



National Institute of Justice

R e s e a r c h R e p o r t

Domestic Violence, Stalking, and Antistalking Legislation

*An Annual Report to Congress under the Violence Against
Women Act*

The studies reported here were mandated by Title IV, the Violence Against Women Act, of the Violent Crime Control and Law Enforcement Act of 1994. The enabling legislation is:

**SUBTITLE F—NATIONAL STALKER AND DOMESTIC VIOLENCE REDUCTION
SECTION 40610, REPORT TO CONGRESS, WHICH STATES THE FOLLOWING:**

The Attorney General shall submit to the Congress an annual report, beginning one year after the date of the enactment of the Act, that provides information concerning the incidence of stalking and domestic violence, and evaluates the effectiveness of antistalking efforts and legislation.

Domestic Violence, Stalking, and Antistalking Legislation

**An Annual Report to Congress under the
Violence Against Women Act**

National Institute of Justice

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Director

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Foreword

Passage of the Violence Against Women Act (VAWA), Title IV of the Violent Crime Control and Enforcement Act of 1994 (Public Law 103-322), marked a major change in our national response to crimes such as domestic violence, sexual assault, and stalking. The Act fosters collaboration among law enforcement, health care providers, nonprofit service groups, community leaders, and the private sector. In addition, the Act provides a substantial commitment of Federal resources for police, prosecutors, prevention programs, and victim service initiatives in cases involving these crimes. Taken together, these provisions are helping communities throughout our country to develop a seamless system to respond to these crimes.

An important provision of the VAWA directs the Attorney General to submit annual reports to Congress providing information concerning the incidence of stalking and the effectiveness of State antistalking efforts and legislation. While there is increased awareness of the problem of stalking, both in the private and public sectors, there is much that we do not know. Although stalking has entered the public consciousness

through some highly publicized cases, stalking affects many people every day, crossing all racial, social, religious, ethnic, and economic lines. We know that stalking is a crime of terror, power, and control. But we do not always know how to prevent or respond to this complex crime. To meet the challenge of formulating an effective criminal justice strategy for combatting stalking, we must increase our knowledge about stalkers, intervention techniques, prevention efforts and law enforcement policies and practice.

The Department of Justice is committed to taking a hard look at what is being done nationally to address the crime of stalking. As a former victim of stalking and as the Director of the Violence Against Women Office, I support and applaud these efforts. We have begun a process that may one day bring greater peace and harmony into the lives of so many innocent victims and their loved ones.

Bonnie J. Campbell
Director
Violence Against Women Office

Preface

The Violence Against Women Act, Title VI of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322), represents a significant turning point in our Nation's efforts to diminish the violence that undermines the security, health, and hopes of many women. This legislation reflects the recognition that violence against women is criminal, with far-reaching harmful consequences for families, children, and society.

In response to the Act, the National Institute of Justice (NIJ) is carrying out an extensive research and evaluation program to develop knowledge about effective responses to violence against women. One element of the program involves specific studies and reports mandated by the legislation.

This report on domestic violence, stalking, and antistalking legislation responds to Subtitle F of the Violence Against Women Act, which directs the Attorney General to submit an annual report on these matters.

Because of its role in supporting the development of the Model State Antistalking Code, NIJ was assigned

responsibility for this report. As yet, little hard data exist on the incidence of stalking and its relationship to domestic violence. State antistalking laws have only recently been enacted, and the extent to which the laws are being used, alone or with other statutes, has not yet been measured. This first annual report, therefore, assembles existing information available on these issues and includes citations for existing State statutes and constitutional challenges as of January 1996.

NIJ is supporting an exploratory study of the crime of stalking from the perspective of the victim. Other NIJ research, which is examining the broader issues of family violence and violence against women, will contribute data relating to these crimes and information useful for intervention efforts.

Jeremy Travis
Director
National Institute of Justice

Introduction

Stalking is a distinctive form of criminal activity composed of a series of actions (rather than a single act) that taken individually might constitute legal behavior. For example, sending flowers, writing love notes, and waiting for someone outside her place of work are actions that, on their own, are not criminal. When these actions are coupled with an intent to instill fear or injury, however, they may constitute a pattern of behavior that is illegal.

In domestic situations, stalking typically occurs after the woman has attempted to leave the relationship. The man, unable to accept rejection and unwilling to let the woman leave, begins to follow, threaten, harass, or assault her. The term “separation assault” has been coined to describe this behavior.¹

The first State antistalking laws were passed in 1990. Before their passage, police and prosecutors often felt hamstrung in their efforts to assist a woman who had been threatened by a stalker. (See the sidebar on the next page, “Laws Change the Response to Stalking.”) There were no applicable laws to protect a person from this trauma until the perpetrator actually “did something” to her. Today, 49 States and the District of Columbia have legislation that addresses the problem of stalking; and in the 19 States where the laws have been challenged on constitutional grounds, they have been upheld with only three exceptions. (See Appendix A for constitutional challenges.)

Increased awareness of the dimensions and nature of the problem of violence against women, including stalking and its personal and social costs, culminated last year in passage of the Violence Against Women Act, Title IV of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322, referred to as the 1994 Crime Act).² This report to Congress responds to Subtitle F of the Act, which directs the Attorney General to submit an annual report to Congress providing information concerning the incidence of stalking and domestic violence and the effectiveness of State antistalking efforts and legislation.

This first annual report was compiled primarily from a review of published literature about stalking and violence against women (particularly studies and reports commissioned by the U.S. Department of Justice), discussions with researchers and practitioners involved in reducing violence against women; and case law analysis of antistalking laws. It presents currently available information about the crime of stalking as it occurs between domestic partners, strangers, acquaintances, and coworkers, with special emphasis on stalking as it relates to domestic violence.

Stalking and domestic violence are gender-neutral crimes (stalkers and batterers can be either male or female); for consistency, however, this report refers to stalkers and batterers as men and victims as women.

Scope of This Report

Chapter 1 focuses primarily on stalking, briefly discussing the history of the stalking issue and the passage of antistalking legislation. Chapter 2 examines stalking in more detail, especially as it occurs in domestic violence situations, and reviews information currently available on antistalking legislation, the characteristics of stalking, constitutional challenges to the legislation, and anecdotal information about the impact of the laws. Chapter 3 discusses interventions for domestic violence and stalking, including community policing, arrest and protection orders, collaborative court approaches and other multidisciplinary techniques, as well as threat assessment procedures. Chapter 4 concludes the report with an overview of research and programs designed to increase our understanding about crimes against women, including stalking, and ways to prevent and respond to them.

Appendix A, which was prepared by the Justice Department, provides stalking code citations by State as well as an analysis of constitutional challenges to the statutes as of January 1996. Appendixes B and C, which are reprinted from the National Criminal Justice

Association's *Project to Develop a Model Antistalking Code for States*, contain the model antistalking code and recommendations for further action prepared by members of the model code resource group.³ Appendix D provides a selected bibliography of materials focusing on violence against women. Appendix E contains charts profiling statutory threat and intent requirements.

Two key related documents provide a more detailed description of the development of the model antistalking code, policy issues related to antistalking legislation, and information on State antistalking statutes: *Project to Develop a Model Antistalking Code for States* (1993) and *Regional Seminar Series on Implementing Antistalking Codes* (1996), published by the National Institute of Justice and the Bureau of Justice Assistance, respectively.⁴

Laws Change the Response to Stalking

Antistalking laws provide law enforcement officials with a mechanism for intervening before violence occurs. The changes in the response are reflected in these two cases:

1990

In her testimony before the Senate Judiciary Committee, a stalking victim, Jane McAllister, recounted how her chance encounter with a minor acquaintance in 1990 became a nightmare. The man began following and telephoning her repeatedly; he wrote bizarre notes, came to her house, offered her money, and often told her he loved her and wanted to marry her. His behavior escalated into a hostile pursuit. On one occasion when she was on foot, he followed her in a truck and shouted obscenities at her. Another time, he said he would wait for her to die and then dig up her body so he could have her.

According to McAllister, "The police were not insensitive, but they were stymied. The man violated almost every area of my life, but had broken no law. The police worked with me to prevent an assault, but, in the final analysis, said there was nothing they could do until an assault occurred.

"I changed my routine, I lived in constant fear of an attack... It was clear that this man, who was apparently crazy, was not going to let up and that the authorities were powerless to stop him. Though he was free to move about, I was living in a state of siege."

To help herself and other stalking victims cope with the experience of stalking, McAllister formed a support group. Of the original members of the group, all eventually gained some measure of relief: one stalker committed suicide and one was incarcerated for crimes unrelated to stalking. The remaining three stalkers tempered their behavior after their States passed antistalking legislation.*

1993

John and Edie Pallas' marriage was characterized by violence; in one episode, John beat Edie so severely he broke her jaw. When they decided to divorce, Edie moved in with her parents, but John, angered by Edie's decision to leave, began telephoning her at her parents' home and delivering threatening messages. On one Sunday in January 1993, he began calling at 7:00 a.m. and continued calling throughout the day, forcing Edie's parents to take the phone off the hook several times. When he did get through he cursed and threatened Edie's parents.

Under Florida's antistalking law, John Pallas was arrested, charged with aggravated stalking, and convicted.

Florida's law states in part that "any person who willfully, maliciously, and repeatedly follows or harasses another person, and makes a credible threat with the intent to place that person in reasonable fear of death or bodily injury, commits the offense of aggravated stalking." The law further states that a person engages in harassment by "engaging in conduct directed at a specific person that causes substantial emotional distress..."

On appeal, John Pallas claimed that Florida's antistalking law was vague and overly broad. However, the appellate court upheld the Florida statute and found that he had indeed unlawfully harassed and threatened his estranged wife.**

*McAllister, Jane, testimony before the Judiciary Committee, U.S. Senate, "Antistalking Legislation," September 29, 1992, p. 51.

**Pallas v. State 636 So. 2nd 1358 (Fla. Dist. Ct. App. 1994).

Chapter 1

Development of Antistalking Laws

Stalking first garnered widespread public concern when a popular, young actress named Rebecca Shaeffer was shot to death in 1989 by an obsessed fan who had stalked her for 2 years. The case galvanized national attention to this serious problem. Radio and television talk shows, the mass market print media, and television news magazines all ran stories about stalking, its potentially deadly consequences, the terrifying helplessness victims experienced, and celebrities who had been stalked.

Although it was the death of a celebrity victim that first attracted media attention, stalking victims are women from all walks of life, and most are trying to end a relationship with a man, often one who has been abusive. Some advocates of battered women believe that up to 80 percent of stalking cases occur in a domestic context.⁵ Currently, there is little hard data, however, on how many stalkers and victims are former intimates, how many murdered women were stalked beforehand, or how many stalking incidents overlap with domestic violence.

Creating a Model Antistalking Code

The National Institute of Justice (NIJ) began investigating stalking issues with the enactment of the U.S. Departments of Commerce, Justice, State, the Judiciary and Related Agencies Appropriation Act for Fiscal Year 1993 (Public Law 102-395), signed on October 6, 1992. The legislation mandated that:

The Attorney General, acting through the Director of the National Institute of Justice, shall (1) evaluate existing and proposed antistalking legislation in the States, (2) develop model antistalking legislation that is constitutional and enforceable, (3) prepare and disseminate to State authorities the findings made as a result of such evaluation, and (4) report to the Congress the findings and the need or appropriateness of further action by the Federal Government by September 30, 1993.

NIJ commissioned the National Criminal Justice Association (NCJA) to develop a model code, which was published in *Project to Develop a Model Antistalking Code for States** (referred to in this document as the Model Antistalking Code Report; see Appendix B for text of the Model Code and accompanying commentary).

