

# THE STRUGGLE TO MAKE STALKING A CRIME: A LEGISLATIVE ROAD MAP OF HOW TO DEVELOP EFFECTIVE STALKING LEGISLATION IN MAINE

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### *I. Identifying Stalking as a Problem*

#### *A. Introduction*

In 1990, California was the first state to enact a law to combat stalking.<sup>1</sup> By 1995, forty-nine states had enacted anti-stalking legislation. Many of these states based their laws on model legislation developed by the Department of Justice.<sup>2</sup> The Department of Justice developed the model in accordance with a law sponsored by U.S. Senator William S. Cohen of Maine.<sup>3</sup> Ironically, until 1996, Senator Cohen's home state of Maine was the only state in the country to fail to make stalking a crime.

Whereas some stalkers do not have a personal relationship with their victim, the majority of stalkers are the victimizers in personal relationships where domestic violence has been the

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<sup>1</sup> See CAL. PENAL CODE § 646.9 (West 1992).

<sup>2</sup> See NATIONAL CRIMINAL JUSTICE ASS'N, U.S. DEP'T OF JUSTICE, PROJECT TO DEVELOP A MODEL ANTI-STALKING CODE FOR STATES, (1993) [hereinafter Model Code].

<sup>3</sup> See U.S. Departments of Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Act for Fiscal Year 1993, Pub. L. No. 102-395, § 109(b) (1992) (citing Congress' charge to the U.S. Attorney General to develop and distribute among the states a constitutional and enforceable model anti-stalking code).

norm.<sup>4</sup> In Maine, eighty percent of domestic violence victims are also victims of stalking.<sup>5</sup> In the face of such telling statistics, legislation to curb stalking in Maine became paramount. This article traces the initiation and inception of anti-stalking legislation in Maine. This article will identify the stalking problem in Maine, survey other states' laws and model legislation, and ultimately present Maine's anti-stalking law, which effectively addresses the problem. Part I identifies stalking as a problem by defining the profile of stalkers and by discussing a case that highlights the ineffectiveness of the 1993 Maine harassment law. Part II develops a legislative proposal for a Maine anti-stalking law by reviewing past legislative proposals in Maine, dissecting the law as it was before the passage of effective anti-stalking legislation, analyzing other states' legislation, and then evaluating political considerations.

## B. *Stalking as a Serious Problem*

### 1. Stalking Defined.

Stalking is a pervasive problem throughout Maine and the United States.<sup>6</sup> Anecdotal evidence has shown that the stalking problem is widespread, crossing economic, social, and gender lines. During a public hearing, former Maine State Representative Richard Bennet (R-Norway) testified, "[o]ne in twenty women will be stalking victims some time in their lives."<sup>7</sup> Dr. Park Dietz, a clinical psychiatrist and stalking expert concurred, noting that

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<sup>4</sup> See *infra* Part I.B.2.

<sup>5</sup> Interview with Sue Jones, Executive Director, Portland Rape Crisis Center, in South Portland, Me. (Nov. 19, 1996). Statistical information regarding the pervasiveness and varying classifications of stalking vary widely, a reflection of the lack of a centralized reporting mechanism. See *infra* Part II.E.I.

<sup>6</sup> See Kathleen Krueger, *Panel Presentation on Stalking*, 25 U. TOL. L. REV. 903 (1995). Krueger notes the magnitude of stalking. "I'm convinced that stalking is the most under-reported and fastest growing crime in America today." *Id.* Krueger bases her assumption on the rising trends in domestic violence and the chronic under-reporting of this crime. See *id.*

<sup>7</sup> A. Jay Higgins, *Stalkers' Victims Tell of Living With Fear*, BANGOR DAILY NEWS, Mar. 30, 1993, at A7; see also Scott Armstrong, *States Crack Down on Stalking*, THE CHRISTIAN SCIENCE MONITOR, May 19, 1993, at 7 (stating that "200,000 people in the US are (actively) being stalked by someone.").

"[a]bout 5% of women in the general population will be harassed, or be the victim of unwanted pursuit, at some time in their lives."<sup>8</sup> Often victims' daily lives are adversely impacted by the threat of a stalker.<sup>9</sup>

In Maine, law enforcement was unable to effectively intervene in stalking situations because there was no law available to encompass the nuances of stalking. Designating harassment, trespassing and loitering as crimes fails to address the cumulative nature of stalking. The characteristic of stalking which distinguishes it from these crimes is that stalking "involves a series of discrete, individual acts, each one building upon the next. Although these discrete acts, standing alone, may be considered innocent behaviors, they assume a threatening character when viewed in the aggregate."<sup>10</sup>

Prosecutors were unable to find an appropriate charge to protect victims from the continued vigilance of a stalker.<sup>11</sup> In Brunswick, Maine, an employee at LL Bean went on a few dates with a man before she decided to break-off the relationship.<sup>12</sup> In

<sup>8</sup> Maria Puente, *Legislators Tackling the Terror of Stalking*, USA TODAY, July 21, 1992, at 9A.

<sup>9</sup> During testimony before the Joint Standing Committee on the Judiciary, Sally Webb recounted the impact that stalking has had on her daily life: "I have been held prisoner by this. My life, I feel, is in mortal danger. Anson [the abuser] said to me during mediation, 'I can take you out any time I want.' Not only I, but law enforcement, feels this to be a reality." *Stalking Hearings on LD's 855, 500, 416, and 1546 Before the Joint Standing Comm. on the Judiciary*, 116th Legis., 1st Reg. Sess. (Me. 1993) (statement of Sally Webb).

<sup>10</sup> Keirsten L. Walsh, *Safe and Sound at Last? Federalized Anti-stalking Legislation in the United States and Canada*, 14 DICK. J. INT'L L. 373, 380 (1996).

<sup>11</sup> Telephone Interview with Michael Cantara, District Attorney, York County, Augusta, Me. (Feb. 5, 1996) [hereinafter DA Cantara]. See also Puente, *supra* note 8, at 9A. Before the passage of Maine's new anti-stalking legislation, victims often would have to fend for themselves. *Id.* The 1993 law did not reach most stalkers and was not effective. As a result, self-help guidelines such as the following have flourished:

- Document the harassment
- Tell neighbors . . . enlist their help.
- Get a car phone.
- Call police every time the stalker shows up.
- Ask for periodic police drive-bys.
- Join a support group.

See Puente, *supra* note 8, at 9A.

<sup>12</sup> See *State v. Slaughter*, No. CR93-2086 (Me. Sup. Ct. 1993) and *Stinson v. Slaughter*, No. CV93-998 (Me. Sup. Ct. 1993) (currently under appeal in Maine

retaliation, the man called her repeatedly, invaded her home, vandalized her car and repeatedly threatened her.<sup>13</sup> Yet, the abuser was never prosecuted due to a lack of stalking legislation.<sup>14</sup>

The failure of the system in Maine to adequately address the problem of stalking had serious consequences. It endangered the life of the victim because there was the ever-present possibility of violent confrontation, which could ultimately result in death.<sup>15</sup> In the words of Jasper S. Wyman, the former Executive Director of the Christian Civic League of Maine, "[e]very person who lives in Maine should be free to move about this state in confidence and security, and no person should be subject to the severe emotional distress of being victimized through stalking."<sup>16</sup>

The Maine Legislature recognized stalking as a problem in 1993 when it passed an amendment to the then-current harassment statute.<sup>17</sup> However, the law had proven ineffective for law enforcement and had never been successfully used in prosecution.<sup>18</sup>

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Supreme Judicial Court).

<sup>13</sup> *See id.*

<sup>14</sup> *See id.* In the Slaughter Case, the abuser was charged with two counts of burglary and two counts of violating a protection from harassment order. *See id.* Ultimately, the case was pled to one count of burglary with a one-year sentence *entirely suspended*. *See id.* Stinson sought protection through a civil remedy in which she sought to recover in a tort action for being terrorized and harassed. *See infra* Part II.C.3.

In *State v. Beyers*, No. CR-94-17 (Me. Sup. Ct. 1995), the victim was forced to move eleven times through three states in a three-year period in an effort to evade her stalker. The stalker was charged with assault and prosecuted. *See id.*

<sup>15</sup> *See infra* notes 26-28.

<sup>16</sup> *Stalking Hearings*, *supra* note 9 at (statement of Jasper S. Wyman, Executive Director, Christian Civic League of Maine).

<sup>17</sup> The 1993 amendment was a well-intentioned effort, but it failed to make stalking itself a crime. *See infra* Part II.B.

<sup>18</sup> *See Jones*, *supra* note 5. Independent prosecution statistics for the amendment are unavailable, but according to the State Bureau of Investigation and interviews with District Attorneys throughout Maine, there has never been a report of successful enforcement of the amendment to the harassment statute. Interview with Col. Alfred Skolfield, Commissioner, Department of Public Safety, in Augusta, Me. (Feb. 12, 1996) [hereinafter Skolfield]. *See also* Interview with Christopher Almy, District Attorney, Penobscot County, in Augusta, Me. (Feb. 15, 1996) [hereinafter Almy]; DA Cantara, *supra* note 11. Kennebec County Assistant District Attorney James Cameron, in reviewing the impact of the 1993 law, noted that it had not made a substantial difference in prosecution and that only one victim had sought its protection. *See* Darla Gilbert Pickett, *Police Say Few Seek Stalking Law Protection*,

## 2. Domestic Violence and Stalking.

Although Maine is among the most crime-free states in the nation,<sup>19</sup> domestic violence represents the largest percentage of all felonies committed in Maine.<sup>20</sup> Domestic abuse professionals in Maine have identified stalking as a critical component of domestic violence in Maine.<sup>21</sup> Indeed, stalking occurs in eighty percent of domestic violence cases in Maine.<sup>22</sup>

Stalking occurs most often when the victim attempts to leave an abusive relationship.<sup>23</sup> The essential link between stalking and domestic violence is the victim's legitimate fear that the "batterer will stalk and inflict more violence if the victim attempts to leave

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MORNING SENTINEL, Feb. 26 1994, at A1.

<sup>19</sup> See 1996 MAINE DEP'T. OF PUB. SAFETY ANN. REP. 2.

<sup>20</sup> DEPARTMENT OF PUB. ADMIN., UNIV. OF MAINE, MAINE LAW ENFORCEMENT AT A CROSSROADS: EXPLORING VIEW'S OF MAINE'S LAW ENFORCEMENT COMMUNITY ON CRIME, SAFETY, AND VIOLENCE (1995). Domestic violence and harassment were rated first and sixth, respectively, among the "six most-serious crimes" rated by Maine's law enforcement officers. See *id.* "Officers felt . . . these crimes . . . inflict significantly more harm on victims, therefore requiring a different and more intensive response from police." *Id.* See also Stacey Plichita, *The Effect of Woman Abuse on Health Care Utilization and Health Status: A Literature Review*, 2 WOMEN'S HEALTH ISSUES 154, at 155 (1992) (crime of domestic abuse chronically under-reported). "In the past five years, domestic assault victims served in Maine have increased by over 25%; sexual assault victims served have increased 30%. Equally alarming is the heightened levels of violence being exhibited in domestic situations, with domestic abuse related homicides increasing over 35% since 1990." MAINE JUSTICE ASSISTANCE COUNCIL, MAINE DEP'T OF PUB. SAFETY, COLLABORATING TO STOP VIOLENCE AGAINST WOMEN IMPLEMENTATION PLAN 7 (1995).

<sup>21</sup> See DEPARTMENT OF PUB. ADMIN., *supra* note 20, at 2. "The overwhelming majority of officers also saw links between . . . abuse and harassment." *Id.* "Stalking is an issue—and a critical one—for the women we assist. It is seen by us frequently—in varying degrees of severity. It is indeed a characteristic of many violent and near violent relationships. . . . [I]t is part and parcel of a cycle of domestic violence." *Stalking Hearings*, *supra* note 9 (statement of Lois Reckitt, Maine's Commission on Domestic Abuse).

<sup>22</sup> See Jones, *supra* note 5.

<sup>23</sup> See David Adams, *Identifying the Assaultive Husband in Court: You Be The Judge*, 33 BOSTON BAR J., No. 4, 23 (1989) (stating that batterers deny end of relationship and stalk victim after separation). Former State Representative Mary Cathcart, the sponsor of LD 416 notes, "statistical information bear[s] out that homicides against women involved in domestic disputes frequently take place after the woman has left home." Higgins, *supra* note 7, at A7 (quoting former State Representative Cathcart).

the [domestic] relationship."<sup>24</sup> As the batterer attempts to control the victim, the victim suffers a cumulative sense of "intimidation, degradation, insults, attacks aimed at the victim's self-esteem, and general hostile behavior [including violence and threat of violence] towards the victim,"<sup>25</sup> and her family.

Stalking in domestic relationships does not result merely in a heightened sense of fear.<sup>26</sup> It has been estimated "that as many as ninety percent of the women killed by (former) husbands or boyfriends were stalked before a murder occurred."<sup>27</sup> In fact, according to former Maine Public Safety Commissioner John Atwood, "a number of cases (up to 50%) of [all] homicides involved perpetrators who stalked their victims beforehand."<sup>28</sup>

### C. *Profile of Victims and Stalkers*

Understanding the profiles of stalkers and their victims is integral in addressing the problem of stalking. While the victims of stalking suffer a growing sense of helplessness and fear, the stalkers strive for a sense of control. There are three categories of stalkers: stalkers of celebrities, stalkers in a domestic context, and

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<sup>24</sup> NORTHEASTERN UNIV. SCHOOL OF LAW, 1992 DOMESTIC VIOLENCE MANUAL 65 (Lois H. Kanter ed., 1992). "A third of female murder victims in 1990 were slain by husbands or boyfriends, according to the FBI." Donna Hunzeker, *Stalking Laws*, National Conference of State Legislatures LegisBrief, Vol. 1, No. 4, Jan. 1993, at 1.

