



BJA Bureau of Justice Assistance

Regional Seminar Series on Developing and Implementing Antistalking Codes

Monograph

Bureau of Justice Assistance

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June 1996

NCJ 156836

This document was prepared by the National Criminal Justice Association, under grant number 93-DD-CX-0025 awarded by the Bureau of Justice Assistance, U.S. Department of Justice, and grant number 94-VF-CX-K001 awarded by the Office for Victims of Crime, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

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Foreword

I am pleased to present this monograph on the regional seminar series “Developing and Implementing Antistalking Codes.” The seminars were funded jointly by the Bureau of Justice Assistance (BJA) and Office for Victims of Crime (OVC), both agencies of the U.S. Department of Justice.

The regional seminars were conducted to acquaint State policymakers with the model antistalking code developed by the National Criminal Justice Association (NCJA) under contract to the National Institute of Justice. The seminars also allowed policymakers to assess the strengths and weaknesses of existing State laws and to review alternative approaches to enforcement.

The monograph includes an overview of the seminar proceedings and findings, a profile of existing State antistalking statutes (current through the 1994 State legislative sessions), an analysis of recent State appellate court decisions in stalking cases, and information on developments in the area of civil protective order laws since publication of the model code. The model code and commentary and the principal recommendations contained in the final report of the model code project are included in appendixes.

The seminars provided participants with the opportunity to obtain valuable information from practitioners on intervening in and prosecuting stalking cases. We hope that this information will guide legislators, public policymakers, and criminal justice officials in making informed decisions about antistalking laws and policies.

Nancy E. Gist

Director
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Acknowledgments

The Bureau of Justice Assistance (BJA) wishes to thank Gwen A. Holden, Executive Vice President, National Criminal Justice Association (NCJA) for her outstanding work in supervising and coordinating the preparation of this document. BJA acknowledges the skill, knowledge, and hard work of NCJA project staff, which included Paul E. Lawrence, Lisa Doyle Moran, Robert A. Kapler, Nadine M. Rapacioli, Carolyn J. Reid, Wanda A. Meredith, Jennifer A. Ferrante, and Doug B. Roberson. In addition, BJA would like to recognize the work of the National Conference of State Legislatures (NCSL) (under contract with NCJA).

BJA also thanks the NCJA Advisory Council, whose members provided the NCJA project staff with the names of potential participants in the regional seminars, and the cohosts of the regional seminars: the Florida Department of Law Enforcement; the Oregon Administrative Services Division, Criminal Justice Services Section; the Illinois Criminal Justice Information Authority; the Illinois Attorney General's Office; and the Chicago (Illinois) Police Department.

BJA and NCJA are especially appreciative of members of the project resource group, who are introduced in the following paragraphs, for their dedication to this endeavor and willingness to share their experiences with the project staff.

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Two resource group members, Mr. Claps and Dr. Fein, deserve special thanks for serving as facilitator and panelist, respectively, for each seminar. BJA also would like to acknowledge the contribution of the following individuals who provided presentations on the status of antistalking legislation in their States at the regional seminars: Michael J. Niemand, Bureau Chief, Criminal Division, Florida Office of the Attorney General; Oregon Senator Ron Cease (D); Oregon Representative Kevin L. Mannix (D); Oregon Circuit Court Judge Hollie Pihl; and then-Illinois Attorney General Roland W. Burris. In addition, the following individuals provided valuable insight into the problem of stalking while serving as panelists at one of the regional seminars: John F. Gorczyk, Commissioner, Corrections Department, Vermont Human Services Agency; Lt. Lane; Laura Scott, Victims Advocate Coordinator, Pinellas County (Florida) Sheriff's Office; Vermont Senator Susan Sweetser (R); Mr. Stein; Mr. Beatty; Leslie Landis, Executive Director, Life Span; and Ms. Ryan.