A project resource group composed of members from the following organizations collaborated on the project:

- American Bar Association
- American Civil Liberties Union
- Los Angeles Police Department
- Mobil Corporation
- National Organization for Victim Assistance

- National Victim Center
- National District Attorneys Association
- National Conference of State Legislatures
- National Center for State Courts
- National Association of Attorneys General
- National Governors' Association
- Police Executive Research Forum
- U.S. Department of Justice's Office for Victims of Crime
- U.S. Secret Service

In addition to assisting in developing or reviewing the language of the model code and commentary, the resource group made recommendations for stalking intervention strategies, interdisciplinary responses in handling stalking incidents, the formulation and use of protective orders in stalking cases, and possible amendments to other stalking-related legislation.

The commentary discusses profiles of existing State stalking statutes and issues that arose in drafting the model code. It also provides an overview of how police agencies managed stalking incidents at the time. Recommendations for States concerning bail and sentencing, code implementation, and stalking-related research are also included.

*National Criminal Justice Association, *Project to Develop a Model Antistalking Code for States*, Washington, DC: U.S. Department of Justice, National Institute of Justice, October 1993. Available from the National Criminal Justice Reference Service, 1-800-851-3420, order no. NCJ 144477.

Estimates of the number of stalkers in the United States vary from 20,000 to 200,000.⁶ It is unknown how many stalkings result in murder, how many victims are able to elude their stalkers by relocating or changing their identities, how many stalkers eventually stop pursuing their target in the absence of legal interventions, and how many stalkers choose new targets.⁷

The initial publicity about Rebecca Shaeffer's death resulted in a rush to pass antistalking legislation. California passed the first antistalking legislation in 1990, and by 1992, 27 States had enacted similar legislation. Today, 49 States and the District of Columbia have antistalking laws.⁸

Initially, State laws varied widely. One observer noted that the first wave of legislation had resulted in a "hodgepodge of flawed statutes," placing prosecutors in a position of dealing with laws that were virtually unenforceable due to ambiguities and the dual requirements to show both specific intent and a credible threat.⁹

To assist the States in their efforts to respond to stalking, Congress in 1992 directed the National Institute of Justice (NIJ), the research branch of the Department of Justice, to undertake a project to develop model antistalking legislation that would be both constitutional and enforceable.¹⁰ NIJ tapped the National Criminal Justice Association (NCJA) for help in developing the

model code and delivered the model antistalking legislation to Congress in October 1993. Copies were widely distributed to the States. Subsequently, with a grant from the Office of Justice Programs' Bureau of Justice Assistance, NCJA conducted a series of regional training seminars to address issues related to implementing the model code. (See the accompanying sidebars, "Creating a Model Antistalking Code" and "Conducting Training Seminars on the Model Codes," as well as Appendixes B and C.)

Since the early 1990s, when the first antistalking legislation was passed, many States have amended their initial laws, in part due to concerns about constitutional challenges and other issues that arose in implementing the laws. Many of the initial statutes, for example, did not specifically prohibit threats or assaults on nonfamily members, such as the victim's new intimate partner. In general, the revised laws include specific intent and credible threat requirements, broaden definitions, refine wording, stiffen penalties, and emphasize the suspect's pattern of activity. Appendix E shows intent and threat requirements by State. State statutes typically define stalking, in essence, as culpable and repeated following and harassing of another person. Many States require that the stalker exhibit a pattern of conduct and possess an intent to instill fear in the victim.

Conducting Training Seminars on the Model Code

As a followup to the model code project, the Bureau of Justice Assistance and the Office for Victims of Crime within the Office of Justice Programs in the U.S. Department of Justice directed the National Criminal Justice Association to conduct a series of regional seminars to assist States in developing and implementing antistalking codes.* The seminars:

- Acquainted State-level policymakers and criminal justice practitioners with the model antistalking code.
- Helped officials assess the strengths and weaknesses of existing State laws.
- Discussed ways to develop alternative approaches to or revise current methods of enforcing antistalking laws.

The original model code resource group continued to guide the development of training materials and recommendations that arose from the seminar series.

Issues raised by participants include the following:

- Should a stalker's motivations play a role in the prosecution of the case?
- What should be the role of evaluation and counseling in handling and sentencing stalkers?
- How should law enforcement officials handle a stalking case in which the victim is unwilling or unable to cooperate with the prosecution?

*The report, *Regional Seminar Series on Implementing Antistalking Codes*, Washington, DC: U.S. Department of Justice, Bureau of Justice Assistance, forthcoming 1996, is available from the National Criminal Justice Reference Service, 1-800-851-3420, order no. NCJ 156836.

Chapter 2

The Characteristics and Legal Issues of Stalking

Until fairly recently, police had little power to arrest someone who behaved in a threatening but legal way. Even when the suspect had followed his victim, sent her hate mail, or behaved in a threatening manner, the police were without legal recourse. Today, however, law enforcement officials can use antistalking statutes to help determine whether an arrest can and should be made. In addition, the criminalization of stalking behavior has stimulated the development of techniques to help law enforcement assess the level of threats involved in such cases.

This chapter describes the general characteristics of stalking as outlined in the literature and the legal elements of the crime as reflected in State statutes.

Characteristics of Stalking and Stalkers

Although every stalking case is different and incidents within the same case can vary, over time a stalker's behavior typically becomes more and more threatening, serious, and violent. The stalking activity generally escalates from what initially may be bothersome and annoying but legal behavior to the level of obsessive, dangerous, violent, and potentially fatal acts.

Stalking occurs in a wide variety of situations and between people who have various relationships, for example, between strangers, former coworkers, and acquaintances. Generally, the relationship between stalker and victim can be characterized in one of three ways:

- **Intimates or former intimates**—The persons involved may be married or divorced, casual or serious sexual partners, or former sexual partners. The parties may have a history of domestic violence.¹¹
- **Acquaintances**—The stalker and victim may know one another casually or be associated in an informal or formal way. For example, they may have had one or two dates or talked briefly but were not sexual partners, or they may be coworkers or former coworkers.
- **Strangers**—The stalker and victim do not know one another at all. Cases involving celebrities and other public figures usually fall into this category.¹²

The relationship between stalker and victim is irrelevant in determining whether to arrest and charge a

suspect with stalking; the law prohibits certain actions regardless of the relationship between the parties. Relationship factors, nevertheless, may become relevant when law enforcement officers, prosecutors, and defense attorneys make case processing and management decisions. Cases involving former intimates with a history of domestic violence, for example, require particular sensitivity to the needs of the victim and her safety.

The motivations for stalking cover a wide range—desires for contact and control, obsession, jealousy, and anger—and stem from the real or imagined relationship between the victim and the stalker. The stalker may feel intense attraction to the victim or extreme hatred. Since it was formed in 1990, the Threat Management Unit within the Los Angeles Police Department has found that stalkers come from all walks of life. Many cease their activity when confronted by police intervention, but many do not. The more troublesome type of stalker may exhibit a personality disorder (such as obsessive-compulsive behavior) severe enough to interfere significantly with the stalker's ability to maintain a normal routine, such as holding a steady job or maintaining stable relationships. Such suspects dedicate an inordinate amount of their time to writing notes and letters to their intended targets, tracking their victim's movements, or traveling in an attempt to achieve an encounter.¹³

The Legal Elements of Stalking

In most States, to charge and convict a defendant of stalking, several elements must be proven beyond a reasonable doubt: a course of conduct or behavior, the presence of threats, and the criminal intent to cause fear in the victim. These elements are discussed below.

Course of Conduct

Almost all States require that the defendant engage in a "course of conduct"—a series of acts that, viewed collectively, present a pattern of behavior. Some States stipulate the requisite number of acts. For example, Colorado, Illinois, Michigan, and North Carolina require the stalker to commit two or more acts on different occasions. (See the sidebar, "Number of States (including the District of Columbia) Prohibiting Specific Acts in Stalking Statutes.")

States designate as stalking a variety of different acts, ranging from specifically defined actions (such as nonconsensual communication or lying in wait) to more diffuse types of action (such as harassment). (See Appendix E for intent and threat requirements in each State.)

Threat Requirements

Most States require that the stalker pose a threat or act in a way that causes a reasonable person to feel fearful. Under the statutes, the threat need not be written or verbal to instill fear (for example, a stalker can convey a threat by sending the victim black roses, forming his hand into a gun and pointing it at her, or delivering a dead animal to her doorstep). Two States (Colorado and New Mexico) require the stalker to make a threat and then engage in additional conduct in furtherance of the threat.

Intent of the Stalker

To be convicted of stalking in most States, the stalker must display a criminal intent to cause fear in the victim. The conduct of the stalker must be “willful,” “purposeful,” “intentional,” or “knowing.” Many States do not require proof that the defendant intended to cause fear as long as he intended to commit the act that resulted in fear. In these States, if the victim is reasonably frightened by the alleged perpetrator’s conduct, the intent element of the crime has been met.

Constitutional Challenges to Antistalking Laws

Drafting effective antistalking legislation that withstands constitutional challenges is a complex task. In some cases, the distinction between lawful activity and stalking activity can be blurry.

At the time the model code was published in fall 1993, no appellate court decisions had been rendered. By January 1996, the Justice Department had identified 53 constitutional challenges to stalking statutes in 19 States. Generally, the courts are upholding the laws.

Defendants seeking to challenge antistalking laws usually argue that these statutes are constitutionally defective because they are “void for vagueness” under due process principles or are so overly broad that they infringe upon constitutionally protected speech or activity. (See Appendix A for specific constitutional challenges.)

Due process demands that criminal statutes must give persons fair notice that their contemplated conduct is legally prohibited. To avoid invalidation on vagueness grounds, a statute need not define the forbidden conduct with mathematical precision.¹⁴ A statute will be found unconstitutionally vague, however, when “forbidden conduct is so poorly defined that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application,”¹⁵ or it is so indefinite that it permits arbitrary arrests or discriminatory enforcement.¹⁶ In determining the sufficiency of a statute’s notice, the court must examine its language in light of the conduct with which the defendant is charged.¹⁷

Number of States (including the District of Columbia) Prohibiting Specific Acts in Stalking Statutes

Presence	6	Harass* [*]	25
Approach	4	Trespass	6
Pursue or follow	40	Possess or show a weapon	1
Surveillance	8	Disregard warning	2
Lie in wait	3	Confine/restrain	1
Intimidate	3	Vandalize	4
Nonconsensual communications	18	Cause bodily harm	3

*The total reflects statutes that define “harassing” within the stalking statute and also those that refer to the State’s harassment statute for the definition.

Notes: The statutes of four States do not enumerate proscribed conduct (Maine, New Hampshire, Ohio, and Wisconsin). The data gathered for Arizona are for Arizona’s harassment statute; for Maine, its terrorizing statute; and for New York, its menacing statute.

Source: Adapted from National Criminal Justice Association, *Regional Seminar Series on Implementing Antistalking Codes*, Washington, DC: U.S. Department of Justice, Bureau of Justice Assistance, forthcoming 1996.