<sup>25</sup> Laurie Salame, *A National Survey of Stalking Laws: A Legislative Trend Comes to the Aid of Domestic Violence Victims and Others*, 27 SUFFOLK U. L. REV. 67, 84 (1993).

<sup>26</sup> See American Medical Association, DIAGNOSTIC AND TREATMENT GUIDELINES ON DOMESTIC VIOLENCE, (1992). Thirty percent of all murdered women were killed by their husbands or boyfriends. See *id.*

<sup>27</sup> Robert P. Faulkner and Douglas H. Hsiao, *And Where You Go I'll Follow: The Constitutionality of Anti-Stalking Laws and Proposed Model Legislation* 31 HARV. J. ON LEGIS. 1, 5 (1994) (quoting Kathleen G. McAnaney et al., Note, *From Imprudence to Crime: Anti-Stalking Laws*, 68 NOTRE DAME L. REV. 819, 838 (1993)). See also *Brown v. Armontrout*, 898 F.2d 84, 85 (8th Cir. 1990) (the batterer stalked and murdered his girlfriend because if he "couldn't have her nobody could"); *People v. Quichoco*, 973 F.2d 723, 724-25 (9th Cir. 1992) (the appellant stalked his former girlfriend ending in the mistaken murder of another girl); *People v. Nicolaus*, 54 Cal. 3d 551, 555, 817 P.2d 893, 897, 286 Cal. Rptr. 628, 632 (1991) (defendant stalked ex-wife and then fatally beat and shot her).

<sup>28</sup> Adam Fiefield, *There Ought To Be A Law*, LEWISTON SUN JOURNAL, Aug. 23, 1992, at 7A (quoting Former Public Safety Commissioner John Atwood). (One-half to one third of all homicides in Maine are committed within the family, in many of those cases the abuser stalked the victim beforehand).

stalkers of strangers or acquaintances.<sup>29</sup> Celebrity stalking accounts for approximately 17% of all stalking cases.<sup>30</sup> More often than not, however, stalking occurs incident to domestic violence as part of a violent relationship.<sup>31</sup>

### 1. A Victim Profile.

A woman is six times more likely than a man to be victimized by one with whom she has had, or is having, an intimate relationship.<sup>32</sup> In evaluating the crime, many victims of stalking, like victims of domestic violence, assume responsibility for the actions of the abuser.<sup>33</sup> Interviews with victims reveal how the cumulative nature of the abusers' actions impact the victims.<sup>34</sup> Such repeated acts of abuse denigrate the victims' sense of control and security, and have a lasting impact on their daily lives.<sup>35</sup>

Susan Lawler, Director of the Family Violence Project in Augusta, reports that a victim's sense of fear and hopelessness is often so great, that receiving "junk mail," usually of a sexual

<sup>29</sup> See *Anti-Stalking Legislation: Hearing on § 2922 Before the Senate Comm. on the Judiciary*, 102d Cong. 16 (1992).

<sup>30</sup> See *id.* See also Jones, *supra* note 5.

<sup>31</sup> See *id.*

<sup>32</sup> See Caroline Wolf Harlow, U.S. DEP'T OF JUSTICE, *FEMALE VICTIMS OF VIOLENT CRIME* 33 (1991).

<sup>33</sup> Typically, victims feel they are crazy, they are to blame, and they encouraged the behavior. See *Stalking Hearings*, *supra* note 9. Victims of stalking "mostly wonder what they can do to protect themselves." *Id.* (statement of Lois Reckitt, Maine's Commission on Domestic Abuse).

<sup>34</sup> See Anonymous In-Person Interviews with Victims in Augusta, Me. (Apr. 25, 1995). The problem is a cumulative "intensifying sense of helplessness that develops from the experience." Higgins, *supra* note 7, at A7.

<sup>35</sup> Personal notes of Marge Kilkelly, Maine State Representative, House District 57 (1993) (on file with author). In a personal reflection, State Representative Marge Kilkelly wrote of her experience as a victim:

This situation has changed me and how I conduct myself-  
watch my rear view mirror-

let cars go by on my road at night before I turn into my own road-  
more concerned about going alone at night, to meetings etc.-  
Lock all doors - car - home - careful in my yard.

This results in stress on my family - neighbors - friends - co-workers, and myself. [sic]



nature, can constitute very damaging abuse.<sup>36</sup> The feeling of insecurity mounts with each act of the stalker and builds toward very real abuse which can turn an ordinary meeting into a terrifying experience for the victim.<sup>37</sup>

## 2. A Stalker Profile.

Stalking involves one person's obsessive behavior toward another, and often varies from case to case and from incident to incident.<sup>38</sup> Sometimes stalkers are enamored by their victim, while at other times they are angry and act violently due to a perceived injury. Still, at other times, the two are combined beginning with inappropriate affectionate overtures, which, when rejected, may be followed by violent behavior.<sup>39</sup>

Categorization of stalkers varies widely.<sup>40</sup> According to Michael Zona, a forensic psychiatrist and stalking expert, nine and one-half percent of stalkers suffer from "erotomania: [in which] the stalker falsely believes that the target, usually someone rich, is in love with the stalker;" forty-three percent of stalkers suffer from a borderline erotomania or "love obsession: [in which] the stalker is a stranger to the target but is obsessed and mounts a campaign to make the target aware of the stalker's existence;" forty-seven percent of stalkers suffer from "simple obsession: [in which] the stalker, usually male, knows the target as an ex-spouse, ex-lover, or former boss, and begins a campaign of harassment."<sup>41</sup> In Maine, the incidence of stalking related to domestic violence is much higher.<sup>42</sup> Other national surveys also reflect the nexus between domestic violence and stalking.<sup>43</sup>

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<sup>36</sup> See *id.*

<sup>37</sup> See *id.*

<sup>38</sup> See Model Code, *supra* note 2, at 93.

<sup>39</sup> See *id.*

<sup>40</sup> See *infra* Part II.E.1. There is a dearth of reliable statistical information regarding stalkers. *Id.* The Model Code endorses computerization of criminal records so this information can be compiled. See Model Code, *supra* note 2, at 94. See also *infra* Part II.E.1.

<sup>41</sup> Puente, *supra* note 8, at 9A.

<sup>42</sup> See Jones, *supra* note 5; see also Fiefield, *supra* note 28.

<sup>43</sup> See Tamar Lewin, *New Laws Address Old Problem: The Terror of a Stalker's Threats*, N.Y. TIMES, Feb. 8, 1993, at B10 (stating "75-80% of stalking cases occur in a domestic context").

What is clear is that stalkers run the gamut. They are spouses, bosses, obsessed fans, neighbors, acquaintances, lovers, and members of political and religious extremist groups.<sup>44</sup> Stalkers embody all walks of life.

a. Profile of Celebrity Stalkers.

Celebrity stalkers typically suffer from erotomania, a condition in which the abuser believes the celebrity reciprocates the romantic interest.<sup>45</sup> "Preliminary research on *celebrity stalking*, the only kind of stalking studied in-depth, suggests that more than ninety percent of [celebrity] stalkers suffer from at least one kind of mental disorder, including schizophrenia."<sup>46</sup> Celebrity stalking has become more frequent.<sup>47</sup> In Maine, novelist Stephen King has been the most notable victim of celebrity stalking.<sup>48</sup>

b. Profile of Domestic Violence Stalkers.

Stalking occurs more commonly in a domestic context.<sup>49</sup> Abusers who commit this type of stalking generally do not suffer from any psychological disorder.<sup>50</sup> Given that the typical abuser is not mentally ill, enhanced anti-stalking laws do serve a purpose as a deterrent and as punishment.<sup>51</sup> Furthermore, mandatory

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<sup>44</sup> See Sandra G. Boodman, *Abortion Foes Strike Doctors' Home Lives*, WASH. POST, Apr. 8, 1993, at A1. An anti-abortion protester crossed the line between legitimate protest and criminal behavior when arrested on stalking charges for following a clinic physician and yelling at her that she should get a bullet-proof vest. See *id.*

<sup>45</sup> See Daniel Golema, *Prominent Delusions: Celebrities are Unwittingly Cast in Disturbed People's Fantasies*, DETROIT FREE PRESS, Nov. 21, 1989, at 1C; see also Tamar Lewin, *New Laws Address Old Problem: The Terror of a Stalker's Threats*, N.Y. TIMES, Feb. 8, 1993, at B10 (stalkers of strangers usually suffer from severe mental illness).

<sup>46</sup> See Puente, *supra* note 8, at 9A.

<sup>47</sup> See *id.*

<sup>48</sup> See Adam Fifield, *Stephen King Has Personal Reasons to Back New Legislation*, LEWISTON SUN JOURNAL, Aug. 23, 1992, at 1A.

<sup>49</sup> See *infra* Part I.A.2. See also Jones, *supra* note 5.

<sup>50</sup> See LENORE E. WALKER, *THE BATTERED WOMAN* 55 (1979) (author describes psychological profile of abuser in domestic relationship).

<sup>51</sup> See Telephone Interview with Dave Giampetruzzi, Grant Program Administrator, Maine Criminal Justice Academy (May 5, 1996). "Since domestic violence is a learned behavior, stiff penalties and mandatory abuser programs serve as a community response to effectively stop the behavior. The response to the

attendance at a certified abuser training program may prevent future abuse.<sup>52</sup>

Stalking is often a part of the cycle of domestic violence.<sup>53</sup> A victim, unwilling to leave a violent relationship, often refuses to leave because of a legitimate fear that the abuser will stalk, assault and possibly murder the victim.<sup>54</sup>

c. Hybrid of Celebrity Stalking and Domestic Violence—  
"Borderline Erotomania."

According to Michael Zona, approximately forty-three percent of stalkers suffer from a borderline erotomania in which the obsessed stalker is a stranger or acquaintance of the target and mounts a campaign to make the target aware of the stalker's existence.<sup>55</sup>

Like erotomania, the abuser is often striving for the attention of the victim.<sup>56</sup> What may begin as benign acts can turn violent

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behavior must come from the community." *Id.* See also MAINE JUSTICE ASSISTANCE COUNCIL, MAINE DEP'T OF PUB. SAFETY, COLLABORATING TO STOP VIOLENCE AGAINST WOMEN IMPLEMENTATION PLAN, at 12, 14 (1995). "Officers agreed with citizens on what were effective solutions to these and other crimes. Actions that would reduce crimes included stiffer penalties . . ." and "[t]he Courts are seen playing a major role by imposing strong sanctions on offenders, requiring treatment to modify persistent patterns of violent behavior within families, and protecting victims and their children from abusers." *Id.* See also Victoria Mikesell Mather, *The Skeleton in the Closet: The Battered Women Syndrome, Self-Defense, and Expert Testimony*, 39 MERCER L. REV. 545, 549 (1980).

<sup>52</sup> See *infra* Part II.F.2.

<sup>53</sup> Interview with Lois Reckitt, Director, Maine Family Crisis Shelters, in Portland, Me. (Dec. 2, 1995). See *supra* Part I.A.2. See also, *supra* notes 5 and 28. "A recurrent theme among batterers is the need to control the person with whom they have an intimate relationship. Unwilling to relinquish control of their former lovers, batterers become stalkers, pursuing their victims after the victims leave the abusive relationship." Salame, *supra* note 25, at 85 n. 98 (quoting SUPREME JUDICIAL COURT OF MASSACHUSETTS, REPORT OF THE GENDER BIAS STUDY OF THE SUPREME JUDICIAL COURT 83 (1989)).

<sup>54</sup> See NORTHEASTERN UNIV. SCHOOL OF LAW, 1992 DOMESTIC VIOLENCE MANUAL 65 (Lois H. Kanter ed., 1992).

<sup>55</sup> See Puente, *supra* note 8, at 9A.

<sup>56</sup> See *Stalking Hearings on LD 1766 Before the Joint Standing Comm. on Criminal Justice*, 117th Legis., 2d Reg. Sess. (Me. 1996) (statement of Kimberly Poland, stalking victim). Kimberly Poland is a typical case. She was stalked by a stranger for eleven years. See *id.* At the age of sixteen a man saw Ms. Poland's picture in the paper. See *id.* For eleven years the man stalked her, threatening her life and the

when the stalker is rejected.<sup>57</sup>

*D. State of Maine v. Stephen Paul Beyers: A Case Study in the Shortcomings of Existing Maine Law*

Ann Marie Dempsey Rice was stalked by a former boyfriend, Steven Beyers, for two and one-half years.<sup>58</sup> Beyers followed Dempsey Rice across state lines, ignored restraining orders, and continued to avoid prosecution in three separate states which had "anti-stalking laws."<sup>59</sup> As a consequence of Beyer's repeated harassment, Dempsey Rice was unable to maintain her employment.<sup>60</sup> She was forced to move as many as eleven times in that two and one half-year period.<sup>61</sup> Beyers stalked Dempsey Rice through three states, all of which have anti-stalking laws.<sup>62</sup>

Maine's 1993 stalking law did not adequately prevent Beyers from repeatedly stalking and directly confronting Dempsey Rice.<sup>63</sup> Although Dempsey Rice filed for a protection order with all the proper documentation, it was not "served" to Beyers by Floridian officials due to the lack of a filing fee.<sup>64</sup> According to District Attorney Cantara, because the appropriate court protection orders did not reach Beyers, he could not pursue a conviction under Maine's then-current anti-stalking laws for violently confronting Dempsey Rice for the third time.<sup>65</sup> Beyers was finally

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lives of her family and friends. *See id.* At first, police were unable to identify her stalker. *See id.* Eventually they identified him and served him with protection orders. *See id.* However, law enforcement never successfully prosecuted him because each individual act was insufficient to rise to the level of a crime. *See id.*

<sup>57</sup> *See id.*

<sup>58</sup> *See Beyers, supra* note 14.

