential for risk increases with each new act of "stalking."

PROTOCOL 18-13

In addition to issuing orders of relief aimed at the cessation of the stalking behavior, the court may consider ordering monetary compensation for losses suffered as a direct result of the stalking, which may include, but are not limited to:

- a. costs of moving and shelter expenses;
- b. lost wages;
- c. reasonable attorney's fees; and
- d. medical and dental expenses.

Other expenses may include:

- e. costs of changing phone numbers, or obtaining caller ID, an unlisted number, or an answering machine;
- f. mental health and/or counseling expenses; and
- g. cost of new locks and other security.

PROTOCOL 18-14-Firearms

If the plaintiff is a protected party as defined under RSA 173-B (i.e., spouse, ex-spouse, person who co-habits but no longer does so, parent, relative by consanguinity or affinity, or current or former sexual partner or current or former intimate partner) and the final order restrains the defendant from abusing or harassing the plaintiff, then the court must order the defendant to relinquish firearms and ammunition, just as would be required under RSA 173-B (see Chapter 7). Chapter 14 provides greater detail on the state and federal laws concerning firearms.

For temporary orders, the court should follow its usual analysis of considering whether the safety needs of the plaintiff warrant an order of removal, since relinquishment is discretionary for ex parte or temporary orders.

For other cases where the relationship requirements of RSA 173-B are not present (because no relationship requirement is necessary for a stalking protective order), the court should nonetheless consider as an order of relief, prohibiting the defendant from owning or possessing firearms, ammunition, and other deadly weapons.

COMMENT

The federal prohibitions against possession of firearms and ammunition, which automatically attach to any domestic violence protective order issued under RSA 173-B, may not apply in a stalking case if the relationship does not qualify. However, because of the potential risks to a victim associated with stalking behavior, the court should carefully consider including a firearms prohibition *pursuant to state law* in the stalking order.

D. NOTIFICATION AND SERVICE

PROTOCOL 18-15

Notice should be provided in accordance with the notice provisions of RSA 173-B:8, *including personal service upon the defendant*.

PROTOCOL 18-16

The court staff shall promptly forward all stalking orders to the TCC for entry into a registry. See Chapter 17, Domestic Violence Registry for more detail.

PROTOCOL 18-17

The Court should encourage the victim to share the existence of the stalking protective order with immediate family members and other concerned parties.

E. ENFORCEMENT OF STALKING ORDERS

RSA 633:3-a, III(a) provides that the enforcement of stalking orders and the penalties for violations thereof shall be the same as those set forth in RSA 173-B.

PROTOCOL 18-18

Enforcement of orders through criminal law. RSA 633:3-a, III-a provides that enforcement of stalking orders may be undertaken in the same manner as under RSA 173-B.

RSA 173-B:9, I(a) requires that police arrest and refer for prosecution any defendant who violates the protective provisions of a temporary or permanent protective order. These arrests may be made without a warrant upon probable cause as long as the arrest is within six hours of the alleged criminal act. The Court should follow the procedures outlined in Chapter 10.

F. BAIL ISSUES

PROTOCOL 18-19

When a person has been arrested for stalking or violation of a stalking protective order, the court should consider the same factors in setting bail as it would for any domestic violence related offense. (See Chapter 12 on issuing Criminal Orders of Protection including Orders and Conditions of Bail.) If there is clear and convincing evidence that the person poses a danger to another, the court may order preventive detention without bail, or order restrictive conditions, including, but not limited to, electronic monitoring and supervision, or issue a criminal order of protection including order and conditions of bail. The court may, but shall not be limited to, consider any of the following conduct outlined by RSA 597:2 as evidence of posing a danger:

- a. Threats of suicide;
- b. Acute depression;
- c. History of violating protective orders;
- d. Possessing or attempting to possess a deadly weapon in violation of an order;
- e. Death threats or threats of possessiveness toward another;
- f. Stalking; and,
- g. Cruelty or violence directed toward pets.

COMMENT

Other risk factors that have been identified by the Domestic Violence Fatality Review Committee of the Governor's Commission on Domestic and Sexual Violence that the court may want to consider are:

- a. Escalation of physical violence;
- b. Escalation of other forms of abuse;
- c. Sexual abuse of the victim;
- d. Recent acquisition or change in use of weapons;
- e. Suicidal ideation, threats or attempts;
- f. Homicidal ideation, threats or attempts;
- g. Change in alcohol or other drug use/abuse;
- h. Stalking or other surveillance/monitoring behavior;
- i. Centrality of the victim to the perpetrator (“he/she’s all I have”);
- j. Jealousy/obsessiveness about, or preoccupation with, the victim;
- k. Mental health concerns connected with violent behavior;
- l. Other criminal behavior or injunctions (e.g., resisting arrest);
- m. Increase in personal risk taking (e.g., violation of restraining orders);
- n. Interference with the victim’s help-seeking attempts (e.g., pulling a phone jack out of the wall);
- o. Imprisonment of the victim in the home;
- p. Symbolic violence including destruction of the victim’s property or harming pets;
- q. The victim’s attempt to flee the batterer or to terminate the relationship;
- r. Batterer’s access to the victim or the victim’s family;
- s. Pending separation, divorce or custody proceedings;
- t. Recent termination from employment; and,
- u. Other suspected risk factor(s).