Courts rarely strike down antistalking statutes on vagueness grounds.¹⁸ In *People v. Holt*,¹⁹ for example, the defendant was convicted under the Illinois antistalking law for repeatedly showing up at the local skating rink where his former girlfriend took private skating lessons and watching her during her lessons even though there was a restraining order against him. The Illinois statute provides that “a person commits stalking when he or she, knowingly and without lawful justification, on at least two separate occasions, follows another person or places the person under surveillance or any combination thereof and . . . places that person in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement or restraint.”²⁰ In rejecting the defendant’s vagueness claim and upholding the statute, the court concluded that it “adequately warns innocent persons of the conduct to be avoided: making threats, following, or placing someone under surveillance, and thereby reasonably producing intimidation, apprehension and fear.”²¹ The law does not rely on strictly subjective standards, but rather “sets explicit, objective standards for defendant’s actions, knowledge, and the effect of his conduct on his victim.”²²

An antistalking statute will be found to be unconstitutionally overbroad where it reaches activity protected by the First Amendment, including the exercise of free speech or lawful assembly.²³ As a general matter, courts have applied the overbreadth doctrine “sparingly and only as a last resort. Facial overbreadth has not been invoked when a limiting construction has been or could have been placed on the challenged statute.”²⁴ Moreover, a statute will not be struck down on overbreadth grounds unless it has a significant effect on constitutionally protected activity.²⁵

While there have been several overbreadth challenges to antistalking statutes,²⁶ no court to date has struck down a State’s antistalking statute on this ground. *People v. White*²⁷ is illustrative. In that case, the defendant pleaded guilty and was convicted of attempted aggravated assault under the Michigan antistalking statute for calling his former girlfriend as often as 100 times a week at home and at work, appearing at her job, and threatening her and her family. The defendant sought to overturn his conviction, arguing that the statute unconstitutionally abridged his First Amendment right to speech by permitting a complainant to subjectively determine which telephone calls are acceptable and which are criminal. The court did not agree. In upholding the statute, the court remarked, “Defendant’s repeated telephone calls to the victim, sometimes 50 to 60 times a day whether the victim was at home or at work, and his verbal threats to kill her and her family do not constitute protected speech or conduct serving a legitimate purpose, even if that purpose is ‘to attempt to reconcile,’ as defendant asserts.”²⁸ The aim of the law is

Antistalking Legislation Today

- Number of States with legislation that addresses the problem of stalking: 49 and the District of Columbia.*
- Number of States where statutes have been challenged on constitutional grounds:** 19

*Maine uses an antiterrorizing statute.

**The bases for constitutional challenges vary. See Appendix A.

to prevent such activity because the threat of violence, which is almost always present in these types of cases, may eventually result in the death of the victim.²⁹

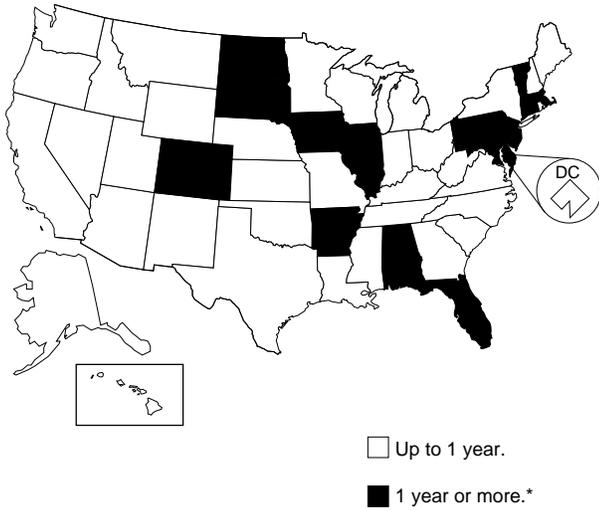
Penalties for Stalking

Many States have both misdemeanor and felony classifications for stalking. Misdemeanors generally carry a jail sentence of up to 1 year. Sentences from 3 to 5 years are typical for felony stalking offenses. Most State statutes contain sentence-enhancing provisions if one or more additional elements are present—for example, if the defendant brandished a weapon, violated a protective order, had committed a prior stalking offense (in 14 States, the prior offense must involve the same victim), or directed his conduct toward a child. Some States allow incarceration for as long as 10 years for repeat offenses. The map on the following page illustrates State sentencing provisions for stalking offenses.

Assessing the Impact of Antistalking Laws

Today, the ability to assess empirically the effectiveness of antistalking legislation is constrained by several factors. Estimating rates of violence against women, especially incidents involving intimates, remains a difficult task. A recently released report on victimization prepared by the Bureau of Justice Statistics noted that many women do not report these crimes to the police because of the often private nature of the events and the belief that no purpose would be served in reporting the crime.³⁰ In addition, the absence of baseline data about stalking (especially the incidence of stalking before passage of antistalking legislation) and the limited length of time antistalking laws have been in effect impede a precise assessment of the effectiveness of the legislation. Exploratory research now under way will assist in understanding the nature of the crime and its impact on victims in one state. (Chapter 3 discusses other related research.)

Sentencing Provisions



*Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Illinois, Iowa, Maryland, Massachusetts, New Jersey, North Dakota, Pennsylvania, South Dakota, Vermont

Notes: The Maine information is for its terrorizing statute. In Florida, sentencing for a misdemeanor is up to 1 year and for a felony up to 5 years.

Source: Adapted from National Criminal Justice Association, *Regional Seminar Series on Implementing Antistalking Codes*, Washington, DC: U.S. Department of Justice, Bureau of Justice Assistance, forthcoming 1996.

In one State, media reports and interviews with law enforcement officers suggest that the laws are working. Florida law enforcement officers who are familiar with the law, for example, generally agree that their statute fills a need. As one supervisor of a violent crime unit expressed it: “This statute can and will save lives.”³¹

As police and prosecutors learn more about the availability and applicability of antistalking laws, the impact of the legislation is likely to increase. “While law enforcement agencies are doing their best to enforce the stalking law, comprehensive stalking policies and training will undoubtedly ensure they enforce it more effectively.”³²

In all types of stalking cases, whether between former coworkers, acquaintances, or divorced spouses, investigators require new ways of thinking about the crime and preventing it. For example, officers are learning to apply techniques for assessing threats that emphasize gathering and evaluating information and evidence *before* violence occurs.³³

One challenge in developing training and policies is that each stalking incident is unique—a single technique cannot be applied to all situations. Police officers may not initially realize that a case they are investigating constitutes stalking. In addition, as one respondent to an independent survey of Florida law enforcement agencies noted, officers are still learning about the State’s law and how to apply its various provisions.³⁴

Chapter 3

Interventions for Domestic Violence and Stalking

The principal objective of antistalking legislation is to intervene in a suspected stalking case before the behavior results in physical harm. The two most immediate and typical interventions are arrest and protection orders.

Arrest and Protection Orders

Under antistalking laws, a pattern of behavior and evidence of a malicious intent to cause fear is enough to trigger arrest. Police no longer need to wait for the suspect to “do something;” they can make an arrest that stops the behavior at least temporarily and sometimes permanently. The extent to which the victim finds relief through the arrest depends on such factors as the victim and stalker relationship, the stalker’s motivations and mental state, the jurisdiction’s bail laws, and the strength of the prosecution’s case. Following arrest, a prosecutor also can ask the court to impose strict pretrial release conditions requiring the defendant to stay away from the victim.³⁵ However, arrest policies that are in place may not be consistently enforced, and research findings on the effectiveness of arrest policies have been mixed.³⁶ Efforts continue to assess the effectiveness of arrest policies.

Civil protection orders (often called restraining orders) are used to keep one person from contacting or coming within the vicinity of another person. If the protection order is violated, courts may hold the violator in contempt, impose fines, or incarcerate the violator, depending on State law. In some States, a stalking penalty is enhanced if the stalker violates a protective order. Protective orders can serve as the first formal means of intervening in a stalking situation. Issuance of a protective order puts the stalker on notice that his behavior is unwanted and that if his behavior continues, the police can take more severe action.³⁷

Historically, protection orders have had several inherent limitations. Until recently, a woman who moved to another State to get away from a stalker or an abusive partner or former boyfriend (or traveled to or worked in another State) sometimes found that the second State could not enforce the restraining order issued in the originating State. The order could be enforced only in the jurisdiction in which it was issued,

and to receive protection, the victim had to obtain another protection order in the new State.

Another limitation is that it may be difficult for victims to obtain a restraining order. All States have mechanisms for issuing emergency restraining orders, and many States have low filing fees, especially if the case involves a spouse or former spouse. In non-emergency situations, however, it may take several weeks for a victim to obtain a protection order, and the process sometimes involves prohibitively expensive lawyer fees and court costs, especially in nondomestic cases.

Furthermore, enforcement of protection orders has been difficult. Most victims assistance agencies are all too familiar with incidents in which the police arrived to find a woman shot and killed by a man against whom the victim had a restraining order. (See, for example, the sidebar, “A Boyfriend Turns Murderer” on the next page.)

The 1994 Violence Against Women Act strengthens protection orders and substantially lessens the hurdles for victims in several ways. Under the Act’s full faith and credit provision, States are required to enforce one another’s civil protection orders. The Act also makes it a Federal crime for a person to cross State lines with the intent to engage in conduct that violates a protection order and prohibits anyone subject to a restraining order that meets certain specifications from possessing a firearm. These measures strengthen protection orders, and efforts will continue to find ways to make restraining orders more effective in protecting victims.

Collaborative Approaches

Cases of violence against women often present challenges not found in other cases that come into the criminal justice system. Much of the time, the relationship between the offender and the victim makes it difficult to know how best to manage and prosecute the case and provide services to the victim. One thing, however, is clear: collaborative approaches involving participation by criminal justice, social services, health, and other agencies are essential in dealing with such crimes. Collaborative, multidisciplinary mechanisms are premised on the notion that when community agencies

work closely together they are more effective in preventing crime and protecting victims. No one component, including the criminal justice system, can do it alone.

Community Policing

Community policing is a promising tool for responding to stalking and related domestic violence crimes because it is based on the concept that police officers should proactively seek to resolve problems, not just respond to calls for help. Community policing puts the police in partnership with the community to identify a problem, define a strategy for responding, and then evaluate the effectiveness of various responses. Collaboration is the focus of a new \$20 million Community-Oriented Policing Services program, “Community Policing to Combat Domestic Violence,” which is open to police departments interested in applying community policing techniques to fight domestic violence.

Creative police departments are experimenting with a number of community-based strategies that reflect the unique nature of domestic violence—compiling location histories that record all responses to a residence, assisting victims in obtaining emergency protection orders, and finding safe houses for women who need the special police protection other intimidated witnesses receive.

Collaborative Court Approaches

In cases in which the stalker and the victim were in a domestic relationship, coordination between the criminal and civil courts is critical. Civil court judges are more likely to focus on preserving the family, while criminal court judges may be more likely to determine that incarcerating the stalker is in the family’s best interests. Communication between the two court systems allows a judge presiding over a divorce case or a custody case to consider pending charges and convictions for assault or stalking in making rulings.

Dade County, Florida, is experimenting with a specialized court for domestic violence cases. The court fosters a collaborative approach by drawing on the services of a variety of family specialists (such as psychiatrists and school counselors) who help the court assess the attitudes and behaviors of both the defendant and the other family members.

Other Collaborative Approaches

Practitioners, researchers, and others concerned about violence against women have suggested that States explore various multidisciplinary approaches to intervening in stalking, including the following:

- Encouraging community legal services organizations to provide victims with help in securing a protective order.
- Enlisting the support of victims service organizations to provide counseling or other services to help victims

A Boyfriend Turns Murderer

Kristin Lardner, 21, dated Michael Cartier for about 2 months before breaking up with him on April 16, 1992. Angered over her decision to end their relationship, Cartier followed her down the street, beat her, and left her lying on a curb. In the following weeks, he continued to contact and follow her. She notified the police and obtained a temporary restraining order. She also learned that he had committed inhumane acts, such as killing cats, and had a criminal record—he had beaten ex-girlfriends and had been caught injecting his own blood into a restaurant ketchup bottle. At the time he was stalking Lardner, Cartier was on probation for having attacked a previous girlfriend with scissors.

The judge who granted the temporary restraining order on May 11, however, was unaware of Cartier’s criminal history and the fact that he was on probation. The judge scheduled a hearing for a permanent injunction to be held the following week. On May 19, when Lardner returned to court to obtain a permanent injunction, a different judge, who was also unaware of the man’s record, treated the case routinely. He issued an order prohibiting Cartier from any contact with Lardner and requiring that he stay 200 yards away from her.

Approximately 2 weeks later, just 6 weeks after he had first beaten her, Cartier shot and killed Kristin Lardner in broad daylight outside a Boston sandwich shop.* Cartier later killed himself in his home.

*Lardner, George, Jr., *The Stalking of Kristin*, New York: Atlantic Monthly Press, 1996.

cope with the anxiety and trauma of being a victim of stalking or battering.

- Contacting social service providers to help recruit the family, friends, and associates of the suspected batterer or stalker to intervene and, if appropriate, secure treatment for him.