<sup>59</sup> *See id.* "Ann Marie Dempsey Rice had remarried, changed her name and moved two states away from her Massachusetts home to get away from Steven Beyers." Jill Higgins, *Accused Stalker Will Avoid Trial and Jail Sentence*, PORTLAND PRESS HERALD, Apr. 19, 1995, at 1A. Dempsey Rice received sixty-two calls from Beyers in one day. *See id.*

<sup>60</sup> *See id.*

<sup>61</sup> According to Kathy Curran, News Reporter, WGME, during an interview of author (1995).

<sup>62</sup> *See* FLA. STAT. ANN. § 784.048 (West 1993); ME. REV. STAT. ANN. tit. 17-A, §§ 506-A, 506-B (West 1996); and MASS. GEN. LAWS ch. 265, § 43 (1992).

<sup>63</sup> *See id.*

<sup>64</sup> DA Cantara, *supra* note 11.

<sup>65</sup> *See id.*

arrested and charged with "terrorizing."<sup>66</sup> District Attorney Cantara maintains that he could not have prosecuted Beyers under Maine's then-current stalking law because Beyers was never given notice of the protection order.<sup>67</sup> Stephen Beyers ultimately ceased stalking Dempsey Rice, but not until he slashed his wrists at Dempsey Rice's door-step, kicking the door, and threatening her and police. According to State Representative, Marge Kilkelly, "[t]hat is exactly the kind of case that the stalker law was intended for."<sup>68</sup>

Maine's harassment law failed to address the issue of treatment for the stalker, which could have addressed Beyers' conduct and mandated a minimum sentence for repeated violation of restraining orders.<sup>69</sup> Not only did Beyers escape prosecution for over two years under Maine's then-current stalking laws, he escaped a jail sentence all together.<sup>70</sup> Instead, Steven Beyers is serving a completely suspended four-year jail term, under probation and a court order requiring that he stay with his family in Florida without contacting Dempsey Rice.<sup>71</sup> He is under no order to undergo treatment, except for taking prescribed psychiatric medication.<sup>72</sup>

## II. Legislative Proposal for a Maine Stalking Law

### A. Overview of the Proposed Legislation

Persuaded that Maine had not effectively confronted stalking, I began the process of drafting legislation nearly two years ago. I sought guidance from numerous sources inside and outside of

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<sup>66</sup> See *Beyers*, *supra* note 14.

<sup>67</sup> DA Cantara, *supra* note 11.

<sup>68</sup> *Former victim wants state to strengthen stalker law*, LEWISTON SUN JOURNAL, Apr. 11, 1995, at A3. This violent confrontation could have been avoided if Maine law had a formal reciprocity agreement with other states, which would give legal authority to the other states' respective protection orders. *Id.*

<sup>69</sup> See *infra* Part II.F.

<sup>70</sup> See Jill Higgins, *supra* note 59, at 1A. Beyers was detained for four months at Augusta Mental Health Institution where he underwent treatment and observation. See *id.*

<sup>71</sup> See *Beyers*, *supra* note 14.

<sup>72</sup> *Id.*

Maine.<sup>73</sup> In addition to speaking with organizations and individuals, I relied heavily on model legislation drafted by Maine's United States Senator, William S. Cohen<sup>74</sup> and on the statutes of the other forty-nine states, which had already enacted stalking legislation. These models were used as benchmarks to compare against the Maine proposal. Other important sources included the testimony and floor debate from the 1993 proposals.<sup>75</sup> As a result of all these efforts, LD 1766, "An Act to Prohibit Stalking" passed almost unchanged. 115 legislators decided to serve as co-sponsors including many of the members of the Joint Standing Committee on Criminal Justice. Those 115 members represented over half the Members of each the House

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<sup>73</sup> Numerous individuals representing diverse constituencies were included in the drafting process of the proposed legislation. They include but are not limited to the following: Chris Almy, Penobscot County District Attorney; Joe Blum, Political Director, National Abortion Rights Action League; Bonnie Campbell, Director, Violence Against Women Office, Department of Justice; Michael Cantara, District Attorney, York County; Tracey Cooley, Director, Bangor Office of the Family Crisis Shelter; Linda Dyer, Lobbyist, Maine Trial Lawyers; Laura Fortman, Executive Director, Maine Women's Lobby; Paul Gauvreau, Criminal Law Advisory Committee; Dave Giampetruzzi, Grant Program Administrator, Maine Criminal Justice Academy; Ted Glessner, Court Administrator, Maine Supreme Judicial Court; Merry Hofford, Director, Family Violence Project, National Council of Juvenile and Family Court Judges; Edward Kelleher, Legislative Liaison, Maine Supreme Judicial Court; Sue Jones, Executive Director, Rape Crisis Center; Andrew Ketterer, Attorney General; Marge Kilkelly, State Representative; Susan Lawler, Director, Family Violence Project; Charles Leadbetter, Assistant Attorney General, Criminal Division; Michael Mullane, Professor, University of Maine School of Law; Debbie Noone, Maine Coalition Against Sexual Assault; Anita St. Onge, Women's Advocate, Former Assistant Attorney General; Michael Povich, Hancock County District Attorney; Kay Rand, Director of Legislative Relations, Office of the Governor; Lois Reckitt, Executive Director, Maine Family Crisis Shelter; Geoffrey A. Rushlau, District Attorney, Knox, Waldo, Lincoln and Sagadahoc Counties; Bonnie Ryder, Peoples Regional Opportunity Program; Col. Alfred. Skolfield, Commissioner, Maine Department of Public Safety; Sally Sutton, Executive Director, Maine Civil Liberties Union; Chief Justice Daniel Wathen, Maine Supreme Judicial Court; Mel Zarr, Criminal Law Advisory Committee.

Marion Hylan Barr, Esq., Legislative Analyst, Joint Standing Committee on Criminal Justice, Office of Policy and Legal Analysis worked directly with me to draft the proposed legislation and served as a direct sounding board to determine the impact of such proposals. Mary Tousignant, Professor, Cumberland Legal Aid Clinic, University of Maine School of Law, has served as my advisor on this project, and has helped me balance the interest of prosecution, defense and good public policy.

<sup>74</sup> See generally NATIONAL CRIMINAL JUSTICE ASS'N, U.S. DEP'T OF JUSTICE, PROJECT TO DEVELOP A MODEL ANTI-STALKING CODE FOR STATES (1993).

<sup>75</sup> See *infra* Part II.B.

and the Senate. The proposed legislation attempted to treat the problem of stalking and not the result. The challenge was to create a law which would not be so broad that it would be unconstitutional, infringing on freedom of speech and association, yet not so narrow so as to render it functionally meaningless.

The legislative proposal included the following:<sup>76</sup>

- define stalking itself as a crime;
- include the stalking of "family members" as part of the crime of stalking;
- enact computer stalking laws to prevent electronic stalking;
- develop a statewide computer "network" to give law enforcement and the courts instant access to all criminal records;
- create mandatory minimum sentences for violation of a protection order with mandatory participation in a certified abuser program; and,
- enter into reciprocity agreements with other states to notify and accept their restraining orders.

Stalking legislation serves the dual purpose of educating the public regarding tolerable behavior and of providing a real tool for law enforcement to protect victims of stalking. Requiring certified abuser courses in tandem with mandatory jail time for repeat offenders serves as a powerful means to punish offenders and protect victims from future abuse.<sup>77</sup>

#### *B. The Law of Maine Before the Enactment of Effective Stalking Legislation*

In 1993, the Maine Legislature took the first step towards addressing stalking by adopting four well-intentioned amendments to Maine's harassment statute. The law, as amended, fell short of the real protection urgently needed by victims of

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<sup>76</sup> Two proposals were considered and rejected:

- making stalking a civil offense so victims could sue their stalkers for monetary damages; and,
- having bail guidelines to create a "cooling-off" period after the violation.

<sup>77</sup> See *supra* Part I.B.2.

stalking and domestic abuse. The most noteworthy shortcoming of Maine's law was its failure to denote stalking as a crime. District Attorneys and law enforcement officials have found the law unworkable.<sup>78</sup> "Harassment" did not capture the essence of stalking, which can come in various forms and render very harsh consequences.

### 1. 1993 Legislative Proposals.

LD 855<sup>79</sup> sponsored by Senator John Baldacci (D-Bangor) received an "Ought not to pass" report from the Joint Standing Committee on the Judiciary. Baldacci's proposed legislation would have made stalking a crime and would have included repetitive acts that cause substantial emotional distress.<sup>80</sup> Further, Baldacci's proposed legislation made violation of a temporary restraining order or a second offense a Class C crime, punishable by up to five years in prison.<sup>81</sup>

LD 500<sup>82</sup> sponsored by Representative Bruno also received an "Ought not to pass" report from the Joint Standing Committee on the Judiciary.<sup>83</sup> Bruno's proposed bill<sup>84</sup> limited stalking to harassing a person with "the intent to place that person in reasonable fear of death or serious bodily injury."<sup>85</sup> Second convictions were to be punished as a Class C crime.<sup>86</sup>

LD 416<sup>87</sup> sponsored by Representative Cathcart (D-Orono) also received an "Ought not to pass" report from the Joint

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<sup>78</sup> See DA Cantara, *supra* note 11 (stating that Cantara found current law unworkable in trying to convict Steven Beyers for stalking Anne Marie Dempsey Rice). See also *infra* Part II.C.1.

<sup>79</sup> SP 284, 116th Legis., 1st Reg. Sess. (Me. 1993).

<sup>80</sup> See *id.*

<sup>81</sup> See *id.*

<sup>82</sup> HP 387, 116th Legis., 1st Reg. Sess. (Me. 1993).

<sup>83</sup> See *id.*

<sup>84</sup> See CAL. PENAL CODE § 646.9 (1991). Representative Bruno modeled his legislation after the original 1990 California legislation. See A. Jay Higgins, *Hearings on stalking bill slated for Augusta*, BANGOR DAILY NEWS, Mar. 29, 1993, at A3. "Under the original California Law, a 'reasonable person' would have to actually suffer substantial emotional distress before authorities could take action." *Id.*

<sup>85</sup> HP 387, 116th Legis., 1st Reg. Sess., § 1 (Me. 1993).

<sup>86</sup> See *id.*

<sup>87</sup> HP 328, 116th Legis., 1st Reg. Sess. (Me. 1993).



Standing Committee on the Judiciary. Representative Cathcart's proposed bill "would have expanded the crime of harassment [and current protection from abuse laws] to more clearly comprise conduct commonly known as stalking . . . and would have specifically allowed the court to order the defendant to refrain from . . . staying near the plaintiff's work or home."<sup>88</sup> Violation of the proposed statute would have been a Class D Crime, punishable by imprisonment not exceeding one year.<sup>89</sup>

Finally, a fourth proposed bill was submitted by the Office of Governor John McKernan. The Governor's bill would have made stalking a crime as well as allow "a police officer to make a warrantless arrest of someone previously accused of harassment."<sup>90</sup>

## 2. Amendments to Maine's Harassment Law.

LD 1546,<sup>91</sup> a committee bill sponsored by Representative Cote (D-Auburn), brought together many aspects of the above four pieces of legislation.<sup>92</sup> It ultimately passed the Legislature and became law.<sup>93</sup>

LD 1546 defined stalking as a form of harassment.<sup>94</sup> The law required the victim to acquire a protection order or a formal warning from a law enforcement official as a predicate to violating the stalking statute.<sup>95</sup> It punishes violations of a "warning" as a Class E Crime and violations of a protection order as a Class D Crime.<sup>96</sup> In addition, LD 1546 adopted the Governor's proposal

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<sup>88</sup> AUDRA SMITH AND SANDY NOONAN, OFFICE OF DEMOCRATIC LEADERSHIP, *STALKING: LEGISLATIVE FACT SHEET 1* (1993).

<sup>89</sup> See HP 328 116<sup>th</sup> Legis., 1<sup>st</sup> Reg. Sess. (Me. 1993).

<sup>90</sup> *Id.* at 2.

<sup>91</sup> PL 1993 ch. 475, introduced as HP 1147, 116<sup>th</sup> Legis., 1<sup>st</sup> Reg. Sess., (Me. 1993) (as amended by H-633 (1993)).

<sup>92</sup> See *id.*

<sup>93</sup> See *id.*

<sup>94</sup> See *Former Victim Wants State To Strengthen Stalker Law*, LEWISTON SUN JOURNAL, Apr. 11, 1995, at A3. "Current Maine law makes stalking—following someone or going to someone's home, school or business without reasonable cause—a form of harassment. If convicted of stalking three times within five years, a suspect could face felony charges punishable by five years in prison and a \$5000 fine." *Id.*

<sup>95</sup> PL 1993 ch. 475, introduced as HP 1147, 116<sup>th</sup> Legis., 1<sup>st</sup> Reg. Sess., (Me. 1993) (as amended by H-633 (1993)).