Aileen Adams, Director, OVC, U.S. Department of Justice, and Nancy Gist, Director, BJA, U.S. Department of Justice, provided support and guidance for this project. The project also benefitted greatly from the contributions of Carolyn Hightower, Assistant Director, OVC; Lois Mock, Program Manager, NIJ; Kenneth R. Thomas, Legislative Attorney, Congressional Research Service, U.S. Congress; Olga Trujillo, General Counsel, OJP; Charles M. Hollis, Law Enforcement Program Manager, BJA; Jennifer Knobe, Grant Programs Specialist, BJA; and Melanie Smith, Program Specialist, OVC. BJA also acknowledges the contributions of Charles A. Lauer, former Special Assistant to the Assistant Attorney General, OJP, and project monitor for the model code project, who also provided valuable guidance in planning the regional seminars.

BJA would like to thank all of the seminar participants who generously shared their time and experiences in dealing with stalking cases and who engaged in lively discussions during the seminars.

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Chapter 1. Overview of Seminar Proceedings and Findings

Stalking captured widespread public attention in the wake of the 1989 murder of actress Rebecca Schaeffer and reports of a fan's persistent harassment of talk-show host David Letterman. California enacted the first State antistalking legislation in 1990. Since then, 48 other States and the District of Columbia have enacted antistalking laws.

Stalking is a complex problem with three defining elements: the stalker's relationship with the victim, the stalker's motive in pursuing the victim, and the stalker's behavior. Suspected stalkers' motives and intentions are uncertain, and their obsessive and unpredictable behavior makes it difficult for criminal justice officials to determine with any certainty how great a threat they pose to their victims. Moreover, stalking is different from many other types of criminal behavior because it involves a series of acts, each of which may be legal by itself, that become criminal when, taken collectively, they cause the victim to fear injury or death.

Conducting the Seminars

In 1994, the National Criminal Justice Association (NCJA) conducted a series of seminars on "Developing and Implementing Anti-Stalking Codes" to assist States in establishing antistalking codes. Conducted under a grant from the Bureau of Justice Assistance (BJA) and the Office for Victims of Crime (OVC), both agencies of the U.S. Department of Justice, the seminars were developed to acquaint State policymakers and criminal justice practitioners with a model antistalking code and to assist policymakers in assessing existing State laws and developing alternative approaches to enforcement.

The seminars were a followup to the project funded by the National Institute of Justice (NIJ), U.S. Department of Justice, to develop a model antistalking code that would be both constitutional and enforceable. NCJA managed the project under the direction and oversight of NIJ. The project was congressionally mandated under §109(b) of the U.S. Departments of Commerce, Justice, and State; the Judiciary; and Related Agencies Appropriations Act for Fiscal Year 1993 [P.L. 102-395]. A project resource group established for the model code project continued its work for the seminars series, providing guidance for the project. In drafting the model code, the project resource group analyzed issues relating to freedom of expression, due process, freedom of movement, excessive punishment, and double jeopardy to ensure the code's constitutionality. The model antistalking code and commentary, and the principal recommendations contained in the project final report, are provided in Appendices A and B, respectively, of this monograph. The final report of the code development project includes the text of the model code and commentary on issues that arose in drafting the code.¹ In addition, the final report contains a profile of existing State stalking statutes; an overview of police agencies' current policies for managing stalking incidents; and discussion

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

and recommendations for States' consideration concerning bail and sentencing, code implementation, and stalking-related research.

The grant from BJA and OVC supported five seminars of two types: two briefings on the model code for State legislators and staff, conducted by the National Conference of State Legislatures (NCSL) under contract to NCJA, and three regional seminars geared toward criminal justice practitioners, including law enforcement officers, victims advocates, prosecutors, and defense attorneys.

The first briefing took place at NCSL's Assembly on the Legislature, May 5–7, 1994, in Washington, DC. Members of the NCSL Criminal Justice Committee were updated on emerging issues concerning State antistalking laws and learned how the model antistalking code could serve as a basis for constitutional and enforceable antistalking laws at the State level. A second briefing took place in conjunction with NCSL's annual meeting in New Orleans, Louisiana, July 24–28, 1994. A joint session of NCSL's Criminal Justice Committee and Children and Family Services Committee on "Stalking Laws and Critical Issues in Domestic Violence" focused on antistalking legislation as an important element of the response to the broader issue of domestic violence. Topics discussed included how State legislation concerning domestic violence, civil protective orders, and training can help States better address the broad issues of victimization.