While observers believe that stalking behavior can be altered by intervention, information about which interventions work best in which situations is still very preliminary. Effective laws must be coupled with cooperation among and within the systems responsible for investigating, prosecuting, adjudicating, monitoring, and treating persons who stalk—i.e., police, prosecutors, judges, probation officers, correctional organizations, victims services organizations, social and medical services and mental health organizations, and community and religious groups.

Threat Assessment

Some stalkers who make threats never actually intend to carry them out and, therefore, do not, in fact, pose a threat to their victim or target. Others who never

actually threaten their victim do pose a very real danger. Differentiating between these kinds of suspects requires specialized knowledge and skills. When information and concern about a possible future violent crime is presented to a law enforcement officer, special kinds of investigative tools and approaches can help in accurate assessment and appropriate action.³⁸

Managing the case, gathering evidence to assess the danger level, and developing behavior profiles are critical to appropriate intervention. For example, if the same victim and suspect are involved in different incidents, and different police officers are called to the scenes, each incident may be viewed as an isolated event unless there is a “paper trail.” To avoid such an outcome, police are encouraged to make a report even if they find no evidence that a crime has been committed when they respond to a call.

To control stalking, law enforcement professionals must craft individualized strategies specific to each case. In some cases, the victim may know the stalker better than anyone; in more ominous cases, the victim may not even know who is making the threats. (See sidebar, “Gathering Data to Enforce Antistalking Laws,” and the “Stalking Critical Incident Diary” following this page for an example of how one State—New Mexico—works with victims to collect data on stalking behavior.)

Gathering Data to Enforce Antistalking Laws

The task of recording stalking incidents often falls on victims. New Mexico's Department of Public Safety Training Center, in conjunction with the State's Coalition Against Domestic Violence, has prepared a “Stalking Critical Incident Diary” that victims can use to record the date, time, location and type of incident, officer's name and badge number, and witness information.

The diary (shown on the following page) and an accompanying brochure about stalking are distributed at hospitals, shelters, schools, police stations, places of employment, and other similar locations as an outreach and educational tool. The diary helps the victim understand the dimensions of stalking and helps law enforcement officers collect evidence to make an arrest and win a conviction.

Source: New Mexico Department of Public Safety Training Center, 1-505-827-9261, in cooperation with the New Mexico Department of Health and the New Mexico Coalition Against Domestic Violence.



Stalking Critical Incident Diary®

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Stalking

Statute

NMSA 30-4A-3

■ Credible Threat

"Knowingly pursuing a pattern of conduct that poses a credible threat: verbal or nonverbal - made with the intent and apparent ability to carry out the threat that would cause a reasonable person to ...

■ Intent

...fear for his/her safety or the safety of a household member, including a spouse, former spouse, in-law, former in-law, family member, present or former household member or co-parent of a child - to another person that is intended to place that person in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint; provided that in furtherance of the threat,...

■ Conduct

...the stalker must commit one or more of the following acts on more than one occasion:
1. following a person, other than in the residence of the stalker;
2. placing a person under surveillance by remaining present outside the person's school, residence, workplace, vehicle or any other place frequented by the person other than in the residence of the stalker; or
3. harassing a person."

Harassment

Statute

NMSA 30-3A-2

■ Conduct

"Knowingly pursuing a pattern of conduct that is..."

■ Intent

...intended to annoy, seriously alarm or terrorize victim..

■ Effects

...and cause a reasonable person to suffer emotional distress."

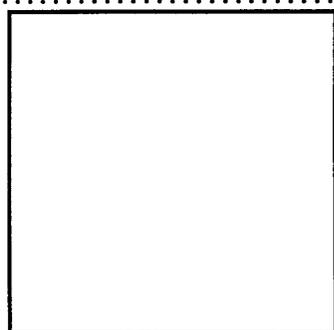
Incident Types

■ These activities have been associated with stalking/harassment. Their presence should lead to specialized assessment and actions. This list is just a sample of the possible types of stalking or harassment.

- Watching or following
- Approaching a victim
- Drive-bys
- Threatening phone calls or hang-ups
- Sending or delivering hate mail
- Sending or delivering love notes
- Electronic stalking using a modem, fax, etc. to deliver message
- Vandalizing a vehicle or home (generally something the victim uses every day)
- Placing or delivering an unwanted object(s) (ex., red bows, stuffed animals, or strange or unusual items such as a coyote head, false teeth, tarot cards, etc.)
- Placing or delivering unwanted object(s) that have a symbolic message (ex., black roses, dead animals, feces, etc.)

Use the diary below to chronologically document stalking/harassment activities. Before filling out this form, make extra copies for future use.

Date	Time	Incident Type <small>(use letter from above list)</small>	Law Enforcement Agency <small>(include phone number)</small>	Officer Name	Badge No.	Report No.	Incident Location <small>(home, work, school, car, other)</small>	Witness Information
								Name _____ Address _____ Home Phone _____ Work Phone _____
								Name _____ Address _____ Home Phone _____ Work Phone _____
								Name _____ Address _____ Home Phone _____ Work Phone _____



Suspect Photo

year taken: _____

Suspect Information

Last Name			First Name			Middle Name			Sex	Race	Age	DOB	Height	Weight	Hair	Eyes
Street Address									Marks/Tattoos		Physical Desc. (glasses, beard, limp, etc.)					
City			State			Zip			Driver's Lic.	State	Soc. Sec. #.	Other I.D. (military, employee, etc.)				
Home Phone Number			Work Phone Number			VEHICLE INFORMATION										
						Make	Model	Year	Style	Color						
Place of Employment									Lic. No.		State		Comments:			
Complete Address of Employment																

Source: Adapted from the "Stalking Incident Diary" developed by the New Mexico Department of Public Safety Training Center in cooperation with the New Mexico Department of Health and the New Mexico Coalition Against Domestic Violence.

Chapter 4

Research on Violence Against Women

The National Institute of Justice (NIJ) sponsors a number of studies related to violence against women, including studies of efforts to develop or strengthen antistalking programs.

Previous NIJ research on stalking has centered on stalkers who pursue two types of public figures: (1) government officials who receive U.S. Secret Service protection and (2) movie stars, television personalities, and other such celebrities. To increase knowledge of ways to deal with stalkers who attack public figures, NIJ, the Secret Service, and the Bureau of Prisons are supporting a study of persons who have attacked or attempted to attack prominent public officials and public figures in the United States since 1950.³⁹

A clearer picture about stalking and stalkers, the law enforcement response, and the needs of victims will emerge as current research yields findings.

Experiences and Needs of Former Intimate Stalking Victims

NIJ awarded nearly \$75,000 in 1995 for a project to explore the experiences of noncelebrity women who had been stalked by former intimate partners.⁴⁰ The project, awarded to West Chester University, will be the first of its kind to focus specifically on the experiences and needs of women who are victims of stalking by a former intimate partner.⁴⁰ The research will contribute to understanding the nature of the victims' experiences.

The study sample will consist of 200 stalking victims in southeastern Pennsylvania. Through in-depth personal interviews with victims, researchers will identify the characteristics of stalker-victim relationships both prior to the separation and at the time of separation, characteristics of stalking incidents, attempts the victim made to discourage the stalker, effects of the stalking on the victim's life, and the responses to the victim from family, friends, law enforcement, and victims services staff. Further, if the victim did not report the stalking offense to the police, the interview will explore the reasons for the inaction.

Violence and Threats of Violence Against Women in America

In collaboration with the Centers for Disease Control and Prevention, NIJ is supporting a 36-month study that will contribute to national estimates on the prevalence and incidence of many different forms of violence against women, including stalking, physical and sexual assaults, power and emotional abuse, and threats.⁴¹ The research, conducted by the Center for Policy Research in Denver, Colorado, will go beyond studies that have focused on subcategories of violence against women (such as domestic violence) or subcategories of victims (such as college students). By examining multiple forms of violence found in a large national sample, the Violence and Threats of Violence Against Women project will broaden our understanding of these crimes. Moreover, it will examine the prevalence and incidence of violence against men by intimate partners, thus permitting comparisons of the pervasiveness and seriousness of male-on-female and female-on-male intimate violence. Specifically, the study will examine the following:

- The relationship between power and emotional abuse, threats of violence, stalking, and actual occurrences of violence.
- The extent to which women and men experience violence at the hands of intimate partners.
- The severity of injury and medical costs associated with female-on-male and male-on-female intimate violence.
- The short- and long-term physical, psychological, and social consequences of victimization.
- The extent and nature of criminal justice responses to violent victimization.
- The extent and nature of stalking episodes and victim and criminal justice responses to stalking.

The project involves telephone interviews with a national cross-section of 8,000 women and 8,000 men.

Women will be queried about their experiences of violence inflicted by all types of perpetrators, and men will be asked about their experiences of violence perpetrated by intimates.

The Effectiveness of Civil Protection Orders

The National Center for State Courts is conducting a 2-year analysis of the effectiveness of civil protection orders in preventing domestic violence and assisting the victims of domestic violence.⁴² The study is examining and documenting a number of protection order features, including how they are processed, what types of relief are encompassed by the orders, what ancillary services are available to the victims, the extent of coordination of these services by the courts, and how orders are monitored and enforced.

Researchers will rely on data from 300 case records,

interviews with 300 petitioners for protection orders, and interviews with personnel from courts and social service systems to evaluate the effectiveness of particular support services and to determine whether particular monitoring and enforcement practices are effective in preventing further violence.

In Summary

In the 5 or so years since stalking gained a place on the criminal justice agenda, much has been accomplished: researchers and policymakers have categorized the types of stalkers, developed and widely disseminated model antistalking legislation, developed training curricula, and conducted training sessions. Efforts are being made to define terms more precisely and outline the differences and similarities between domestic violence and stalking. In the coming year, new data about stalking, domestic violence, and the response to it will be available to inform policy and practice.

Notes

¹Mahoney, M.R., "Legal Images of Battered Women: Redefining the Issue of Separation," *Michigan Law Review* (October 1991)90(1):1-95.

²Public Law 103-322, Violent Crime Control and Law Enforcement Act of 1994, signed September 13, 1994.

³National Criminal Justice Association, *Project to Develop a Model Antistalking Code for States*, Washington, DC: U.S. Department of Justice, National Institute of Justice, October 1993. Available from NCJRS, 1-800-851-3420, NCJ order no. 144477.

⁴National Criminal Justice Association, *Project to Develop a Model Antistalking Code for States*, Washington, DC: U.S. Department of Justice, National Institute of Justice, October 1993. NCJ order no. 144477. National Criminal Justice Association, *Regional Seminar Series on Implementing Antistalking Codes*, Washington, DC: U.S. Department of Justice, Bureau of Justice Assistance, forthcoming 1996. NCJ order no. 156836.

⁵For example, see the quote by Cheryl Tyiska, National Organization for Victim Assistance, in Lewin, T., "New Laws Address Old Problem: The Terror of a Stalker's Threats," *New York Times* (February 8, 1993)142(5):A1. Data reported to police and collected by the U.S. Federal Bureau of Investigation's Uniform Crime Reports reveal that in 1993, 29 percent of female homicide victims were slain by a current or former husband or boyfriend, compared with just 3 percent of male homicide victims. Federal Bureau of Investigation, *Uniform Crime Reports for the United States, 1993*. Washington, DC: U.S. Department of Justice, Federal Bureau of Investigation, 1993.

⁶The number 200,000 is generally attributed to Park Elliott Dietz, who has authored a number of papers on various subtopics of stalking. The 200,000 figure includes the broadest possible spectrum of stalkers, including those who send threatening mail to public figures, such as Hollywood celebrities and members of Congress. If incidents involving public figures are excluded from this count, the estimate of stalkers' numbers declines significantly. It is believed that stalking is underreported due to confusion about how to define a stalking episode. The consensus among the model code resource group is that the majority of stalking victims are not public figures.