<sup>96</sup> See ME. REV. STAT. ANN. tit.17-A, § 506-B (West 1995).

for warrantless arrests subsequent to violation of protection orders.<sup>97</sup>

### C. *Stalking Defined as a Crime*

#### 1. Why a New Law is Needed.

LD 1546 was enacted as Maine Revised Statute Annotated, Title 5 section 4655.<sup>98</sup> This law amends Maine's harassment statutes and restricts the behavior of the abuser.<sup>99</sup> Noticeably missing from the statute, however, is the word "stalking."<sup>100</sup> Stalking is not explicitly prohibited by this law.<sup>101</sup> The consequence of this omission has been decried by legal experts, law enforcement, and advocates throughout Maine.

The language included in the harassment statute fell short of the protections needed by victims of stalking.<sup>102</sup> Stalking is not merely harassment because it rises to a level of a distinct and unique crime that must be recognized separately from our harassment laws.

Barbara Michaud, a stalking victim and a representative of the Maine Coalition for Family Services, testified during the 116th legislature's hearing on stalking.<sup>103</sup> Michaud implored the Committee, "I encourage you to see stalking as a crime in and of itself. We believe it is an error to classify it as harassment. . . . The law must address the behavior in its totality."<sup>104</sup> Michaud argued that defining the behavior as harassment limited its utility to

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<sup>97</sup> See Smith and Noonan, *supra* note 88, at 2.

<sup>98</sup> See ME. REV. STAT ANN. tit. 5, § 4655 C-1 (West 1995).

C-1 Directing the defendant to refrain from repeatedly and without reasonable cause:

(1) Following the plaintiff; or

(2) Being at or in the vicinity of the plaintiff's home, school, business, or place of employment.

*Id.*

<sup>99</sup> See *id.*

<sup>100</sup> See ME. REV. STAT ANN. tit. 5, § 4655 C-1 (West 1995).

<sup>101</sup> See *id.*

<sup>102</sup> See *id.*

<sup>103</sup> *Stalking Hearings*, *supra* note 9.

<sup>104</sup> *Stalking Hearings*, *supra* note 9 (quoting Barbara Michaud).

"neighbor" situations and was incorrectly focused on the harm suffered by the victim rather than the action of the abuser.<sup>105</sup> She remarked, "[t]he focus of this law must be the behavior and conduct of the stalker."<sup>106</sup>

York County District Attorney Michael Cantara suggested that the 1993 law was cumbersome because it was merely an amendment to existing anti-harassment laws. More problematic was the fact that a court protection order had to precede a stalking charge.<sup>107</sup> Former Attorney General Michael Carpenter distinguished stalking from harassment when he noted: "The criminal threatening statute – that's for something that's about to happen. But, with a stalker law, it's more elongated. *I wouldn't have to show that I was in immediate fear, but rather that fear grew over a period of time.*"<sup>108</sup> According to former Public Safety Commissioner John Atwood, "[t]he continuous pattern of behavior coupled with the obsessive nature of a 'stalker' are the important distinctions that mark stalking and distinguish it from other crimes, such as criminal threatening, harassment and terrorizing."<sup>109</sup>

Making stalking a crime itself eliminates a step. "You wouldn't have to get a protection order in the first place," claims Maine Supreme Court Justice Robert Clifford.<sup>110</sup> Protection orders are sometimes withheld by judges, or at other times present an obstacle to victims for varying reasons, including lack of time, money and education.

State Police Trooper Christopher Groton lamented the lack of authority local law enforcement officials had in interceding on behalf of victims, stating: "we'll keep an eye on him [the stalker], but that is all we can do under current law. We usually treat not

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<sup>105</sup> See *id.* (citing Barbara Michaud).

<sup>106</sup> *Id.* (quoting Barbara Michaud).

<sup>107</sup> See DA Cantara, *supra* note 11. See also Higgins, *supra* note 59, at 10B; Darla Gilbert Pickett, *Police Say Few Seek Stalking Law Protection*, MORNING SENTINEL, Feb. 26, 27 1994, at A1. But see Scott Armstrong, *States Crack Down on Stalking*, THE CHRISTIAN SCIENCE MONITOR, May 19, 1993, at 7 (stating that "[w]e haven't solved the problem by passing laws").

<sup>108</sup> See Adam Fifield, *But Will the Law Take Away More Rights Than It Protects*, LEWISTON SUN JOURNAL, Aug. 23, 1992, at 1A, 7A (quoting Michael Carpenter, Former Maine Attorney General).

<sup>109</sup> See Adam Fifield, *There Ought To Be a Law*, LEWISTON SUN JOURNAL, Aug. 23, 1992, 1A, 7A (quoting John Atwood, Former Public Safety Commissioner).

<sup>110</sup> See *id.* (quoting Robert Clifford, Maine Supreme Court Justice).

the problem but the result. We don't have a law for treating the underlying cause."<sup>111</sup>

Moreover, the failure to design an effective anti-stalking law produced grave consequences. Park Dietz, an expert on stalking, "cautions that arresting but failing to prosecute or jail the stalker always worsens the situation for the victim. As a general rule, it's perceived by the mentally ill stalker as a confirmation of the relationship, and by the less seriously ill stalker as an angering challenge."<sup>112</sup>

Making stalking itself a crime gives prosecutors and law enforcement officials a tool to address specific behavior which is not within the vague umbrella of harassment. As a result, district attorneys will be empowered to vigorously and successfully prosecute stalkers. This will serve as a deterrent and also educate the public regarding acceptable behavior.

## 2. A Proposal to Make Stalking a Crime.

### a. Proposed Language.

My proposal, LD 1766<sup>113</sup> sought to make stalking a crime.

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<sup>111</sup> See *id.* (quoting Christopher Groton, State Police Trooper).

<sup>112</sup> See Puente, *supra* note 8, at 9A (quoting Park Dietz, Clinical Psychologist and Expert of Stalking).

<sup>113</sup> HP 1286, LD 1766, 117th Legis., 2nd Reg. Sess. (Me. 1996) (p. 2, lines 29-50 and p.3, lines 1-5). Sec.3. 17-A MRSA §210-A is enacted to read:

§210-a. Stalking:

1. A person is guilty of stalking if:

A. The person intentionally engages in a course of conduct directed at another specific person that would cause a reasonable person to suffer emotional distress, to fear bodily injury, to that person or a member of that person's immediate family or to fear the death of that person or a member of that person's immediate family;

B. The person knows or should have known that another specific person will suffer or would have suffered emotional distress, will be or would have been placed in reasonable fear of bodily injury to that person or a member of that person's immediate family or will be or would have been placed in reasonable fear of the death of that person or a member of that person's immediate family; and

C. The person's acts in fact induce in another specific person emotional distress, in fact induce in another specific person to

The proposed language carefully balances constitutional and functional considerations.<sup>114</sup> The most striking variation of this legislation from the model code is the extension of protection to a victim against an abuser's action of causing the victim "emotional distress."<sup>115</sup> "Emotional distress" is included in many states' statutes.<sup>116</sup> This provision is critical to the protection of victims.

According to District Attorney Cantara, the judicial system would be unable to prosecute Steven Beyers under the model stalking laws because Beyers' self-mutilation at the doorstep of Dempsey Rice did not constitute behavior that creates a "reasonable person to fear bodily injury."<sup>117</sup> Further, according to District Attorney Cantara, conduct by Beyers, such as telephoning Dempsey Rice sixty-two times in one day,<sup>118</sup> while clearly causing "emotional distress," similarly does not rise to behavior that would

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fear bodily injury to that person or a member of that person's immediate family or in fact induce in another specific person to fear the death of that person or a member of that person's immediate family.

*Id.*

<sup>114</sup> Most of the language is taken directly from the proposed language in the "Project to Develop a Model Anti-Stalking Code for States." See Model Code, *supra* note 2.

<sup>115</sup> See Salame, *supra* note 25 at 268 n. 27. "Typically the course of conduct must rise to the level that would cause a reasonable person to suffer substantial emotional distress. In some states' statutes the victim must actually suffer from that distress." *Id.* States which require the stalking to cause the victim to actually fear death or physical injury include: CONN. GEN. STAT. §§ 53a-181c, d (1993) (causing fear of physical injury); N.Y. PENAL LAW §§ 120.13-14, 240.25 (McKinney 1993) (placing in fear of death or physical injury); N.C. GEN. STAT. § 14-277.3 (1992) (placing in fear of death or physical injury).

<sup>116</sup> See FLA. STAT. ANN. § 784.048 (West 1993) (listing the objective standard regarding emotional distress); IND. CODE ANN. § 35-45-10-1-5 (Michie 1993) (feeling terrorized, frightened, intimidated or threatened); MASS. GEN. LAWS ch. 265, § 43 (1992) (noting that a "reasonable person" would suffer emotional distress); MICH. COMP. LAWS ANN. § 750.411h-411i (West 1991) (feeling oppressed, persecuted or intimidated); MONT. CODE ANN. § 45-5-220 (1995) (causing substantial emotional distress); NEB. REV. STAT. § 28-311.02-05 (1992) (feeling terrified, threatened or intimidated); OHIO REV. CODE ANN. § 2903.211-213 (Banks-Baldwin 1992) (causing substantial emotional distress); UTAH CODE ANN. § 76-5-106.5 (1992) (listing a course of conduct which would cause emotional distress); VT. STAT. ANN. tit. 13, §§ 1061-1063 (1993) (noting substantial emotional distress); WASH. REV. CODE ANN. § 9A-46.110 (West 1992) (feeling intimidated, harassed, or in fear of injury); WYO. STAT. ANN. § 6-2-506(a)(ii) (Michie 1993) (listing acts which seriously alarm another person).

<sup>117</sup> See DA Cantara, *supra* note 11. See also Model Code, *supra* note 2, at 43.

<sup>118</sup> See Curran, *supra* note 61.

cause a “reasonable person to fear bodily injury.”<sup>119</sup> Under the statement of facts in the proposed legislation, both of these actions were included in the “course of conduct” defining a stalker.<sup>120</sup>

b. Constitutional Considerations.

During the Committee process, Members of the Joint Standing Committee on Criminal Justice became concerned with the phrase “emotional distress.”<sup>121</sup> Although “emotional distress” is used in other states’ statutes,<sup>122</sup> and is found in Maine’s tort law,<sup>123</sup> the term is not used in Maine’s criminal code. Although the committee was concerned about the use of the term “emotional distress,” the Committee agreed that the scope of the law should recognize the mental intimidation and fear that stalking causes in victims.<sup>124</sup> As a result, the committee replaced “emotional distress” with “intimidation or serious inconvenience, annoyance or alarm.”<sup>125</sup>

This language effectively addresses the undesired conduct and prevents the necessity of defining “emotional distress” in the criminal code. Replacing “emotional distress” helps inoculate against potential challenges that the language is

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<sup>119</sup> See DA Cantara, *supra* note 11.

<sup>120</sup> See HP 1286, LD 1766, 117<sup>th</sup> Legis., 2<sup>nd</sup> Reg. Sess. (Me. 1996).

<sup>121</sup> See *Stalking Hearings on LD 1766*, *supra* note 56 (statements of Chairmen Sen. John Benoit, Rep. Herb Clark and testimony of Penobscot County DA Christopher Almy).

<sup>122</sup> See *id.*

<sup>123</sup> See *Dewilde v. Guy Gannett Pub. Co.*, 797 F. Supp. 55, 62 (D. Me. 1992) (noting “severe emotional distress” refers to emotional distress created by circumstances that no reasonable person could be expected to endure).

<sup>124</sup> See *Stalking Hearings on LD 1766*, *supra* note 56.

<sup>125</sup> LD 1766, Committee Amendment B to HP 1286, 117<sup>th</sup> Legis., 2d Reg. Sess. 3 (Me. 1996). This language was suggested by District Attorney Geoffrey A. Rushlau. Memorandum from Geoffrey A. Rushlau, District Attorney, Knox, Waldo, Lincoln and Sagadahoc Counties (Feb. 29, 1996) (on file with author). The word “intimidation” is taken from the Obstructing Government Administration statute<sup>125</sup> and it has been defined in the Law Court decision, *State v. Janischak*. See ME. REV. STAT. ANN. tit. 17-A, § 751 (West 1983); see also *State v. Janischak*, 579 A.2d 736, 738 (Me. 1990). The words “serious inconvenience, annoyance or alarm” are taken from the Failure to Disperse statute. See ME. REV. STAT. ANN. tit. 17-A § 502 (West 1983). This law was addressed by the Law Court in *State v. Anair*. See *State v. Anair*, 499 A.2d 152, 153 (Me.1985).

unconstitutionally vague or over-broad.<sup>126</sup> Furthermore, it prevents application of the statute to less serious confrontations, which only cause ordinary irritation or annoyance.

