



# COMMONWEALTH OF VIRGINIA

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August 27, 2009

Colonel W.S. (Steve) Flaherty  
Superintendent, Department of State Police  
P.O. Box 27472  
Richmond, Virginia 23261-7472

Dear Colonel Flaherty:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## **Issue Presented**

You ask whether “offensive conduct” includes the acts of harassing, stalking, threatening, or placing a person in reasonable fear of bodily injury.

## **Response**

It is my opinion that “offensive conduct” includes the acts of harassing, stalking, threatening, or placing a person in reasonable fear of bodily injury.

## **Applicable Law and Discussion**

The Department of State Police maintains a computerized Protective Order Registry which may be shared with law enforcement agencies through the Virginia Criminal Information Network (“VCIN”).<sup>1</sup> VCIN includes a “Brady Indicator Field” for subjects who are prohibited from “harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child” by way of a judicial protective order.<sup>2</sup>

Section 16.1-253(A)(1) authorizes juvenile and domestic relations district courts to issue child protective orders that require persons “[t]o abstain from offensive conduct against the child, a family or household member of the child or any person to whom custody of the child is awarded.”<sup>3</sup> The General Assembly has not defined “offensive conduct,” nor has a Virginia court interpreted its meaning. Thus, the

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<sup>1</sup> See VA. CODE ANN. § 19.2-387.1(A) (2008); see also VA. CODE ANN. § 52-45 (2005) (requiring Superintendent to establish and maintain Registry regarding outstanding, valid protective orders).

<sup>2</sup> 18 U.S.C.S. § 922(g)(8)(B) (LexisNexis 2005).

<sup>3</sup> VA. CODE ANN. § 16.1-253(A)(1) (Supp. 2009).

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plain and ordinary meaning of the statutory term must be considered.<sup>4</sup> “Offensive” means “[u]npleasant or disagreeable to the senses; obnoxious” or “[c]ausing displeasure ... repugnant to the prevailing sense of what is decent or moral.”<sup>5</sup> “Conduct” may be defined as “[p]ersonal behavior, whether by action or inaction; the manner in which a person behaves.”<sup>6</sup> These are broad terms that encompass a wide variety of behavior. It is my opinion that harassing, stalking, threatening, or engaging in other conduct that would place a person or child in reasonable fear of bodily injury would constitute “offensive conduct.”

### Conclusion

Accordingly, it is my opinion that absent a judicial or statutory definition, “offensive conduct” includes the acts of harassing, stalking, threatening, or placing a person in reasonable fear of bodily injury.

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, appearing to read 'W C Mims', with a stylized flourish at the end.

William C. Mims

3:1425; 1:941/09-048

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<sup>4</sup>Winborne v. Va. Lottery, 278 Va. 142, 148, 677 S.E.2d 304, 306 (2009).

<sup>5</sup>BLACK'S LAW DICTIONARY 1188 (9th ed. 2009).

<sup>6</sup>*Id.* at 336; *see also id.* at 337 (defining “wrongful conduct” as “an act that unjustly infringes on another’s rights”; defining “disorderly conduct” as “[b]ehavior that tends to disturb the public peace, offend public morals, or undermine public safety”).