⁷Puente, M., "Legislators Tackling the Terror of Stalking but Some Experts Say Measures Are Vague," *USA Today* (July 21, 1992):A9; Lingg, R.A., "Stopping Stalkers: A Critical Examination of Anti-Stalking Statutes," *St. John's Law Review* 67:347, 350; Strikis, S.A., "Note: Stopping Stalking," *Georgetown Law Journal* 1993;81:2771 at n. 16; Beck, A. "Murderous Obsession," *Newsweek* (July 13, 1992):60.

⁸Maine uses an antiterrorizing statute. The State also amended its protective order statute in 1993, adding provisions to allow protective orders to be issued to enjoin stalking behavior.

⁹Carmody, C., "Deadly Mistakes," *ABA Journal* (September 1994)80:68-71.

¹⁰The model code was mandated in P.L. 102-395, the U.S. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act for Fiscal Year 1993. The directive to develop model antistalking legislation is contained in §109(b).

¹¹A survey of 90 Florida law enforcement agencies reported that in most cases the victim knew the offender, confirming reports that most cases arise among former intimates. See Tucker, J.T., "Stalking the Problems with Stalking Laws: The Effectiveness of Florida Statutes Section 784.048," *Florida Law Review* (September 1993)45(4):609-707.

¹²Several studies have focused on celebrities and others in high-visibility positions, including Presidents and other elected officials. For example, Robert Fein and Bryan Vossekuil, with support from the National Institute of Justice, U.S. Bureau of Prisons, and U.S. Secret Service are conducting a study of persons who have attacked or approached for attack prominent public figures in the United States since 1950, under grant no. 92-IJ-CX-0013. See also Dietz, P.E., D.B. Matthews, D.A. Martell, T.M. Stewart, D.R. Hrouda, and J. Warren, "Threatening and Otherwise Inappropriate Letters to Members of the United States Congress," *Journal of Forensic Sciences* (September 1991):1445-68; Dietz, P.E., D.B. Matthews, D.A. Markell, T.M. Stewart, D.R. Hrouda, and J. Warren, March 4, 1991, revisions to *Journal of Forensic Sciences*, "Threatening and Otherwise Inappropriate Letters to Hollywood Celebrities," *Journal of Forensic Sciences* (January 1991):185-209.

¹³Zona, M.A., K.K. Kaushal, and J. Lane, "Comparative Study of Erotomania and Obsessional Subjects in a Forensic Sample," *Journal of Forensic Sciences* (April 1993)38(4):894-903; see also Dietz et al., January 1991.

¹⁴*Graynard v. City of Rockford*, 408 U.S. 104, 110; 92 S.Ct. 2294, 2300; 33 L.Ed. 2d 222, 228-29 (1972).

¹⁵*State v. McGill*, 536 N.W. 2d 89,95 (S.D. 1995) (quoting *Connally v. Gen. Constr. Co.*, 269 U.S.385, 391; 46 S.Ct. 126, 127; 70 L.Ed. 2d 322, 328 [1926]). See also *Johnson v. State*, 449 S.E. 2d 94, 95 (Ga. 1994).

¹⁶*Kolender v. Lawson*, 461 U.S. 352, 357; 103 S.Ct. 1855, 1858; 75 L.Ed. 2d 903, 909 (1983); *Long v. State*, 903 S.W. 2d 52, 54 (Tx.App.Ct. 1995).

¹⁷*State v. Randall*, 1995 WL 576993 (Ala. Cr. App. Sept. 29, 1995); *Pallas v. State*, 636 So. 2d 1358, 1360 (Fla. App. Ct. 1994), approved 654 So. 2d 127 (Fla. 1995).

¹⁸See, e.g., *People v. Heilman*, 30 Cal. Rptr. 2d 422 (Dist. Ct. App. 1994); *Gilbert v. State* 659 So. 2d 233 (Fla. 1995), (upholding State stalking statutes that had been challenged as void for vagueness). But see, *State v. Bryan*, 1996 WL 36169 (Kan. Jan. 26, 1996); *Commonwealth v. Kwiatkowski*, 637 N.E. 2d 854 (Sup. Jud. Ct. Mass. 1994) (finding State stalking statutes unconstitutionally vague).

¹⁹*Holt*, 649 N.E. 2d 571 (Ill. App. Ct. 1995).

²⁰720 ILCS 5/12-7.3(a)(2) (West Supp. 1993).

²¹*Holt*, 649 N.E. 2d at 580.

²²*Id.*

²³*Broadrick v. Oklahoma*, 413 U.S. 601, 611-12; 93 S.Ct. 2908, 2915-16; 37 L.Ed. 2d 830, 839-40 (1973); *Holt*, 649 N.E. 2d at 581; *Pallas v. State*, 636 So. 2d 1358, 1360 (Fla. App. Ct. 1994).

²⁴*Broadrick*, 413 U.S. at 613; 93 S.Ct. at 2916; 37 L.Ed. 2d at 841.

²⁵*Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494; 102 S.Ct. 1186, 1191; 71 L.Ed. 2d 362, 369 (1982).

²⁶See, e.g., *Higgins v. State*, 656 So. 2d 483 (Fla. Dist. Ct. App. 1994); *Folsom v. State* 654 So. 2d 128 (Fla. 1995).

²⁷*People v. White*, 536 N.W. 2d 876 (Mich. App. Ct. 1995).

²⁸*Id.* at 883.

²⁹*Id.*

³⁰Bachman, R., and L. Saltzman, "Violence Against Women: Estimates from the Redesigned Survey," *BJS Special Report*, Washington, DC.: U.S. Department of Justice, Bureau of Justice Statistics, August 1995. BJS redesigned the National Crime Victimization Survey to better capture information about crimes, such as rape, domestic violence, and sexual assault, that are frequently underreported and therefore difficult to measure.

³¹Tucker, J.T., op. cit., 694.

³²Tucker, J.T., op. cit., 649.

³³Infante, C., "The New Stalking Law," *Arkansas Lawyer* (Fall 1994)28:30.

³⁴Tucker, J.T., op. cit., 694.

³⁵Under interstate domestic violence offenses (18 U.S.C. 2263) and as part of the general provisions of chapter 207 of title 18 of the U.S.C., the victim may address the court regarding the defendant's dangerousness.

³⁶The landmark study about police response to domestic abuse was conducted by Lawrence W. Sherman and Richard A. Berk and can be found in "The Minneapolis Domestic Violence Experiment," Washington, DC: Police Foundation, 1984, and in Lawrence W. Sherman and Richard A. Berk, "Specific Deterrent Effects of Arrest for Domestic Assault," *American Sociological*

Review (April 1984)49(2):261-272. The three options for police response to domestic violence in the Minneapolis project were (1) arrest, (2) attempts to mediate and counsel both parties, and (3) sending the assailant away from home for several hours. The initial Minneapolis experiment found positive effects of arrest in decreasing repeat offenses; however, several replications in other cities obtained mixed results. Extensive discussion about the effectiveness of mandatory arrest can also be found in the "Domestic Violence: Not Just a Family Matter" hearings before the Subcommittee on Crime and Criminal Justice of the Committee on the Judiciary, House of Representatives, 103d Congress, 2d session, June 30, 1994, pp. 46-73.

³⁷Studies on civil protection orders include Finn, P., "State-by-State Guide to Enforcement of Civil Protection Orders," *Response to the Victimization of Women and Children* (1991)14(78):3-12; Finn, P., and S. Colson, *Civil Protection Orders: Legislation, Current Court Practice, and Enforcement*, Washington, DC: U.S. Department of Justice, National Institute of Justice, 1990; Harrell, A., B. Smith, and L. Newmark, *Court Processing and the Effects of Restraining Orders for Domestic Violence Victims*, Washington, DC: The Urban Institute, 1993; Schollenberg, E., and B. Gibbons, "Domestic Violence Protection Orders: A Comparative Review," *Canadian Journal of Family Law* (1992)10(2):191-238. For more discussion about using civil protection orders in stalking cases, see National Criminal Justice Association, *Regional Seminar Series on Implementing Antistalking Codes*, Washington, DC: U.S. Department of Justice, forthcoming 1996.

³⁸Issues involving the development of prediction models and risk assessment tools are explored in Fein, R.A., B. Vossekuil, and G.A. Holden, *Threat Assessment: An Approach to Prevent Targeted Violence*, Washington, DC: U.S. Department of Justice, National Institute of Justice, September 1995.

³⁹Fein, R., and B. Vossekuil, "Secret Service Exceptional Case Study Project," grant no. 92-IJ-CX-0013, forthcoming April 1996. Some of the research questions are as follows: How does a person develop the idea of attacking a public official or public figure? How does the person move from the idea to the action? What relationship exists between formulating the idea and acting on it? What motivates persons to act violently toward public officials and public figures?

⁴⁰Brewster, M., "An Exploration of the Experiences and Needs of Former Intimate Stalking Victims," West Chester University, proposal no. 5-8432-PA-IJ, forthcoming October 1996.

⁴¹Tjaden, P., "Violence and Threats of Violence Against Women in America," Center for Policy Research, grant no. 93-IJ-CX-0012, forthcoming January 1997.

⁴²Keilitz, S., "The Effectiveness of Civil Protection Orders in Detering Domestic Violence," grant no. 93-IJ-CX-0035, forthcoming April 1996.

**Appendix
A**

**Anitstalking Code Citations
and Constitutional
Challenges by State**

Legislation and Constitutional Challenges

State	Legislation	Constitutional Challenges	Basis of Challenge	Outcome	
Alabama	Ala. Code§13 A-6-90 (1995) (enacted 1992)	Stalking	<i>Culbreath v. State</i> , 667 So. 2d. 156 (Ala. Crim. App. 1995)	Vagueness	Statute upheld
	Ala. Code§13 A-6-91 (1995) (enacted 1992)	Aggravated stalking	<i>State v. Randall</i> , CR 94-1058, 1995 WL 576993 (Ala. Crim. App. Sept. 29, 1995)	Vagueness & overbreadth	Statute upheld
	Ala. Code§13 A-6-92 (1995) (enacted 1992)	Definitions	<i>Clark v. City of Montgomery</i> , 497 So. 2d 1140 (Ala. Crim. App. 1986)	Vagueness of §13A-11-8-(a)	Statute upheld
	Ala. Code§13 A-6-93 (1995) (enacted 1992)	Relationship to other laws	<i>Crook v. State</i> , 469 So. 2d. 690 (Ala. Crim. App. 1985)	Vagueness of §13A-11-8-(a)	Statute upheld
	Ala. Code§13 A-6-94 (1995) (enacted 1992)	Article construed to sustain confidentiality	<i>Donley v. City of Fountain Brook</i> , 429 So. 2d 603 (Ala. Crim. App. 1982), rev'd on other grounds sub nom. <i>Ex parte Donley</i> , 429 S. 2d 618 (Ala. 1983)	Vagueness of §13A-11-8-(a)	Statute upheld
	Ala. Code§13 A-11-8(a) (1995) (enacted 1977)	Harassment	<i>Brooks v. City of Birmingham</i> , 485 So. 2d 385 (Ala. Crim. App. 1985)	Vagueness & overbreadth of §13A-11-8(a)	Statute upheld
	Ala. Code§13 A-11-8(b) (1995) (enacted 1978)	Harassing communications			
Ala. Code§13 A-6-23 (1995) (enacted 1977)	Menacing				
Alaska	Alaska Stat. §11.41.260 (1995) (enacted 1993)	Stalking in the first degree			
	Alaska Stat. §11.4.270 (1995) (enacted 1993)	Stalking in the second degree			
Arizona	Arizona Rev. Stat. Ann. §13-2921 (1995) (enacted 1992)	Harassment; clarification; definition			
Arkansas	Ark. Code Ann. §5-71-229 (Michie 1994) (enacted 1993)	Stalking			
	Ark. Code Ann. §5-13-301 (Michie 1994) (enacted 1975)	Terroristic threatening			