### 3. Civil Suits.

Allowing stalking victims to bring a civil suit against stalkers might further deter the conduct of abusers and would provide an opportunity for victims to recover damages.<sup>127</sup> However, Maine's law already allows victims an opportunity to recover damages through a civil cause of action.<sup>128</sup> An example of this is the case of *Stinson v. Slaughter*.<sup>129</sup> In this case, although the State of Maine failed to bring stalking charges against Richard Slaughter for stalking Joanne Stinson,<sup>130</sup> Ms. Stinson successfully found relief by bringing a civil cause of action.<sup>131</sup> Slaughter was ordered by a jury to pay Stinson \$650,000 for intentionally harming Stinson and violating her right to privacy.<sup>132</sup>

### 4. "Course of Conduct" Which Constitutes "Stalking."<sup>133</sup>

Since the crime of stalking is not an isolated incident, the law must address a series of acts taken together. By defining those

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<sup>126</sup> *But see* *Woolfolk v. Commonwealth* (Fitzpatrick) No. 1173-93-2, Louisa County Cir. Ct. (Aug. 23, 1994) (upholding constitutionality of "emotional distress" in Virginia stalking law (VA. CODE ANN. §18.2-60.3)). The law prohibits a person from engaging in conduct "with intent to cause emotional distress." *Id.* The statute was found not to be unconstitutionally vague and overbroad because it created a "reasonable person standard" and therefore avoids an ambiguous, subjective standard. *Id.* *See also infra*, II(G).

<sup>127</sup> *See* Model Code, *supra* note 2, at 37, 51. "States may want to consider permitting stalking victims to recover damages from convicted defendants through civil causes of action." *Id.*

<sup>128</sup> *See* *Stinson v. Slaughter*, No. CV93-998 (Me. Sup. Ct. 1993).

<sup>129</sup> *See id.*

<sup>130</sup> *See* *State v. Slaughter*, No. CR93-2086 (Me. Sup. Ct. 1993). Slaughter was charged with two counts of burglary and two counts of violating protection orders. Slaughter pled to one count of burglary and served a one-year suspended sentence. *See id.*

<sup>131</sup> *See* *Stinson v. Slaughter*, No. CV93-998 (Me. Sup. Ct. 1993) (currently under appeal in Maine Supreme Judicial Court).

<sup>132</sup> *See id.*

<sup>133</sup> *See id.*

prohibited acts under the term "course of conduct," the proposal recognizes the cumulative nature of the crime. Furthermore, each of the terms used in the definition of "course of conduct" are carefully defined. By giving the terms precise meaning, the legislation becomes less susceptible to claims that it is unconstitutionally vague.<sup>134</sup>

a. Number of Incidents.

LD 1766 defines "repeatedly" as "on two or more occasions."<sup>135</sup> Two or more acts are sufficient to constitute conduct which rises to the level of stalking. Setting a fixed number defines expectations and sets parameters for the conduct that is prohibited. "Typically a 'course of conduct' is defined as 'a series of acts over a period of time, however short, evidencing a continuity of purpose.'"<sup>136</sup> Illinois, Michigan, and Oklahoma's laws each specify that two or more acts are sufficient to demonstrate a continuity of purpose.<sup>137</sup> Other states accept a lower standard to establish conduct.<sup>138</sup>

The Department of Justice's *Project to Develop a Model Anti-Stalking Code for States* recommends language which defines "repeatedly" as meaning "two or more occasions."<sup>139</sup> The proposed legislation adopted the model language, which rejected one incident as sufficient to define a course of conduct. By punishing just one incident, this legislation would be addressing behavior that is already prohibited under existing terrorizing and harassment statutes.<sup>140</sup> The new anti-stalking legislation was not intended to replace existing terrorizing statutes, but rather to

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<sup>134</sup> See *infra* Part II.G.

<sup>135</sup> HP 1286, LD 1766, 117th Legis., 2nd Reg. Sess. (Me. 1996) (p.3, line 27).

<sup>136</sup> Model Code, *supra* note 2, at 21.

<sup>137</sup> See 725 ILL. COMP. STAT. 5/110-4 (West 1993); MICH. COMP. LAWS §§ 750. 411h-i 600.2950a, 600.2954, 764.15b, 771.2, 771.2(a); OKLA. STAT. tit. 21, § 1173A (1993), as amended by 1993 OKLA. SESS. LAWS ch. 64; 1993 OR. LAWS ch. 626, § 2(1) (to be codified at OR. REV. STAT. § 133.310 (1995)).

<sup>138</sup> See COLO. REV. STAT. § 18-9-111; N.C. GEN. STAT. § 14-277.3 (1993); VA. CODE ANN. § 18.2-60.3 (Michie 1996) (stating that one or more occasions of proscribed conduct is sufficient to establish the crime of stalking).

<sup>139</sup> See Model Code, *supra* note 2, at 43.

<sup>140</sup> See ME. REV. STAT. ANN. tit. 5, § 4651 et seq. and tit. 17-A, § 501 et seq. (West 1983).



address behavior which has the cumulative impact of abusing the victim.

At the other extreme, adopting less specific language would potentially be unconstitutionally ambiguous.<sup>141</sup> "Indefiniteness runs afoul of due process concepts which require that persons be given fair notice of what to avoid."<sup>142</sup> Unduly ambiguous language runs the risk of being unconstitutional, and thus, unenforceable, thereby resulting in ineffective penalization of the actions of a stalker. Defining the term "repeatedly" creates definiteness and serves as notice.

#### b. Immediate Family.

Stalkers, in addition to pursuing their primary victim, may threaten to harm members of the victim's family. Veiled threats and threats to family members are just as reprehensible as a direct threat to the primary target, and will now be punishable under Maine law. Such threats, like primary threats, are used to control the victim's behavior.<sup>143</sup> Many states extend their statutes' reach to also include threats against the victim's immediate family members.<sup>144</sup>

In the case of Tracey Thurman,<sup>145</sup> Ms. Thurman's estranged

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<sup>141</sup> See U.S. CONST. amend. V ("No person shall be . . . deprived of life, liberty, or property without due process of law").

<sup>142</sup> Lawrence H. Tribe, *American Constitutional Law*, § 12-31, at 1033 (2d. ed. 1988).

<sup>143</sup> See *infra* notes 131.

<sup>144</sup> ALA. CODE § 13A-6-92(b) (1993); 1993 Alaska Sess. Laws ch. 40 (to be codified at ALASKA STAT. § 11.41.270(a)); 1993 Ark. Acts 379 § 1(a); CAL. PENAL CODE § 646.9(a) (West 1992); IDAHO CODE § 18-7905(a) (1992); 1993 N.M. Laws ch. 86 (to be codified at N.M. STAT. ANN. § 30-3A-3(a)(3)) (Michie 1994); OKLA. STAT. tit. 21, § 1173(A) (1993), amended by 1993 Okla. Sess. Laws ch. 64; 1993 Or. Laws ch. 626, § 2(1) (to be codified at OR. REV. STAT. § 133.310); 1993 Tex. Sess. Law Serv. ch. 10 (Vernon) (to be codified at TEX. PENAL CODE. ANN. § 42.07(a)(2)); UTAH CODE ANN. § 76-5-106.5(2) (1992); see also HAW. REV. STAT. § 711-1106.5 (1992) (including another person though not limited to family members); 1993 Md. Laws ch. 205 (to be codified at MD. CODE ANN. art. 27, § 121B) (stating that third persons can be included). Oklahoma defines an immediate member as a "spouse, parent, child, or person related within the third degree of consanguinity or affinity or any other person who regularly resides in the household or who regularly resided in the household within the six (6) prior months." OKLA. STAT. tit. 21, § 1173(E)(4) (1993), amended by 1993 Okla. Sess. Laws ch. 64.

<sup>145</sup> See *Thurman v. City of Torrington*, 595 F. Supp. 1521, 1524-25 (D. Conn.

husband repeatedly threatened and physically confronted Ms. Thurman, their child, and friends with whom Ms. Thurman resided.<sup>146</sup> Ultimately, Thurman's husband assaulted Thurman, beating her until she was paralyzed, and then physically dropped their son on the injured mother.<sup>147</sup> The Thurman case has become emblematic of the use of threats and actions against family members, as a means to stalk and control the victim.<sup>148</sup>

The anti-stalking legislation which passed in Maine adopts the language of the model bill by extending the definition of a target of stalking to include the victim's "immediate family."<sup>149</sup> Importantly, this language refers not only to the nuclear family, but to "any person" who has recently lived in the house.<sup>150</sup> Thereby, the definition includes any domestic partner or other person involved in the household whether or not he/she is a blood relative.<sup>151</sup> According to this legislation, threatening the victim's family can be used as evidence of stalking the primary victim.<sup>152</sup>

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1984).

<sup>146</sup> See *id.*

<sup>147</sup> See *id.*

<sup>148</sup> See *id.* Barbara Michaud, of the Maine Coalition for Family Services testified to one such occurrence involving herself. See *Stalking Hearings*, *supra* note 9, (written statement of Barbara Michaud, Maine Coalition for Family Services):

We believe [stalking] should be expanded to include surveillance of family or household members in the definition of the crime. Stalkers often expand their tactics in this manner. An example of this comes from my personal experience. I have a teenage son and a teenage daughter. Both of them worked the breakfast shift at a local restaurant. When stalking tactics against me weren't proving effective, this man, who was not a breakfast eater, started showing up for breakfast at this establishment, and only when my children were there. He strategically placed himself where he could stare at my daughter. Some of these breakfasts lasted three hours. There should have been a way for me to keep this from happening to her.

*Id.*

Threats to family members are not isolated or infrequent; they commonly occur in Maine. See *id.*

<sup>149</sup> LD 1766 defines "immediate family" as "a spouse, parent, child, sibling, stepchild, stepparent or any person who regularly resides in the household or who within the prior 6 months resided in the household."

<sup>150</sup> See *id.*

<sup>151</sup> See *id.*

<sup>152</sup> See *id.*

c. Computer Stalking.

Individuals have also had former domestic partners violate their privacy through the use of computers. Through "computer hacking" stalkers can learn about the victim's phone records, expenses or other personal information, and in some cases, stalkers can directly contact the victim by sending threatening electronic mail.<sup>153</sup> These invasions compound the cumulative sense of helplessness and fear that the victims of stalking suffer.<sup>154</sup> Current law protects against "following" the victim, but does not extend to invading a victim's life through the use of a computer.<sup>155</sup> By recognizing high technology and its potential misuse, LD 1766 will be flexible enough to protect victims in the future.<sup>156</sup>

d. Intent.

"Intent" is a key component of this legislation, which insulates it from constitutional challenges. The legislation blends the model code<sup>157</sup> with parallel construction from existing Maine statutes, utilitarian advice from prosecutors, civil libertarians and criminal law experts in Maine.

Following the admonitions of the Bangor Daily News, the legislation attempts to balance the protections of the individual victim with the civil liberties of the public.<sup>158</sup> The model code uses the word "purposeful instead of 'intentional' as its *mens rea*

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<sup>153</sup> See MAINE CREDITOR UPDATE, THE BUREAU OF CONSUMER CREDIT PROTECTION, ISSUE #25, CONSUMER "HORRIFIED" AT CREDIT REPORT DISCLOSURE, Aug. 1994, at 1. See also Amy Harmon, *E-mail harassment Case Highlights New Problem*, MAINE SUNDAY TELEGRAM, Nov. 19, 1995, at 5A.

<sup>154</sup> See *supra* Part I.C.1.

<sup>155</sup> See ME. REV. STAT. ANN. tit. 19, §§ 762(1), 765(4) (West 1994). LD 1766 includes "gaining unauthorized access to personal, medical, financial, or other identifying information, including access by computer network," in its definition of "course of conduct" that can constitute stalking. See *id.*

<sup>156</sup> See *id.*

<sup>157</sup> See *Model Code*, *supra* note 2, at 43 (Section 2: Any person who: "*purposefully* engages in a course of conduct" satisfies the *mens rea* element for stalking) (emphasis added).

<sup>158</sup> See *Update on the stalking law*, BANGOR DAILY NEWS, Apr. 12, 1994, at 2A ("Though a reckless anti-stalker law could infringe upon free speech and freedom of association, there is good reason to believe that the law can be strengthened, if necessary, without trampling on anyone's rights.").

element."<sup>159</sup> The Maine legislation has replaced "purposeful" with "intentional," following Maine's criminal code,<sup>160</sup> Rep. Bruno's 1993 proposal,<sup>161</sup> and the California stalking law.<sup>162</sup> By limiting conduct through the use of "intent," constitutionally protected behavior will not be restricted.<sup>163</sup> "The right to movement . . . may be restricted by a statute that is narrowly constructed to protect citizens from malicious or willful conduct [encapsulated by intent in Maine law]."<sup>164</sup>

For example, Maine State Representative Richard Thompson expressed concern that an overbroad law would infringe upon constitutionally protected behavior, and more importantly would interfere with certain professions.<sup>165</sup> Specifically, Thompson mentioned the ability of private investigators to track worker's compensation claims and observe the claimant's behavior to discover fraud.<sup>166</sup>

Bonnie Campbell, Director of the Violence Against Women Office, Department of Justice,<sup>167</sup> dismissed Thompson's complaint, noting the explicit language of the statute, which makes it a crime to "intentionally" engage in a "course of conduct directed at another person that would cause a reasonable person to fear bodily injury or suffer extreme emotional distress."<sup>168</sup> Campbell noted that a private investigator does not "intend" to cause a worker's compensation claimant "emotional distress" or to "fear bodily injury," whereas a stalker *does intend* to create such a response in the victim.<sup>169</sup> When an individual's words or actions

<sup>159</sup> See Model Code, *supra* note 2, at 43.

<sup>160</sup> See ME. REV. STAT. ANN. tit. 17-A, § 34 (West 1983).