In November 1994, NCSL mailed packets to legal and criminal justice legislative staff including an NCSL update on antistalking laws, an NCJA article on State appellate court decisions in stalking cases, and copies of the model code. Subsequently, NCJA held 1 1/2-day seminars in the following three geographical regions:

- Eastern Region: Held March 31–April 1 in Tampa, Florida, in cooperation with the Florida Department of Law Enforcement, this seminar included the States of Connecticut, Delaware, the District of Columbia, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, the Virgin Islands, Virginia, and West Virginia.
- Western Region: This seminar, which took place May 12–13 in Portland, Oregon, in cooperation with the Oregon Administrative Services Division, Criminal Justice Services Section, included the States of Alaska, American Samoa, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, the Northern Mariana Islands, Oklahoma, Oregon, Texas, Utah, Washington, and Wyoming.
- Central Region: Held October 27–28 in Chicago, Illinois, in cooperation with the Illinois Criminal Justice Information Authority, the Illinois Attorney General's Office, and the Chicago Police Department, this seminar included the States of Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan,

Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, and Wisconsin.

The participant lists from each seminar are provided in Appendix C. During the first day of each seminar, panelists provided a review of the methodology and collaborative process used to develop the model code and described antistalking statutes in the region. On the second day, using three hypothetical stalking case studies, participants discussed substantive issues related to stalking. The agendas from each seminar are provided in Appendix D. The hypothetical stalking cases used at the seminars are provided in Appendix E.

Speakers for the seminars included the following persons:

- Gwen A. Holden, NCJA Executive Vice President, discussed stalking and provided a brief history of efforts to address the problem. Lisa Doyle Moran of NCJA provided an overview of the model antistalking code for the States and a profile of the existing antistalking statutes for the particular region. Robert Fein, a consulting psychologist for the U.S. Secret Service, U.S. Department of the Treasury, and visiting fellow at NIJ, discussed the most current information on the psychological profiles of stalkers.
- At the Eastern Region seminar, Michael J. Niemand, Bureau Chief of the Criminal Division, Florida Office of the Attorney General, briefed participants on a recent Florida District Court of Appeals decision upholding the Florida antistalking statute. It was the first decision by a State appellate court to address the constitutionality of antistalking laws.
- At the Western Region seminar, Oregon Senator Ron Cease (D) and Representative Kevin L. Mannix (D) discussed the development and enactment of the Oregon antistalking statute. Circuit Court Judge Hollie Pihl, who had declared the Oregon statute unconstitutional, discussed his decision.
- In the Central Region seminar, Illinois Attorney General Roland W. Burriss welcomed participants.

The three hypothetical case studies, which include elements of actual stalking cases, were used to demonstrate potential practical implications of the model antistalking code; examine the experiences of States with existing statutes and practices for handling stalking cases; and explore options for handling the complex and unique legal, social, and mental health issues raised by stalking cases. One of the hypothetical cases involves an estranged married couple, another involves a supervisor and a former employee, and the third involves two individuals who do not know each other.

Ms. Holden and Joseph M. Claps, First Assistant Attorney General of the Illinois Office of the Attorney General, were facilitators for discussions of the hypothetical cases. After

presenting a hypothetical case in its entirety, the facilitators broke the case down into various stages of official action—prearrest, postarrest, prosecution, postconviction, and postrelease.

The facilitators presented the facts and issues of a particular stage for discussion by panelists from various disciplines. For example, a panelist with expertise in law enforcement may have been asked how he or she would handle a particular series of events in the pre- and post-arrest stages. Panelists reacted to each others' responses, and audience participation was encouraged.

- Panelists for the Eastern Region seminar were Mr. Claps; Mr. Fein; John F. Gorczyk, Commissioner of the Corrections Department, Vermont Human Services Agency; Lt. John Lane, Los Angeles (California) Police Department; Laura Scott, Victims Advocate Coordinator, Pinellas County (Florida) Sheriff's Office; and Vermont Senator Susan W. Sweetser (R).
- Panelists for the Western Region seminar were Mr. Claps; Mr. Fein; and John Stein, Deputy Director of the National Organization for Victim Assistance.
- Panelists for the Central Region seminar were David Beatty, who was then Acting Executive Director of the National Victim Center; Mr. Fein; Leslie Landis, Executive Director of Life Span; and Roxann M. Ryan, Deputy Attorney General, Iowa Attorney General's Office.