Domestic Violence, Stalking, and Antistalking Legislation

A-2

State	Legislation	Constitutional Challenges	Basis of Challenge	Outcome	
California	Ark. Code Ann. §5-71-208 (Michie 1994) (enacted 1975)	Harassment			
	Ark. Code Ann. §5-71-209 (Michie 1994) (enacted 1975)	Harassing communications			
	Cal. Penal Code §646.9 (Deering 1995) (enacted 1990)	Stalking	<i>People v. Heilman</i> , 30 Cal. Rptr. 2d 422 (Dist. Ct. App. 1994)	Vagueness	Statute upheld
	Cal. Penal Code §422 (West 1996) (enacted 1988)	Elements of offense; punishment; "immediate family" defined			
	Cal. Civil Code §1708.7 (West 1996) (enacted 1993)	Stalking; tort action; damages and equitable remedies			
Colorado	Colorado Rev. Stat. §18-9-111 (1995)	Harassment - stalking			
Connecticut	Conn. Gen. Stat. §53a-181-c (1994) (enacted 1992)	Stalking in the first degree	<i>State v. Culmo</i> , 642 A.2d 90 (Superior Court 1993)	Vagueness & overbreadth	Statute upheld
	Conn. Gen. Stat. §53a-181-d (1994) (enacted 1992)	Stalking in the second degree			
Delaware	Del. Code Ann. tit. 11 §1312 (1995)	Aggravated harassment			
	Del. Code Ann. tit. 11 §1312A (1995) (enacted 1992)	Stalking: class F felony			
District of Columbia	District of Columbia Code §22-504(b) (1994) (enacted 1992)	Stalking			
Florida	Fla. Stat. Ann. §784.048 (West 1995) (enacted 1992)	Stalking; definitions; penalties	<i>Folsom v. State</i> , 654 So. 2d 128 (Fla. 1995)	Overbreadth	Statute upheld
			<i>Gilbert v. State</i> , 659 So. 2d 233 (Fla. 1995)	Vagueness & overbreadth	Statute upheld
			<i>Huffine v. State</i> , 655 So. 2d 103 (Fla. 1995)	Vagueness & overbreadth	Statute upheld

State	Legislation	Constitutional Challenges	Basis of Challenge	Outcome
		<i>Pallas v. State</i> , 654 So. 2d 127 (Fla. 1995)	Vagueness & overbreadth	Statute upheld
		<i>Perez v. State</i> , 656 So. 2d 484 (Fla. 1995)	Facial overbreadth	Statute upheld
		<i>Salatino v. State</i> , 660 So. 2d 627 (Fla. 1995)	Vagueness & overbreadth	Statute upheld
		<i>State v. Barron</i> , 637 So. 2d 384 (Fla. Dist. Ct. App. 1994)	Overbreadth	Statute upheld
		<i>State v. Baugher</i> , 637 So. 2d 384 (Fla. Dist. Ct. App. 1994)	Vagueness & overbreadth	Statute upheld
		<i>State v. Kahles</i> , 657 So. 2d 897 (Fla. 1995)	Vagueness & overbreadth	Statute upheld
		<i>State v. Tremmel</i> , 644 So. 2d 102 (Fla. Dist. Ct. App. 1994) approved by <i>Higgins v. State</i> , 656 So. 2d 483 (Fla. 1995)	Overbreadth	Statute upheld
		<i>Varney v. State</i> , 659 So. 2d 234 (Fla. 1995)	Vagueness & overbreadth	Statute upheld
		<i>Altingeyik v. State</i> , 659 So. 2d 692 (Fla. 1995)	Vagueness & overbreadth	Statute upheld
		<i>Daniels v. State</i> , 658 So. 2d 927 (Fla. 1995)	Overbreadth	Statute upheld
		<i>Koshel v. State</i> , 659 So. 2d 232 (Fla. 1995) cert. denied by <i>Bouters v. Florida</i> , 116 S. Ct. 245 (1995)	Overbreadth	Statute upheld
		<i>Bouters v. State</i> , 659 So. 2d 235 (Fla. 1995) cert. denied 116 S. Ct. 245 (1995)	Overbreadth	Statute upheld
		<i>Morrison v. State</i> , 658 So. 2d 1038 (Fla. 1995)	Vagueness & overbreadth	Statute upheld
		<i>Polson v. State</i> , 654 So. 2d 127 (Fla. 1995)	Overbreadth	Statute upheld
		<i>Ratcliffe v. State</i> , 660 So. 2d 1384 (Fla. 1995)	Overbreadth	Statute upheld
		<i>State v. Gonzalez</i> , 651 So. 2d 185 (Fla. Dist. Ct. App. 1995)	Vagueness & overbreadth	Statute upheld
		<i>State v. Foster</i> , 661 So. 2d 58 (Fla. Dist. Ct. App. 1995)	Overbreadth	Statute upheld
		<i>Blount v. State</i> , 654 So. 2d 126 (Fla. 1995) cert. denied <i>Blount v. Florida</i> , 116 S. Ct. 145 (1995)	Overbreadth	Statute upheld
		<i>Saiya v. State</i> , 654 So. 2d 128 (Fla. 1995)	Overbreadth	Statute upheld
		<i>Rosen v. State</i> , 644 So. 2d 531 (Fla. Dist. Ct. App. 1994)	Vagueness & overbreadth	Statute upheld
		<i>Higgins v. State</i> , 656 So. 2d 483 (Fla. Dist. Ct. App. 1995)	Overbreadth	Statute upheld

State	Legislation		Constitutional Challenges	Basis of Challenge	Outcome
Georgia	Ga. Code Ann. §16-5-90 (1995) (enacted 1993)	Stalking	<i>Johnson v. State</i> , 449 S.E. 2d 94 (Ga. 1994)	Vagueness & overbreadth	Statute upheld
	Ga. Code Ann. §16-5-91 (1995) (enacted 1993)	Aggravated stalking			
Hawaii	Haw. Rev. Stat. §711-1106 (1995) (enacted 1992)	Harassment			
	Haw. Rev. Stat. §711-1106.4 (1995) (enacted 1995)	Aggravated harassment by stalking			
Idaho	Idaho Code §18-7905 (1995) (enacted 1992)	Stalking; definitions; penalties			
Illinois	Ill. Ann. Stat. Ch. 720, para. 5/12-7.3 (Smith-Hurd 1995) (enacted 1992)	Stalking	<i>People v. Holt</i> , 649 N.E. 2d 571 (Ill. App. Ct. 1995)	Vagueness & overbreadth	Statute upheld
	Ill. Ann. Stat. Ch. 720, para. 5/12-7.4 (Smith-Hurd 1995) (enacted 1992)	Aggravated stalking	<i>People v. Bailey</i> , 657 N.E. 2d 953 (Ill. 1995)	Vagueness & overbreadth	Statute upheld
				<i>People v. Sowewimo</i> , 657 N.E. 2d 1047 (Ill. App. Ct. 1995)	Vagueness & overbreadth
Indiana	Ind. Code §35-45-10-5 (1996) (enacted 1993)	Criminal stalking	<i>Johnson v. State</i> , 648 N.E. 2d 666 (Ind. App. 1995)	Vagueness	Statute upheld
	Ind. Code §35-45-10-1 (1996) (enacted 1993)	Stalking; defined			
	Ind. Code §35-45-10-2 (1996) (enacted 1993)	Harassment; defined			
	Ind. Code §35-45-10-3 (1996) (enacted 1993)	Impermissible contact; defined			
	Ind. Code §35-45-10-4 (1996) (enacted 1993)	Victim; defined			
Iowa	Iowa Code §708.11	Stalking			

State	Legislation		Constitutional Challenges	Basis of Challenge	Outcome
Kansas	Kan. Stat. Ann. §21-3438 (Supp. 1995) (enacted 1992)	Stalking	<i>State v. Bryan</i> , 910 P.2d 212 (Kan. 1996)	Vagueness	1994 version of statute (which was amended in 1995) found unconstitutionally vague
Kentucky	Ky. Rev. Stat. Ann. §§508.130-.150 (Michie/Bobbs-Merill Supp. 1994) (enacted 1992)	Definitions; stalking in first degree; stalking in second degree			
Louisiana	La. Rev. Stat. Ann. §14:40.2 (West Supp. 1995) (enacted 1992)	Stalking			
Maine	Me. Rev. Stat. Ann. 17-A §210 (1994) (effective 1976) (The Maine legislature is currently considering specific stalking legislation.)	Terrorizing	<i>Maine v. Porter</i> , 384 A.2d 429 (Sup. Jud. Ct. of Maine 1978)	Overbreadth	Statute upheld
Maryland	Md. Ann. Code Art. 27§121B (1995) (effective 1993)	Stalking			
	Md. Ann. Code Art. 27§121A (1995) (effective 1995)	Harassment			
	Md. Ann. Code §4-506 (1995) (effective 1984)	Protection orders			
	Md. Ann. Code Art. 27§594B (1995) (effective 1969)	Arrests without warrants generally			
	Md. Ann. Code Art. 27§616 1/2 (1995) (effective 1969)	Bail generally; special provisions in second and seventh circuits			
Massachusetts	Mass. Gen. L. Ch. 265 Sect. 43 (1995) (effective 1992)	Stalking	<i>Commonwealth v. Kwiatkowski</i> , 637 N.E. 2d 854 (Sup. Jud. Ct. Mass. 1994)	Vagueness	Statute found unconstitutionally vague

State	Legislation	Constitutional Challenges	Basis of Challenge	Outcome	
Michigan	Mich. Stat. Ann. 28.643(8), Mich. Comp. Laws Ann. §750.411h (1993) (effective 1993)	Stalking; definitions violation; penalties; probation, term, conditions; evidence, rebuttable presumption; penalty additional	<i>Michigan v. White</i> , 536 N.W. 2d 876 (Mich. Ct. of App. 1995)	Vagueness	Statute upheld
	Mich. Stat. Ann. 28.643(9), Mich. Comp. Laws Ann. §750.411i (1993) (effective 1993)	Aggravated stalking; course of conduct; violation; penalties; probation; rebuttable presumption	<i>Michigan v. Ballantyne</i> , 538 N.W. 2d 106 (Mich. Ct. of App. 1995)	Vagueness & overbreadth	Statute upheld
	Mich. Stat. Ann. 27A.2950 (1), Mich. Comp. Laws Ann. §600.2950a (1993) (effective 1993)	Petition to restrain or enjoin stalking			
	Mich. Stat. Ann. 27A.2954, Mich. Comp. Laws Ann. §600.2954 (1993) (effective 1993)	Civil action against stalker; damages; costs and attorney fees			
Minnesota	Minn. Stat. Ann. §609.749 (1994) (effective 1993)	Harassment; stalking; penalties			
Mississippi	Miss. Code Ann. 97-3-107 (1995) (effective 1992)	Stalking			
Missouri	Mo. Ann. Stat. §565.225 (Vernon Supp. 1996) (enacted 1993)	Crime of stalking			
Montana	Mont. Code Ann. §45-5-220 (Supp. 1993) (enacted 1992)	Stalking	<i>Montana v. Cooney</i> , 894 P. 2d 303 (Mont. 1995)	Free speech	Statute upheld
			<i>Montana v. Martel</i> , 902 P. 2d 14 (Mont. 1995)	Vagueness & overbreadth	Statute upheld
Nebraska	Neb. Rev. Stat. §28-311.02 to .05 (Supp. 1993)	Stalking			