<sup>161</sup> See HP 387, 116th Legis., 1st Reg. Sess. (Me. 1993).

<sup>162</sup> See CAL. PENAL CODE § 646.9.

<sup>163</sup> See Model Code, *supra* note 2, at 11. See also ME. REV. STAT. ANN. tit. 17-A, § 34 (West 1983).

<sup>164</sup> *Id.*

<sup>165</sup> Interview with Maine State Representative and Attorney Richard Thompson, Member, Joint Standing Comm. on Criminal Justice, in Augusta, Me. (Mar. 5, 1996).

<sup>166</sup> See *id.*

<sup>167</sup> Telephone Interview with Bonnie Campbell, Director, Violence Against Women Office, Dep't of Justice, in Washington, D.C. (Mar. 7, 1996).

<sup>168</sup> HP 1286, LD 1766, 117th Legis., 2nd Reg. Sess. (Me. 1996).

<sup>169</sup> See also 27 SUFFOLK U. L. REV. 67, at 8. "The stalking laws in most states would not inhibit the lawful activities of those listed above [such as law enforcers, private detectives, process servers, news reporters and organized protesters] since these actors would not have the requisite intent." *Id.*

intend to create harm, then they are not constitutionally protected.<sup>170</sup> "Intent" thereby insulates against unconstitutionality.<sup>171</sup>

Some states further insulate against constitutional attacks by explicitly excluding actions of certain professions from inclusion in their respective statutes.<sup>172</sup> Other statutes make a blanket exclusion of any activities which would be constitutionally protected.<sup>173</sup> Instead of cataloguing professions which might be disturbed by such a law and running the risk of missing one, LD 1766 complements the "intent" language with a blanket exemption for *all* constitutionally protected behavior.<sup>174</sup> The original language used in LD 1766 was modeled on that used in current Maine harassment law.<sup>175</sup> Members of the Joint Standing Committee on Criminal Justice, anxious to ensure that they would place no limitations on constitutionally protected activity, bolstered the original language by adding an exemption for conduct protected under the "Constitution of Maine . . . or by state or federal statute."<sup>176</sup>

Ensuring that the proposed law could withstand constitutional scrutiny was important. Rushing through a law,

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<sup>170</sup> See *Goodling v. Wilson*, 405 U.S. 518, 525 (1972); *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942) (noting that fighting words, by their very utterance, create injury are not protected).

<sup>171</sup> See *id.*

<sup>172</sup> See Salame, *supra* note 25, at 4. See also *infra* Part II.F. "Many states make the distinction that their statutes do not apply to various protected activities or professions," including: lawful labor picketing, law enforcement, private investigation, news reporting, or broader still, "any lawful business activity." See Salame, *supra* note 25, at 4. See GA. CODE ANN. § 16-5-92 (1993) (excluded if lawfully engaged in a bona fide business activity or practice of profession); 1993 Nev. Stat. 233 (to be codified at NEV. REV. STAT. § 200.575(6)(b) (1995)) (normal law enforcement excluded); TENN. CODE ANN. § 39-17-315(c) (1993) amended by 1993 Tenn. Pub. Acts 435 (following a person in the course of a lawful business activity is excluded).

<sup>173</sup> ME. REV. STAT. ANN. tit. 5, § 4651(2) (West 1987). This definition does not include any act protected by the constitutional guarantee of free speech. *Id.*

<sup>174</sup> Comm. Amendment B to HP 1286, LD 1766, 117th Legis., 2d Reg. Sess., at 3 (Me. 1996).

<sup>175</sup> ME. REV. STAT. ANN. tit. 5, § 4651(2) (West 1993). The 1993 stalking law utilized a similar blanket exclusion. See *id.* "This definition does not include any act protected by the constitutional guarantee of free speech." *Id.*

<sup>176</sup> Comm. Amendment B to HP 1286, LD 1766, 117th Legis., 2d Reg. Sess., at 3 (Me. 1996).

which in the end is unconstitutional, is a disservice to victims because ultimately the stalker would go free.<sup>177</sup> Since establishing protections against stalking is intended to create security for victims, establishing a law which will be overturned is not only a waste of time, it would perpetuate the suffering of victims.

#### D. *Enforcement*

Laws are ineffective if they cannot be enforced. The 1993 legislation was *never* effectively enforced;<sup>178</sup> LD 1766 attempts to remedy that shortcoming. First, LD 1766 eliminates the need to have a violation of an antecedent warning or protection order as a predicate to a stalking violation.<sup>179</sup> Second, in an effort to enhance law enforcement's ability to swiftly intervene in potentially volatile situations, stalking has been included in a list of violations for which police can execute a warrantless arrest.<sup>180</sup> Finally, bail guidelines are considered, to ensure a cooling-off period for abusers because failing to jail the stalker often worsens the situation for the victim by serving as an angering challenge to the abuser.<sup>181</sup>

#### 1. Protection Orders.

MRSA 17-A § 506-A defines the requisite behavior necessary to be charged under the 1993 harassment law.<sup>182</sup> This law requires

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<sup>177</sup> See Rosalind Resnick, *States Enact "Stalking Laws,"* NAT'L L. J., May 11, 1992, at 27 (noting Florida Bill may not pass Constitutional muster).

<sup>178</sup> See *infra* Part II.B.

<sup>179</sup> See Comm. Amendment B to HP 1286, LD 1766, 117th Legis., 2d Reg. Sess., at 3 (Me. 1996).

<sup>180</sup> See *id.*

<sup>181</sup> See Puente, *supra* note 8 (citing Dietz).

<sup>182</sup> MRSA 17-A § 506-A states:

A person is guilty of harassment if, without reasonable cause, the person engages in course of conduct with the intent to harass, threaten or torment or threaten another person after having been forbidden to do so by any sheriff, deputy sheriff, constable, police officer or justice of the peace or by a court in a protective order issued under Title 5, section 4654 or 4655 or Title 19, section 765 or 766.

PL 1993 ch. 475, introduced as HP 1147, 116th Legis., 1st Reg. Sess., as amended by

either a direct warning or service of a protection order to the abuser before a victim can have protection under the law.<sup>183</sup>

Under the 1993 harassment law, victims who are unable to identify their stalkers cannot secure a protection order, and consequently are not protected from the actions of their abuser.<sup>184</sup> Without the protection order, or a direct warning from a law enforcement official, a victim cannot take advantage of the 1993 harassment law.<sup>185</sup>

Mere possession of protection orders does not always guarantee that the order will be enforced. According to Lt. Robert Barker, "initial court-order violations where a person doesn't *physically* harass another often don't hold up in court."<sup>186</sup> In Maine's Cumberland County, District Attorney Stephanie Anderson has made evidence of physical abuse a prerequisite for issuing a complaint in violation of protection orders.<sup>187</sup> The failure to enforce protection orders demands action from the legislature addressing the seriousness of the crime and removing road-blocks from effective prosecution.

## 2. Warrantless Arrests.

When the 1993 Maine harassment law was passed it amended the warrantless arrest statutes, adding harassment to the list of offenses on which a law enforcer can make a warrantless arrest.<sup>188</sup> This provision has been held constitutional in *Gerstein v. Pugh*,<sup>189</sup>

H-633 (Me. 1993).

<sup>183</sup> PL 1993 ch. 475, introduced as HP 1147, 116th Legis., 1st Reg. Sess., as amended by H-633 (Me. 1993).

<sup>184</sup> ME. REV. STAT. ANN. tit. 19-A, § 4001 et seq. (West 1998) The protection from abuse order requires the participation of both parties. *See id.* *See also* Interview with an anonymous State Legislator who has a stalker but cannot identify him, and thereby cannot secure a protection from harassment order, in Augusta, Me. (Oct. 17, 1995).

<sup>185</sup> *See* ME. REV. STAT. ANN. tit. 17-A, § 506-A(1) (West 1997) (explaining that without an antecedent warning an individual, even one who can document the abusers behavior, is *not* protected under the 1993 law).

<sup>186</sup> Higgins, *supra* note 59, at 10B (emphasis added).

<sup>187</sup> *See* Jason Wolfe and Alan Clendenning, Police: Harasser of Ex-girlfriend Strikes Again, PORTLAND PRESS HERALD, Oct. 11, 1995, at 1A.

<sup>188</sup> *See* 1993 Me. Legis. Serv. 475, (West) (amending ME. REV. STAT. ANN. tit. 17-A, § 15(1)(A)(12) (West 1991).

<sup>189</sup> *See* 420 U.S. 103, 113 (1975).

which upheld arrests without a warrant when there was probable cause. The court noted that "a policeman's on-the-scene assessment of probable cause provides legal justification for arresting a person suspected of a crime."<sup>190</sup>

Within the limitations of the Fourth Amendment of the United States Constitution,<sup>191</sup> warrantless arrests in limited situations will be an asset to law enforcement officers.<sup>192</sup> "It is an important option for the law to include the option for police to arrest without a warrant for this activity. Warrantless arrests have a proven track record of success in Maine in certain domestic violence cases."<sup>193</sup>

Warrantless arrests facilitate speedy intervention by law enforcement, thereby diffusing potentially volatile confrontations.<sup>194</sup> Maine is now one of seven states in which police officers are granted authority to make warrantless arrests for harassment based on probable cause.<sup>195</sup> LD 1766 compliments current warrantless arrest provisions by including stalking among the crimes for which a person can be arrested without a court-ordered warrant for arrest.<sup>196</sup>

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<sup>190</sup> *Gerstein*, 420 U.S. at 113-114 (1975).

<sup>191</sup> See U.S. CONST. amend. IV ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and *no warrants shall issue, but upon probable cause*, supported by oath or affirmation, and particularly describing the place to be searched, or the person or things to be seized.") (emphasis added).

<sup>192</sup> See *Stalking Hearings*, *supra* note 9, at (statement of Lois Reckitt, Maine's Commission on Domestic Abuse: "The one aspect of the legislation of less relevance to us [Maine Commission on Domestic Abuse] is the punishment. What we need is effective, swift intervention by the police to be facilitated.").

<sup>193</sup> *Id.* (statement of Lois Reckitt, Maine's Commission on Domestic Abuse).

<sup>194</sup> See *id.* (statement of Lois Reckitt, Maine's Commission on Domestic Abuse: "What we need is effective, swift intervention by the police to be facilitated.").

<sup>195</sup> See FLA. STAT. ANN. § 784.048(5) (6) (West 1993); 1993 Me. Legis. Serv. ch. 475 (West) (to be codified at ME. REV. STAT. ANN. tit. 17-A, § 15(1)(A)); 1993 Md. Laws ch. 205 (to be codified at MD. REV. STAT. § 455.085); 1993 N.H. Laws 173 (to be codified at N.H. REV. STAT. ANN. § 633:3-a(V)); 1993 Or. Laws 626 (to be codified at OR. REV. STAT. § 133.310); WIS. STAT. ANN. § 29.05(1m) (West 1992).

<sup>196</sup> See Committee Amendment B to HP 1286, LD 1766, 117th Legis., 2d Reg. Sess. (Me. 1996) (stating that in a drafting oversight, warrantless arrests for stalking were not included in LD 1766. This omission was noted and was remedied in the committee amendment.)



### 3. Bail Guidelines.

Horror stories abound in the press of abusers released on bail, who immediately recommence pursuit of their victims.<sup>197</sup> Maine's history with granting bail to abusers is inconsistent. Since the legislature amended Maine's harassment statute in 1993, some bail commissioners and courts have refused to grant bail.<sup>198</sup> However, many others failed to deny bail, thus leading to further contact between the victim and the perpetrator. Stalkers would often ignore their bail provisions, and re-contact the victim.<sup>199</sup>

The case of George Jordan, Jr.<sup>200</sup> stirred the Portland Press Herald to write an editorial excoriating law enforcement and the courts for their failure to enforce current protection orders.<sup>201</sup> George Jordan was charged with violating his restraining order eight times within a period of ten months. In finally refusing bail to Jordan, Justice Arthur G. Brennan wrote, "[t]he state has

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<sup>197</sup> See Puente, *supra* note 8 (citing Dietz).

<sup>198</sup> See Jason Wolfe and Alan Clendenning, *Police: Harasser of ex-girlfriend strikes again*, PORTLAND PRESS HERALD, Oct. 10, 1995, at 1A. "[Sanborn] is being held without bail for allegedly violating a probation condition that prohibits contact with the women." *Id.*; see also Jason Wolfe *Threat to kill ex-wife lands man in jail*, PORTLAND PRESS HERALD, Oct. 7, 1995, at 1A. "A judge set high bail Friday for a Portland man accused of threatening to kill his ex-wife after saying he could get away with murder just like he believes O.J. Simpson did." *Id.*

<sup>199</sup> See Interview with Maine State Representative Lloyd LeFountain, in Augusta, Me. (Rep. LeFountain represents Doris Urdman, a stalking victim in a civil case. Her abuser violated numerous protection orders before being convicted.) See also Interview with Professor Michael Mullane, Univ. of Maine School of Law, Cumberland Legal Aid Clinic (1995) (explaining that the real problem in Maine is not so much minimum sentences, but stopping abusers from continuing to assault victims after the initial arrest. Bail guidelines serve as a means to further protect victims.)

<sup>200</sup> State v. Jordan, No. CR94-1025 (Me. Sup. Ct. 1994).