State	Legislation	Constitutional Challenges	Basis of Challenge	Outcome	
Nevada	Nev. Rev. Stat. Ann. §200.575 (Supp. 1995) (enacted 1993)	Stalking			
New Hampshire	N.H. Rev. Stat. Ann. §633:3-a (Supp. 1995) (enacted 1993)	Stalking			
New Jersey	N.J. Stat. Ann. §2C:12-10 (West 1995) (enacted 1993)	Stalking			
New Mexico	N.M. Stat. Ann. §30-3A3 (Michie Supp. 1993) (enacted 1993)	Stalking			
New York	N.Y. Penal Law §120.13 (McKinney Supp. 1993) (enacted 1993)	Menacing in the first degree			
	N.Y. Penal Law §120.14 (McKinney Supp. 1994) (enacted 1993)	Menacing in the second degree			
North Carolina	N.C. Gen. Stat. §14-277.3 (Supp. 1994) (enacted 1993)	Stalking			
North Dakota	N.D. Cent. Code §12.1-17-07.1 (Supp. 1993) (enacted 1993)	Stalking			
Ohio	Ohio Rev. Code Ann. §2903.211-.215 (Anderson Supp. 1994) (enacted 1992)	Menacing by stalking	<i>Ohio v. Dario</i> , No. C-940844, 1995 WL 553322 (Ohio App. 1 Dist. Sept. 20, 1995)	Vagueness & overbreadth	Statute upheld
			<i>Ohio v. Francway</i> , No. 68116, 1995 WL 491104 (Ohio App. 8 Dist. Aug. 17, 1995), <i>review denied</i> , 659 N.E. 2d 313 (Ohio 1996)	Vagueness & overbreadth	Statute upheld
			<i>City of Dayton v. Smith</i> , 646 N.E. 2d 917 (Ohio Mun. 1994)	Vagueness & overbreadth	Statute upheld

State	Legislation		Constitutional Challenges	Basis of Challenge	Outcome
Oklahoma	Okla. Stat. Ann. tit. 21, §1173 (West Supp. 1996) (enacted 1992)	Stalking; penalties	<i>Oklahoma v. Saunders</i> , 886 P.2d 496 (Okla. Crim. App. 1994)	Vaguerness	Statute upheld
Oregon	Or. Rev. Stat. §163.730-.750 (1995) (enacted 1993)	Stalking	<i>Oregon v. Orton</i> , 904 P.2d 179 (Or. Ct. App. 1995) <i>Starr v. Eccles</i> , 900 P.2d 1068 (Or. Ct. App. 1995)	Vagueness Vagueness, overbreadth, due process, equal protection, privileges and immunities	1993 statute struck down (relying on <i>Norris-Romine/Finley</i> ; 1995 amendment removed the offending language from the statute) 1993 statute struck down (relying on <i>Norris-Romine/Finley</i> ; other challenges not addressed)
Pennsylvania	18 Pa. C.S.A. §2709 (Supp. 1995) (enacted 1993)	Harassment and stalking	<i>Commonwealth v. Schierscher</i> , 668 A.2d 164 (Pa. Super. Ct. 1995)	Vagueness & overbreadth	Statute upheld
Rhode Island	R.I. Gen. Laws §11-59-1 to -3 (Supp. 1994) (enacted 1992)	Stalking			
South Carolina	S.C. Code Ann. §16-3-1070 (1993) (enacted 1992)	Stalking			
South Dakota	S.D. Codified Laws Ann. §§22-19A-1 to -7 (Supp. 1995) (§22-19A-1 to -6 enacted 1992, §22-19A-7 enacted 1992)	Stalking as misdemeanor; violation of restraining order and subsequent convictions as felony; "harasses," "course of conduct," and "credible threat" defined; stalking a child as misdemeanor	<i>State v. McGill</i> , 536 N.W. 2d 89 (S.D. 1995)	Vagueness	Statute upheld
Tennessee	Tenn. Code Ann. §39-17-315 (Supp. 1995) (enacted 1992)	Stalking			

State	Legislation	Constitutional Challenges	Basis of Challenge	Outcome	
Texas	Tenn. Code Ann. §36-3-606 (Supp. 1995) (stalking provision enacted 1995)	Scope of protection order			
	Tex. Penal Code Ann. §42.071 (West Supp. 1996) (enacted 1995)	Stalking	<i>Long v. State</i> , 903 S.W. 2d 52 (Tex Ct. App. 1995) (review granted Dec. 13, 1995)	Vagueness & overbreadth (challenges to then existing provision of harassment statute that resembles current stalking statute)	Statute upheld
	Tex. Code Crim. Proc. Ann. Art 17.46 (West Supp. 1996)	Conditions for release on bond for stalking defendant			
	Tex. Code Crim. Proc. Ann. Art 42.12 (West Supp. 1996)	Conditions for release on probation for stalking defendant			
	Tex. Code Crim. Proc. Art. 42.18 (West Supp. 1996)	Conditions for release on parole for stalking defendant			
Utah	Tex. Code Crim. Proc. Art. 56.11 (West Supp. 1996)	Notification to stalking victim			
	Utah Code Ann. §76-5-106.5 (1995) (enacted 1992)	Stalking			
Vermont	Vt. Stat. Ann. tit. 13, §§1061-1063 (Supp. 1995) (enacted 1993)	Definitions; stalking; aggravated stalking			
Virginia	Va. Code Ann. §18.2-60.3 (Michie Supp. 1995) (effective 1992)	Stalking; penalty	<i>Woolfolk v. Commonwealth</i> , 447 S.E. 2d 530 (Va. Ct. App. 1994)	Vagueness & overbreadth	Statute upheld
	Va. Code Ann. §18.2-308.1:4 (enacted 1994)	Purchase or transportation of firearms by person subject to protective orders; penalty			

State	Legislation	Constitutional Challenges	Basis of Challenge	Outcome	
Washington	Wash. Rev. Code Ann. §9A.46.110 (West Supp. 1995) (enacted 1992)	Stalking			
	Wash. Rev. Code Ann. §9.94A.155 (West Supp. 1995) (Stalking provision enacted 1992)	Prisoner escape, parole, release, placement, or furlough - notification procedures			
	Wash. Rev. Code Ann. §13.40.215 (West Supp. 1995) (Stalking provision enacted 1993)	Juvenile stalkers - notification of discharge, parole, leave, release, transfer, or escape			
West Virginia	W. Va. Code §61-2-9a (Supp. 1995) (enacted 1992)	Stalking; penalties; definitions			
Wisconsin	Wis. Stat. Ann. §940.32 (West Supp. 1995) (enacted 1993)	Stalking			
Wyoming	Wyo. Stat. §6-2-506 (Supp. 1995) (enacted 1993)	Stalking; penalty	<i>Luplow v. State</i> , 897 P.2d 463 (Wyo. 1995)	Vagueness & overbreadth	Statute upheld
	Wyo. Stat. §1-1-126 (Supp. 1995) enacted 1993)	Civil liability	<i>Vit v. State</i> , 909 P.2d 953 (Wyo. 1996)	Vagueness & overbreadth	Statute upheld (relying on <i>Luplow</i>)
	Wyo. Stat. §§7-3-506 to -511 (Supp. 1995) (enacted 1993)	Protection orders for stalking victims	<i>Garton v. State</i> , 910 P.2d 1348 (Wyo. 1996)	Vagueness & overbreadth (statute). Vagueness & equal protection (enhancement provision)	Statute upheld (relying on <i>Luplow</i> and <i>Vit</i>). Statutory enhancement provision upheld

Appendix B

A Model Antistalking Code for the States

The model antistalking code development project has sought to formulate a constitutional and enforceable legal framework for addressing the problem of stalking.

The model code encourages legislators to make stalking a felony offense; to establish penalties for stalking that reflect and are commensurate with the seriousness of the crime; and to provide criminal justice officials with the authority and legal tools to arrest, prosecute, and sentence stalkers.

The Model Antistalking Code for the States

Section 1. For purposes of this code:

- (a) “Course of conduct” means repeatedly maintaining a visual or physical proximity to a person or repeatedly conveying verbal or written threats or threats implied by conduct or a combination thereof directed at or toward a person;
- (b) “Repeatedly” means on two or more occasions; and
- (c) “Immediate family” means a spouse, parent, child, sibling, or any other person who regularly resides in the household or who within the prior six months regularly resided in the household.

Section 2. Any person who:

- (a) purposefully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear bodily injury to himself or herself or a member of his or her immediate family or to fear the death of himself or herself or a member of his or her immediate family;
- (b) has knowledge or should have knowledge that the specific person will be placed in reasonable fear of bodily injury to himself or herself or a member of his or her immediate family or will be placed in reasonable fear of the death of himself or herself or a member of his or her immediate family; and
- (c) whose acts induce fear in the specific person of bodily injury to himself or herself or a member of his or her immediate family or induce fear in the specific person of the death of himself or herself or a

member of his or her immediate family; is guilty of stalking.

Analysis and Commentary on Code Language

Prohibited Acts

Unlike many state stalking statutes, the model code does not list specific types of actions that could be construed as “stalking.” Examples of specific acts frequently proscribed in existing stalking statutes include following, non-consensual communication, harassing, and trespassing.

Some courts have ruled that if a statute includes a specific list, the list is exclusive. The model code, therefore, does not list specifically proscribed acts, because ingenuity on the part of an alleged stalker should not permit him to skirt the law. Instead, the model code prohibits defendants from engaging in “a course of conduct” that would cause a reasonable person fear.

“Credible Threat”

Unlike many state stalking statutes, the model code does not use the language “credible threat.” Stalking defendants often will not threaten their victims verbally or in writing but will instead engage in conduct which, taken in context, would cause a reasonable person fear. The model code is intended to apply to such “threats implied by conduct.” Therefore, the “credible threat” language, which might be construed as requiring an actual verbal or written threat, was not used in the model code.

“Immediate Family”

A stalking defendant may, in addition to threatening the primary victim, threaten to harm members of the

Source: National Criminal Justice Association, *Project to Develop a Model Antistalking Code for States*, Washington, DC: U.S. Department of Justice, National Institute of Justice, October 1993.

primary victim's family. Under the provisions of the model code, such a threat to harm an immediate family member could be used as evidence of stalking in the prosecution for stalking of the primary victim.

The model code uses a definition of "immediate family" similar to one currently pending in the California legislature. This definition is broader than the traditional nuclear family, encompassing "any other person who regularly resides in the household or who within the prior six months regularly resided in the household."

If states want to consider further expanding the definition of "immediate family," they should be aware that broadening it too much may lead to challenges that the statute is overly broad.

Classification as a Felony

States should consider creating a stalking felony to address serious, persistent, and obsessive behavior that causes a victim to fear bodily injury or death. The felony statute could be used to handle the most egregious cases of stalking-type behavior. Less egregious cases could be handled under existing harassment or intimidation statutes. As an alternative, states may wish to consider adopting both misdemeanor and felony stalking statutes.

Since stalking defendants' behavior often is characterized by a series of increasingly serious acts, states should consider establishing a continuum of charges that could be used by law enforcement officials to intervene at various stages. Initially, defendants may engage in behavior that causes a victim emotional distress but does not cause the victim to fear bodily injury or death. For example, a defendant may make frequent but non-threatening telephone calls. Existing harassment or intimidation statutes could be used to address this type of behavior. States also may want to consider enacting aggravated harassment or intimidation statutes that could be used in situations in which a defendant persistently engages in annoying behavior. The enactment of a felony stalking statute would allow law enforcement officials to intervene in situations that may pose an imminent and serious danger to a potential victim.

Classification as a felony would assist in the development of the public's understanding of stalking as a unique crime,¹ as well as permit the imposition of penalties that would punish appropriately the defendant and provide protection for the victim.

Of utmost importance is a state's decision to require the criminal justice system and related disciplines to take stalking incidents seriously.² A state's decision on how to classify stalking and how to establish its continuum of charges is of less importance.

"Conduct Directed at a Specific Person"

Under the model code's language, the stalking conduct must be directed at a "specific person." Threatening behavior not aimed at a specific individual would not be punishable under a statute similar to the model code. For example, a teenager who regularly drives at high speed through a neighborhood, scaring the residents, could not be charged under a stalking statute based upon the model code.

Fear of Sexual Assault

It is likely that victims who fear that a defendant may sexually assault them most likely also fear that the defendant would physically injure them if they resisted. Furthermore, because the human immunodeficiency virus (HIV), which causes acquired immunodeficiency syndrome (AIDS), could be contracted through a sexual assault, a victim is more likely to fear bodily injury or death, as well as psychological injury. Nevertheless, due to the nature of stalking offenses, states may want to consider expanding the language of their felony stalking statutes to include explicitly behavior that would cause a reasonable person to fear sexual assault in addition to behavior that would cause a reasonable person to fear bodily injury or death.

Intent Element

Under the provisions of the model antistalking code, a defendant must engage purposefully in activity that would cause a reasonable person fear, and the defendant must have knowledge, or should have knowledge, that the person toward whom the conduct is directed will be placed in reasonable fear. In other words, if a defendant consciously engages in conduct that he knows or should know would cause fear in the person at whom the conduct is directed, the intent element of the model code is satisfied.

A suspected stalker often suffers under a delusion that the victim actually is in love with him or that, if properly pursued, the victim will begin to love him.

¹This idea is further explained in a *Georgetown Law Journal* comment: "Aside from statutorily defined components of stalking, a generally recognized notion of 'stalking' is evolving. Not only do antistalking statutes indicate recognition of stalking, public and judicial perceptions indicate that stalking is a discretely identifiable behavior. Although this public perception of stalking does not obviate the need for concise definitions in antistalking statutes, it does provide guidance as to the types of activity society is trying to limit through these statutes." Silvija A. Strikis, "Note, Stopping Stalking," *Georgetown Law Journal*, 1993;81:2771 at n.16.

²*Id.*

Therefore, a stalking defendant actually may not intend to cause fear; he instead may intend to establish a relationship with his victim. Nevertheless, the suspected stalker's actions cause fear in his victim. As long as a stalking defendant knows or should know that his actions cause fear, the alleged stalker can be prosecuted for stalking. Protection orders can serve as notice to a defendant that his behavior is unwanted and that it is causing the victim to fear.

Fear Element

Since stalking statutes criminalize what otherwise would be legitimate behavior based upon the fact that the behavior induces fear, the level of fear induced in a stalking victim is a crucial element of the stalking

offense. The model code, which treats stalking as a felony, requires a high level of fear—fear of bodily injury or death. Acts that induce annoyance or emotional distress would be punishable under statutes such as harassment or trespassing, which do not rise to the felony level and carry less severe penalties.

In some instances, a defendant may be aware, through a past relationship with the victim, of an unusual phobia of the victim's and use this knowledge to cause fear in the victim. In order for such a defendant to be charged under provisions similar to those in the model code, the victim actually must fear bodily injury or death as a result of the defendant's behavior and a jury must determine that the victim's fear was reasonable under the circumstances.

Appendix C

Principal Recommendations of the Project to Develop an Antistalking Model Code

A Model Antistalking Code for the States

- Because stalking defendants' behavior often is characterized by a series of increasingly serious acts, states should consider establishing a continuum of charges that could be used by law enforcement officials to intervene at various stages of a stalking case.
- States should consider creating a stalking felony to address serious, persistent, and obsessive behavior that causes a victim to fear bodily injury or death.

Sentencing Convicted Stalkers

- States should consider establishing a sentencing scheme for stalking that permits incarceration as an option for all stalking convictions.
- If a state decides not to treat stalking as a felony, the state should consider incorporating a system of aggravating factors into its stalking sentencing policy so that a particular stalking incident can be elevated from a misdemeanor to a felony if an aggravating factor is present.
- States should consider the same penalty enhancements for stalking convictions that they generally apply to aggravating circumstances such as violation of a protective order, a minor victim, or use of a weapon during commission of the crime. States should consider making severe enhancements available in instances in which the defendant has committed a previous felony or stalking offense. In such instances, states should consider requiring mandatory prison sentences.
- As an alternative to penalty enhancements, states may wish to create a separate crime—for example, aggravated stalking—to deal with convicted stalkers who have committed previous felonies or stalking offenses.
- States' stalking sentencing schemes should incorporate release options and conditions that increase in restrictiveness commensurate with the risk the stalker poses to the victim. At a minimum, states should consider no-contact orders as a condition of release for con-

victed stalkers released on probation or parole. States also may want to consider monitoring convicted stalkers released on probation or parole through electronic monitoring or house arrest.

- States may wish to consider requiring convicted stalkers, as part of their sentences, to pay restitution to their victims. Alternatively, states may wish to consider permitting victims to recover damages from convicted stalkers through civil causes of action.
- States should consider requiring evaluation and offering counseling as part of any sentence imposed upon a convicted stalker. States also should consider requiring counseling as a condition of release for convicted stalkers placed on probation or parole.

Pretrial Release: Supervising Accused Stalkers

- States should consider developing appropriate pretrial release conditions for accused stalkers. At a minimum, states should consider making it a condition of release that the accused refrain from deliberately contacting the victim and, if appropriate, members of the victim's immediate family.
- States should consider including provisions in their pretrial release or bail laws requiring authorities to make reasonable efforts to provide victims with copies of relevant pretrial release orders, information about how and to whom to report alleged violations, and lists of sanctions for violations.

Strategies for Implementing Stalking Statutes and Protocols

- States should consider developing a multidisciplinary approach emphasizing early intervention in suspected stalkings. Such an approach should involve the

Source: National Criminal Justice Association, *Project to Develop a Model Antistalking Code for States*, Washington, DC: U.S. Department of Justice, National Institute of Justice, October 1993.

enforcement community, the judicial system, correctional and social services agencies, victims services and advocacy groups, and community organizations.

- Criminal justice officials should be provided training in the characteristics of stalkers and their behaviors. In cases in which two or more criminal justice disciplines have shared compatible training needs, states should consider developing interdisciplinary training resources.
- Police officials should receive training in four principal areas: the provisions and evidentiary requirements of stalking laws; identifying and monitoring stalking incidents; assessing the potential dangerousness of suspected stalkers; and assisting stalking victims. Training for police officials should be incorporated into police recruit and roll call and inservice specialized training curricula.
- States should consider reviewing their protective order statutes to determine whether, under present conditions, protective orders would be available to all stalking victims.
- States may wish to consider adopting legislation and complementary procedures that allow protective orders to be issued on an emergency basis after court hours.
- Judges should consider incorporating substance abuse monitoring and treatment and mental health counseling recommendations into restraining orders, where the existence of these conditions can be documented.
- States should consider reviewing their protective order statutes' notification procedures to ensure that they provide adequate notification protocol to all

parties of the existence and specific terms of an order.

- States should consider enacting legislation that would allow their courts to enforce a protective order issued by another jurisdiction in cases in which one of their courts is informed by a victim that she has obtained a protective order in another jurisdiction and that it has been violated in the non-issuing jurisdiction.
- Law enforcement agency administrators should establish formal department policies and procedures for dealing with stalking cases.
- States should consider enacting legislation and establishing procedures that would encourage the judiciary's use of criminal history record information when making decisions about pretrial release conditions, sentencing, and the issuance of protective orders in stalking cases. Similarly, states should consider developing procedures to ensure that judicial authorities making decisions about pretrial release and civil protection orders in stalking cases have timely access to information about civil protection orders applied for or issued in any court in the state.
- States should examine their privacy and freedom of information statutes to determine whether amendments are needed to prevent information contained in public records from being used for illegal purposes.
- States should review their statutory and regulatory victim notification provisions, as well as the protocols of their victims' agencies, to determine whether they are adequate to meet the unique needs of stalking victims.

Appendix D

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**Appendix
E**

**Threat and Intent
Requirements**

State	Explicit or Implicit Threat	Explicit Threat	Intent and Apparent Ability	Threat and Conduct	Intent to and Actually Causes Reasonable Fear	Intent to and Actually Causes Alarm/Annoyance	Actually Causes Reasonable Fear
Alabama			X	Implied threat sufficient	X		
Alaska	X						X
Arizona	X					X	
Arkansas				Terroristic threat	X		
California	X		X		X		
Colorado				X ^a		X	
Connecticut	X				X		
Delaware	X				X		
District of Columbia	X						X
Florida	X	Credible threat, aggravated stalking			3rd degree felony		1st degree misdemeanor
Georgia	X				X		
Hawaii	X					X	
Idaho	X			X ^a	X ^b		

^a Threat followed by additional conduct in furtherance of the threat is required. The threat can be implied.

^b The defendant must act "willfully or maliciously."

^c On at least two separate occasions.

^d The defendant must act "intentionally or maliciously."

^e The defendant must act "purposefully or knowingly."

^f Conduct must occur after the person toward whom the conduct is directed has reported the conduct to a law enforcement agency.

Source: Reprinted from National Criminal Justice Association, *Regional Seminar Series on Implementing Antistalking Codes*, Washington, DC: U.S. Department of Justice, Bureau of Justice Assistance, forthcoming 1996. NCJ order no. 156836.

Explicit or Implicit Threat – Actions that would cause a reasonable person to be threatened, but which are not necessarily verbal threats by the perpetrator. The perpetrator may make an explicit threat, but it is not required to satisfy an element of the crime.

Intent and Apparent Ability – Statutes that require the intent and apparent ability to carry out the threat in addition to the making of a threat.

Threat and Conduct – Statutes that require a threat and conduct to satisfy the elements of the crime of stalking.

Intent to and Actually Causes Reasonable Fear – These statutes require proof that the defendant intended to cause reasonable fear. The "actually causes" language is in some statutes, but for this chart, it is assumed that if charges are brought, reasonable fear has resulted from the defendant's actions.

Intent to and Actually Causes Alarm/Annoyance – This is a lesser standard than fear, and although some statutes have it in their stalking statutes, most reserve this language for their harassment statutes.

Actually Causes Reasonable Fear – These statutes do not require proof of intent on the part of the defendant. As long as the victim is reasonably frightened by the defendant's conduct, an element of the crime has been met. The defendant need only have the intent to do the act that results in fear.

State	Explicit or Implicit Threat	Explicit Threat	Intent and Apparent Ability	Threat and Conduct	Intent to and Actually Causes Reasonable Fear	Intent to and Actually Causes Alarm/Annoyance	Actually Causes Reasonable Fear
Illinois	X ^c			X	X		
Indiana	X				Aggravated		X
Iowa	X						X
Kansas	X				X ^d		
Kentucky	X				X		
Louisiana	X				X		
Maine		Threat	X				X
Maryland	X				X		
Massachusetts				Threat	X		
Michigan	X	Credible threat, aggravated stalking					X
Minnesota	X						X
Mississippi	X				X		
Missouri	X	Credible threat, aggravated stalking			Aggravated	X	

E-3

^a Threat followed by additional conduct in furtherance of the threat is required. The threat can be implied.

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State	Explicit or Implicit Threat	Explicit Threat	Intent and Apparent Ability	Threat and Conduct	Intent to and Actually Causes Reasonable Fear	Intent to and Actually Causes Alarm/Annoyance	Actually Causes Reasonable Fear
Montana	X				X ^e		
Nebraska	X				X		
Nevada	X	Aggravated			Aggravated		X
New Hampshire	X						X
New Jersey	X		X			X	
New Mexico			X	X ^a	X		
New York	X				X		
North Carolina	X				X		
North Dakota	X						X
Ohio	X				X		
Oklahoma	X				X ^c		
Oregon	X				X		
Pennsylvania	X				X		

E-4

^a Threat followed by additional conduct in furtherance of the threat is required. The threat can be implied.

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State	Explicit or Implicit Threat	Explicit Threat	Intent and Apparent Ability	Threat and Conduct	Intent to and Actually Causes Reasonable Fear	Intent to and Actually Causes Alarm/Annoyance	Actually Causes Reasonable Fear
Rhode Island			X	Credible threat	X		
South Dakota	X				X		
South Carolina			X	Credible threat	X		
Tennessee	X				X		
Texas				X ^f		X	
Utah	X						X
Vermont	X						X
Virginia	X						X
Washington	X						X
West Virginia			Only requires apparent ability	Credible threat	X		
Wisconsin	X						X
Wyoming	X					X	

^a Threat followed by additional conduct in furtherance of the threat is required. The threat can be implied.

^b The defendant must act "willfully or maliciously."

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