<sup>201</sup> The editorial writers at the Portland Press Herald criticize the Jordan case noting:

This case makes one wonder: *What's the point in having protective orders if people aren't punished for breaking them?* Bail commissioners and judges would do well to remember that domestic violence is one of our state's most serious problems. Allowing people who ignore protective orders to walk the streets is wrong. There should be no easy personal recognizance bail for people who flout serious public safety orders issued by the courts.

*Without real enforcement, restraining orders mean little*, PORTLAND PRESS HERALD, Aug. 23, 1994, at 8A

established by clear and convincing evidence that no set of bail conditions will provide for the public safety."<sup>202</sup>

At least eleven states address bail provisions in their stalking laws.<sup>203</sup> Iowa and Illinois bail provisions illustrate how different states address concerns regarding bail.<sup>204</sup> The Iowa statute creates a presumption that stalking defendants are ineligible for bail.<sup>205</sup> The defendant, however, may overcome the presumption by demonstrating to the court that the defendant is unlikely to jeopardize the safety of another person.<sup>206</sup> The Illinois provision permits the court to deny bail where the "denial is necessary to prevent fulfillment of the threat upon which the charge is based."<sup>207</sup>

Many critics are concerned that no-bail provisions breach Eighth Amendment<sup>208</sup> protections against pretrial detention. Illinois' stalking law added provisions to Illinois' bail guidelines, which allowed the court to deny bail.<sup>209</sup> In *People v. Incandella* the Illinois Supreme Court denied the defendant's petition to the court, thereby upholding the mandatory bail provisions.<sup>210</sup> Illinois

<sup>202</sup> *Id.*

<sup>203</sup> See 1993 Ark. Acts 379 § 1(a); GA. CODE ANN. §§ 16-5-90, 16-5-91 (1996); 725 ILL. COMP. STAT. ANN. § 5/110-4 (West 1993) (formerly ILL. REV. STAT. ch. 38, para. 110-4). IOWA CODE § 811.1(3) (1993); 1993 Md. Laws ch. 205 (to be codified at MD. CODE ANN. art. 27, § 121B) (stating that any third persons can be included); MONT. CODE ANN. § 45-5-220 (1997); OHIO REV. CODE ANN. §2903.211-213 (Banks-Baldwin 1997); 1993 Tex. Sess. Law Serv. 10 (West) (to be codified at TEX. PENAL CODE. ANN. § 42.07(a)(2)) (West 1994); VT. STAT. ANN. tit. 13, §§ 1061-1063 (1998); W. VA. CODE § 61-2-9a (1993) 61-2-9a to 61-2-9k.

<sup>204</sup> See Iowa Code § 811.1(3)(1993). See also, Salame, *supra* note 25, at 4.

<sup>205</sup> See Iowa Code § 811.1(3)(1993).

<sup>206</sup> See *id.*

<sup>207</sup> Salame, *supra* note 25, at 4.

<sup>208</sup> U.S. CONST. amend. VIII, ("Excessive bail shall not be required . . ."); see also Me. CONST. art. I, § 9 ("excessive bail shall not be required") and article I, § 10 ("for any of the crimes which now or have been denominated capital offenses since the adoption of the Constitution.")

<sup>209</sup> See Le Fountain and Mullane Interviews, *supra* note 199. See also ME. REV. STAT. ANN. tit. 15, § 1003 (West 1997) and Me. CONST., art. 1, § 10 ("No person before conviction shall be bailable for any of the crimes which now are, or have been denominated capital offenses since the adoption of the Constitution, when the proof is evident the presumption is great, whatever the punishment of the crimes may be.")

<sup>210</sup> See *People v. Incandella*, 151 Ill. 2d 571, 616 N.E.2d 341 (1993) (denied without opinion).

and Maine share common bail guidelines<sup>211</sup> which say that all persons shall be eligible for bail except those accused of capital crimes. Illinois goes further, however, including specific crimes in addition to capital crimes.

Like *Incandella*, *United States v. Salerno*,<sup>212</sup> refutes the argument against bail guidelines.<sup>213</sup> Chief Justice Rehnquist, writing for the majority, upheld the constitutionality of mandatory bail guidelines, noting that the government has a "legitimate and compelling" reason to detain the defendant when the "government's interest [is] in preventing crime" and protecting the community from an "identified and articulable threat."<sup>214</sup>

However, subsequent Law Court decisions in Maine, while establishing the constitutionality of no-bail provisions for existing capital offenses, may prevent the creation of additional non-capital, non-bailable offenses. In *Fredette v. State of Maine*<sup>215</sup> the court held that there was no absolute right to bail for a capital offense. However, the court limited its decision by explaining how a capital, non-bailable offense was derived.<sup>216</sup> Following the *Fredette* reasoning, unless stalking is made a capital offense by amendment to the Constitution, it must remain bailable.<sup>217</sup> While it is possible that a law similar to that of Illinois' would withstand constitutional scrutiny in Maine, bail guidelines were left out of the legislative proposal. The compelling reasons to have bail guidelines, consistency between courts, protection of victims and the public, and deterrence of future abuse, are outweighed by other considerations.

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<sup>211</sup> See Me. CONST., art. I §10, referenced at ME. REV. STAT. ANN., tit. 15, § 1003 ("No person before conviction shall be bailable for any of the crimes which now are, or have been denominated capital offenses.").

<sup>212</sup> *United States v. Salerno*, 107 S.Ct. 2095, 2103 (1987).

<sup>213</sup> See *id.* (quoting *United States v. Melendez-Carrion*, 790 F.2d 984, 1000-1001 (1986) (opinion of Newman, J.) (arguing against bail provisions, the Melendez-Carrion court notes that "our criminal law holds persons accountable for past actions not anticipated future actions.")).

<sup>214</sup> *United States v. Salerno*, 107 S.Ct. 2095, 2103 (1987).

<sup>215</sup> 428 A.2d 395 (1981).

<sup>216</sup> See *id.*, at 406 (emphasis in original). "After the 1838 amendment of Article I, §10, such 'bailable offenses' were all offenses *other* than those currently punishable by death or those 'denominated' as so punishable at any time 'since the adoption of the Constitution.'" *Id.*

<sup>217</sup> Telephone Interview with Charles Leadbetter, Assistant Attorney General, Director of the Criminal Division, in Augusta, Me. (May 10, 1996).

During negotiations with the Maine Civil Liberties Union, it was agreed that bail guidelines had a potential for use as a bargaining chip for prosecutors.<sup>218</sup> Prosecutors have the power of determining which charge to bring against defendants. Bringing a charge with a mandatory bail guideline might further augment prosecutors' negotiating position.<sup>219</sup> The legislation already includes mandatory minimum sentences,<sup>220</sup> which provides a similar negotiating strength for prosecutors.

Current Maine bail guidelines require courts to consider "[t]he nature of the crime charged" and the "defendant's criminal history."<sup>221</sup> Guidelines allow the court to order the accused to avoid all contact with the victim.<sup>222</sup> The major problem now in Maine is not in establishing guidelines, but rather their enforcement.

Maine courts can, and have, imposed meaningful bail conditions.<sup>223</sup> However, in order for those conditions to be effectively enforced, law enforcement must have access to that information in the field.<sup>224</sup> With the establishment of a state-wide computer system linking all the courts, prosecutors and law enforcement will have immediate access to an individuals' backgrounds, and the courts will have an enhanced ability to determine the likelihood of violation of bail orders. This computer network will enhance law enforcement's ability to protect victims.

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<sup>218</sup> Interview with Sally Sutton, Executive Director, Maine Civil Liberties Union, in Augusta, Me. (Feb. 1996).

<sup>219</sup> *See id.*

<sup>220</sup> *See infra* Part II.F.

<sup>221</sup> ME. REV. STAT. ANN. tit. 15, § 1026, sub-§ 4(A), (C) (7).

<sup>222</sup> ME. REV. STAT. ANN. tit. 15, § 1026, sub-§ 3(A) (5). *See also* Telephone Interview with Susan Lawler, Maine Family Crisis Shelter (Feb. 6, 1996) ("the court should not require a blanket no-contact provision.") Lawler suggested that the courts had effectively addressed the issue of no-contact provisions. *See id.*

<sup>223</sup> *See, supra* note 198.

<sup>224</sup> *See infra* Part II.E.

### E. Enhanced Intra and Inter-State Community

#### 1. Establishing a Statewide Computer System.

Part of establishing an effective law is providing law enforcement with the tools necessary to enforce that law. For example, while the 1993 harassment law allows for warrantless arrests for violators of protection orders, it is a reality in Maine that a police officer intervening in a domestic situation is almost never fully aware of existing protection orders or previous violations of protection orders by an abuser.<sup>225</sup>

Because there is no state-wide computer system currently in place, the State Bureau of Investigation cannot track convictions or document the utility of the 1993 stalking law.<sup>226</sup> As a result, analysis of the effectiveness of the 1993 law must be done on the basis of anecdotal evidence and surveys of law enforcement and domestic violence professionals.<sup>227</sup>

#### 2. Funding Computerization.

Convincing the legislature to pass a bill is a difficult task that becomes much more difficult if it requires funding. More often, legislators mandate that the responsible party meet a specific standard and absorb the cost of implementing the law.<sup>228</sup> Funding statewide computerization of criminal records and bail orders has

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<sup>225</sup> Telephone Interview with Dave Giampetruzzi, Grant Program Administrator, Maine Criminal Justice Academy (May 5, 1996). Law enforcement officials are placed in danger by having to enter potentially volatile situations with no access to a criminal history. *See id.* "[Police officers] enter a situation that is both complex and volatile, and they are sometimes unaware of the long and difficult history associated with the case." DEP'T OF PUBLIC ADMINISTRATION, UNIVERSITY OF MAINE, MAINE LAW ENFORCEMENT AT A CROSSROADS: EXPLORING VIEW'S OF MAINE'S LAW ENFORCEMENT COMMUNITY ON CRIME, SAFETY, AND VIOLENCE 2 (1995). This results in ineffective law enforcement and prosecution. *See id.*

<sup>226</sup> *See* Giampetruzzi, *supra* note 225.

<sup>227</sup> *See id.* While such anecdotal evidence is compelling, it is undeniable that statistical information reflecting the magnitude of the problem and the efficacy of the law would be preferable. *See id.*

<sup>228</sup> *See* Letter from Chief Justice Daniel Wathen, Maine Supreme Judicial Court, to author (May 10, 1996) (on file with author). "[I]t is rare that a legislator identifies an additional responsibility and then undertakes to provide the resources to address that responsibility." *Id.*

been a longtime objective of the Department of Public Safety and the Maine Supreme Judicial Court.<sup>229</sup> Funding sources for computerization include such diverse sources as grant awards and tithing by domestic violence advocacy groups. The balance yet to be funded for the computer system was estimated by Dave Giampetruzzi, Grant Program Administrator, Maine Criminal Justice Academy, to be \$245,000.<sup>230</sup>

In order to fund that shortfall, LD 1766 requires a 2% surcharge on all criminal fines dedicating that revenue to the computer system until it is funded.<sup>231</sup> The dedicated revenue source was the sole issue of contention, dividing the Criminal Justice Committee, which considered the bill, largely along partisan lines.<sup>232</sup> Ultimately, the funding was passed.

### 3. Reciprocity Agreements With Other States.

The National Violence Against Women Act requires states to honor protection orders issued by other states.<sup>233</sup> Maine adopted legislation honoring that requirement,<sup>234</sup> but set-up bureaucratic hurdles which resulted in the protection orders never being filed in Maine.

For example, although Ann Marie Dempsey Rice successfully received a protection order in Florida, that order was not

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<sup>229</sup> See *supra* note 198. See also CHIEF JUSTICE DANIEL WATHEN, MAINE SUPREME JUDICIAL COURT, ANNUAL STATE OF THE JUDICIARY BEFORE THE MAINE LEGISLATURE (1995) (identifying statewide computer system as top priority of the judiciary).

<sup>230</sup> See Giampetruzzi, *supra* note 225.

<sup>231</sup> HP 1286, LD 1766, 117th Legis., 2d Reg. Sess. (Me. 1996) (p. 2, lines 29-50 and p.1, lines 5-50 and p. 2 lines 1-26). Amended by Committee Amendment B to HP 1286, LD 1766, 117th Legis., 2d Reg. Sess. (Me. 1996), at 1-2 (noting the funding mechanism is sunsetted for 2001 because sunsets must be according to a date certain and *not* an event, such as fully funding the computer system.)

<sup>232</sup> Committee Amendment A to HP 1286, LD 1766, 117th Legis., 2d Reg. Sess. (Me. 1996) (stating that the Republican report does not have the funding for the computer system). See also Committee Amendment B to HP 1286, LD 1766, 117th Legis., 2d Reg. Sess. (Me. 1996). (explaining that the amendment includes the funding for the computer system and was presented by all the Committee Democrats and one Republican Member. This amendment was eventually accepted by both bodies of the Maine Legislature.)

<sup>233</sup> Violence Against Women Act, Pub. L. No. 103-322, 108 Stat. 1796.

<sup>234</sup> ME. REV. STAT. ANN., tit. 15, § 321, sub-§6 (West 1997), as enacted by PL 1983, c.619.

reciprocally accepted in Maine because of a failure to submit a fee.<sup>235</sup> Dempsey Rice was given no notice of the failure to serve Beyers with the protection order in Maine.<sup>236</sup> Given that she had no notice of the failure, Dempsey Rice could not remedy the shortcoming, and eventually she was confronted by Beyers.<sup>237</sup> Due to the fact that the appropriate court protection orders did not reach Beyers, he could not be prosecuted under the amendment to the 1993 harassment law.<sup>238</sup>

In order to avoid bureaucratic confusion, LD 1766 grants the victim the authority to submit a "copy of the protection order to a Superior Court or District Court clerk."<sup>239</sup> This order will then be entered into the statewide computer system and will be fully honored by all Maine courts and law enforcement.<sup>240</sup>

Other reciprocity matters in the stalking bill concerned violation of protection orders in other states. The committee amendment included language ensuring accountability for violation of protection orders in other states by modeling the language used in Maine which requires consideration of previous violations of drunken driving laws in other states.<sup>241</sup> As a result, violations of protection orders in other states will be considered when prosecuting subsequent violations in Maine.<sup>242</sup>

### F. Sentencing

Nearly all who spoke at the 1993 hearing in favor of enacting stalking legislation agreed that the imposition of serious criminal penalties for stalkers could discourage deadly acts of violence from taking place. Yet, three years later, Steven Beyers' sentence under the 1993 stalking law entailed no jail time and no mandatory psychiatric care.<sup>243</sup> While it is the role of the legislature

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<sup>235</sup> See *Beyers*, *supra* note 14.

<sup>236</sup> See *id.*

<sup>237</sup> See *id.*

<sup>238</sup> See *supra* Part I.D.

<sup>239</sup> Committee Amendment B to HP 1286, LD 1766, 117th Legis., 2d Reg. Sess. (Me. 1996) at 4.

<sup>240</sup> New federal law prohibits stalking over state lines. See 18 U.S.C. § 2661 (1996).

<sup>241</sup> ME. REV. STAT. ANN. tit.29-A, § 2411 (West 1996).

<sup>242</sup> See Committee Amendment B to HP 1286, *supra* note 125.

<sup>243</sup> See *supra* Part I.D.

to protect the lives of all citizens by enacting a tougher and more comprehensive piece of stalking legislation, stalking is still being given little credence by prosecutors and judges<sup>244</sup>

### 1. Mandatory Minimum Sentences.

In written testimony before the Joint Standing Committee on the Judiciary, police Sergeant John B. Rogers endorsed increasing the penalty for stalkers to a Class C crime.<sup>245</sup> He noted in his testimony, "I *do like* the added section of making stalking a Class C felony."<sup>246</sup> Other police officers concurred with Rogers that an important deterrent to stalking must include stiffer penalties.<sup>247</sup>

States such as Massachusetts impose mandatory minimum sentences for stalking violations.<sup>248</sup> Many states classify a subsequent stalking offense within a specific time period as a

<sup>244</sup> See *id.* "[S]talking statutes are only as effective as the sanctions they impose upon the criminal. The criminal behind bars poses no immediate physical threat to the stalking victim. The goal of maximum protection for stalking victims dictates the need for rigorous sentencing and criminal penalties. Statutes containing mandatory minimum sentences guarantee that convicted stalkers will go to jail." Salame, *supra* note 25, at 7.

<sup>245</sup> A Class C Crime is punishable up to five years in prison. See ME. REV. STAT. ANN. tit. 17-A, § 1252(2)(c) (West 1983).

<sup>246</sup> *Stalking Hearings*, *supra* note 9 (written statement of Sergeant John B. Rogers, Orono Police Dep't) (emphasis added).

<sup>247</sup> See DEP'T OF PUB. ADMIN., UNIV. OF MAINE, MAINE LAW ENFORCEMENT AT A CROSSROADS: EXPLORING VIEW'S OF MAINE'S LAW ENFORCEMENT COMMUNITY ON CRIME, SAFETY, AND VIOLENCE 2 (1995). Police officers were not alone in calling for more severe penalties for stalkers, an editorial in the Portland Press Herald concurred with the police:

No body of lawmakers can legislate obsession out of existence . . . [But] society needs to say, through serious penalties, that stalking will not be tolerated, whether it involves former marriage partners, ex-boyfriends and girlfriends or total strangers. Society needs to say, *through serious penalties*, that stalking will not be tolerated, whether it involves former marriage partners, ex-boyfriends and girlfriends or total strangers. Nothing less can keep potential victims safe.

*Terror of stalking deserves to be treated as a serious crime*, PORTLAND PRESS HERALD, Apr. 16, 1994 (emphasis added).

<sup>248</sup> See MASS. GEN. LAWS ch. 265, § 43 (1992). Massachusetts Attorney General, Scott Harshbarger testified that these mandatory penalties send a strong signal to abusers and will serve to better protect victims. See *An Act Regarding Stalking: Hearings on Senate Bill 126 Before the Joint Comm. on Criminal Justice*, at 3-4 (Mar. 30, 1992) (testimony of Scott Harshbarger, Massachusetts Attorney General).



felony.<sup>249</sup> Only five states classify a first offense as a felony.<sup>250</sup> LD 1766 establishes minimum mandatory penalties, making second offenses, or any offense with use of a dangerous weapon a felony.<sup>251</sup>

## 2. Mandatory Certified Abuser Program.

In addition to mandatory minimum sentencing, Maine's new anti-stalking legislation recognizes a need for a mandatory certified abuser education program. Individuals convicted of violating the stalking law will be required to "attend an abuser education program approved by the court."<sup>252</sup> Mandatory attendance at certified abuser programs has precedence in California, Hawaii, Massachusetts, Michigan, and Minnesota.<sup>253</sup>

*Emerge*, a program based in Boston, and the Domestic Abuse Intervention Project, based in Duluth Minnesota, serve as national models for "abuser education programs."<sup>254</sup> These programs teach batterers to control future conduct by relearning appropriate social behaviors.<sup>255</sup> While these programs are not always effective in curing a chronic batterer, thirty-five percent of men who are

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<sup>249</sup> See Salame, *supra* note 25, at 3 (notes that "at least 29 states" consider stalking a felony).

<sup>250</sup> See *Michigan Gets Tough on Stalkers*, BOSTON GLOBE, Dec. 12, 1992, at A3. A 1990 California law and a 1992 Michigan law serve as state models for "getting tough" on stalking. See MICH. COMP. LAWS § 750.411 (1992). The Michigan law punishes repeat offenders with up to five years in prison and \$10,000 in fines. *Id.*

<sup>251</sup> First offenses are punished as "a Class D crime for which the court shall impose a minimum sentence of imprisonment of at least 60 days, of which 48 hours may not be suspended." See HP 1286, LD 1766, 117th Legis., 2nd Reg. Sess. (Me. 1996) lines 29-31. Second offenses or violations of protection orders are a Class C crime with a minimum sentence of "6 months, of which 14 days may not be suspended." *Id.*, at lines 32-41. All offenses in Maine committed with a dangerous weapon are further enhanced by one class. See ME. REV. STAT. ANN. tit.17-A, § 1252, sub-§4, West 1983). These penalties send the message that stalking and domestic violence are unacceptable behavior.

*Id.*

<sup>252</sup> Committee Amendment B to HP 1286, LD 1766, 117th Legis., 2d Reg. Sess. (Me. 1996), at 3.

<sup>253</sup> See Salame, *supra* note 25, at 3. These states "have added provisions that may require convicted stalkers to participate in counseling programs." *Id.*

<sup>254</sup> See Shoshana Hoose, *Education Programs for Domestic Abusers Grow*, PORTLAND PRESS HERALD, Oct. 29, 1995, at 12B.

<sup>255</sup> See *id.*

court-referred terminate their abusive behavior.<sup>256</sup> Clearly, education programs are not perfect, but they do represent a starting place and have enough of an impact to warrant their use in Maine.<sup>257</sup>

### G. *Constitutional Considerations*

Critics of stalking laws often criticize the statutes on constitutional grounds including vagueness, overbreadth,<sup>258</sup> Eighth Amendment challenges to no-bail provisions,<sup>259</sup> and Fourth Amendment challenges to warrantless arrests.<sup>260</sup>

In order to protect an individual's First Amendment right to freedom of expression, the U.S. Supreme Court has ruled that a statute may not be overly broad or vague.<sup>261</sup> A vague statute is one which fails to provide explicit standards for enforcement.<sup>262</sup> "A statute may not forbid conduct in terms so vague that people of common intelligence would be relegated to different guesses about its meaning."<sup>263</sup> In *Grayned v. City of Rockford*,<sup>264</sup> the United States Supreme Court provided a two-prong test for vagueness: (1) can ordinary citizens understand the scope of the law, and (2) does the law contain detailed standards to preclude arbitrary or capricious enforcement?<sup>265</sup>

LD 1766 is sufficiently precise in that it defines terms such as "course of conduct," "repeatedly," and "immediate family." Under these definitions, Maine's stalking legislation not violate constitutional protections.<sup>266</sup> Furthermore, stalking legislation,

<sup>256</sup> See *id.*

<sup>257</sup> See PL 405, introduced as HP 808 117th Legis., 2nd Reg. Sess. (Me. 1996). Public Law 405, directs the state to develop certified abusers programs which will effectively help end the cycle of abuse. See *id.*

<sup>258</sup> See *supra* Part II.C.2 and 4.d.

<sup>259</sup> See *supra* Part II.D.2.

<sup>260</sup> See *supra* Part II.D.1.

<sup>261</sup> See *Schad v. Arizona*, 111 S.Ct. 2491, 2497 (1991) (citing *Laznetta v. New Jersey*, 306 U.S. 451, 453 (1939)).

<sup>262</sup> See *id.*

<sup>263</sup> *Id.*

<sup>264</sup> 408 U.S. 104 (1972).

<sup>265</sup> See *id.*

<sup>266</sup> See *People v. Heilman*, 25 Cal. App. 4th 391, 30 Cal. Rptr.2d 422, 426-27 (1994) (stating that the court rejected a vagueness challenge, noting that terms like

like the Racketeer Influenced and Corrupt Organization Act (RICO),<sup>267</sup> penalizes a pattern of behavior. RICO has not been deemed unconstitutionally vague by the U.S. Supreme Court, although it has had opportunities to do so.<sup>268</sup>

No-bail provisions, while probably safe from Eighth Amendment challenges,<sup>269</sup> may violate Article I §10 of Maine's Constitution.<sup>270</sup> As a result, they were omitted from the legislative proposal.

Finally, warrantless arrests may raise Fourth Amendment concerns. However, *Gerstein v. Pugh*<sup>271</sup> upheld arrests without a warrant when there is probable cause. Warrantless arrests have been used effectively in Maine without falling to a constitutional challenge.<sup>272</sup>

Enacting a law which fails to meet constitutional challenges is of no use at all. Accordingly, LD 1766 was carefully designed to withstand those challenges by modeling language on successful laws and by following legal precedent. This legislation will prove not only constitutional, but useful.

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"repeatedly" are sufficiently precise so as to adequately give notice to the public); *Pallas v. State*, 654 So.2d 127, (Fla. 1995) (court rejected challenge that the statute was vague and overly broad because the language was based on a "reasonable person standard" and that the standard to protect speech combined with conduct is lower than that for pure speech); *Woolfolk v. Commonwealth* (Fitzpatrick) No. 1173-93-2, Louisa County Cir. Ct. (Aug. 23, 1994) (claiming the statute was not found to be unconstitutionally vague and overbroad because it created a "reasonable person standard" and therefore avoids an ambiguous, subjective standard.)

<sup>267</sup> See 18 U.S.C. §§ 1961-1968 (1970).

<sup>268</sup> See *HJ, Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 236-237 (1989); see also *Sedima SPRL v. Imrex Co.*, 473 US 479, 496 n.14 (1985).

<sup>269</sup> See *People v. Incandella*, 151 Ill. 2d. 571, 616 N.E.2d. 341 (1993) (appeal denied without opinion).

<sup>270</sup> See *Fredette v. State of Maine*, 428 A.2d 395, 402 (Me. 1981). The court held that there was no absolute right to bail for a capital offense. *Id.* However, the court limited capital, non-bailable offenses to those "denominated" as so punishable at any time "since the adoption of the Constitution." *Id.* Consequently, to make a crime subject to a no-bail provision, the Legislature would probably have to amend the Constitution and define stalking as a capital offense. See *id.*

<sup>271</sup> 420 U.S. 103, 113 (1975).

<sup>272</sup> ME. REV. STAT. ANN. tit. 17, § 15 (including such crimes as murder, assault while hunting, theft and harassment).

### *III. Conclusion*

Maine has now joined every state in the country by enacting LD 1766.<sup>273</sup> Maine law now recognizes stalking itself as a crime. The law includes “family members” in the definition of stalking and prohibits stalking through the use of computer technology such as computers. It provides police officers with several important enforcement tools including warrantless arrests and immediate access to criminal records through a statewide computer system. Victims may file protection orders in other states, and they will be given full weight, as if they were issued in Maine. Finally, abusers will be punished by minimum, mandatory sentences and will be required to attend a certified abuser program.

Domestic violence, Maine’s most substantial crime problem, will be hindered. Victims will be able to leave violent relationships, knowing that a law exists to protect them during this difficult transition period. However, Maine’s stalking law will not be effective unless the courts, law enforcement, victim advocates, and victims are adequately informed. Education will complete the journey, and will help protect lives.

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<sup>273</sup> PL 668, introduced as HP 1286, 117<sup>th</sup> Legis., 2<sup>nd</sup> Reg. Sess. (Me. 1996), as amended by Committee Amendment B to HP 1286.