Issues Discussed

The seminars addressed three principal issues: whether the stalker's motivation should be considered in prosecuting a case, the role of psychological evaluation and counseling in handling and sentencing stalkers, and how to handle stalking cases in which the victim is unwilling or unable to cooperate with the prosecution.

Stalkers' Motivations and Behaviors

Stalkers may have many reasons for engaging in their conduct, including desire for contact and control, obsessions, jealousy, anger, and revenge. Stalking behavior can vary from case to case and from incident to incident within a single case. One stalker may be angry with the victim for a real or perceived injury and may pursue the victim by sending threatening letters and making threatening telephone calls. Another stalker may seek to win or maintain the affection of the victim, making his interest known by sending flowers and other gifts. However, the stalker may become violent if overtures are rejected.

During the development of the model code, the resource group agreed that the alleged stalker's behavior, not motives, should be the most significant factor in determining whether to file charges. However, the project resource group pointed out that the stalker's relationship with and motive in pursuing the victim may have important implications for

selecting an appropriate, potentially effective strategy for intervening in the stalking behavior. The group urged, therefore, that research be carried out on a wide range of matters relating to stalkers—including behavior, motives, and relationships with victims—to provide guidance for criminal justice and social services practitioners in developing intervention strategies. Discussion at the regional seminars focused on the relationship between stalking and domestic violence and on whether stalking behavior should be handled differently depending on the stalker's motives and the context in which the behavior occurs.

Although motives are relevant to the ultimate management and disposition of a case, the resource group agreed that neither the stalker's motives nor the context in which the stalking occurred should be considered when the crime is charged. If the conduct in which the person engages is seriously threatening, it should be charged as stalking, regardless of the defendant's motivations or relationship to the victim. In taking this approach, the resource group reaffirmed the model code's focus on behavior rather than motivation.

Evaluation and Treatment

Although stalking cannot be considered normal or appropriate, a stalker may not necessarily be diagnosed as mentally ill. However, some stalkers appear to suffer from psychiatric or psychological disorders, and it is unlikely that simply punishing the convicted stalker will resolve the problem. In fact, a stalker with a mental disorder who has been convicted and incarcerated may be embittered and seek retribution for being kept from the victim, especially if the illness was left untreated during incarceration.

The report of the model code development project recommends that States consider requiring mental evaluations and counseling as part of sentences imposed on convicted stalkers and as part of conditions for pretrial release, probation, or parole.

Including counseling in a stalker's sentence may make it easier to intervene immediately if a stalker resumes pursuit of the victim after release. If a probationer or parolee fails to comply with the counseling conditions, the release could be revoked. In cases where the stalker does not comply, or if treatment fails initially, the prosecutor may be more successful in obtaining a jail sentence at a later court date. However, judges do not always know whether a defendant complies with release conditions.

Some mental health professionals and others in the field contend that it is useless to require counseling for individuals who do not believe they have a problem. In addition, the victim may be lulled into a false sense of security because the offender is in treatment and may fail to take steps to protect himself or herself once the treatment program ends. Finally, a judge may be more apt to dispose of a case without sentencing, even in the case of a dangerous stalker, if there is an option to release the individual on the condition that he or she participate in counseling.

Prior to requiring counseling as a condition of probation, there should be a presentencing mental health evaluation to determine what value counseling might have in the particular case. The sentencing judge and mental health professionals who are assigned to the case should be apprised fully of the results of the evaluation.

In addition, victims should be informed that treatment may not be successful and that they should still take steps to protect themselves. While the defendant is undergoing treatment, the victim may have an opportunity to relocate, commence separation proceedings, or make other decisions with less fear.

In cases of domestic abuse, victims are most at risk when attempting to leave an abusive relationship. It may be helpful to keep the alleged abuser under court supervision during this time. Many stalkers are released on unsupervised probation without conditions, or are released from prison because of crowding. By making participation in counseling a requirement for release, the court can retain control over the defendant without requiring a prison sentence. If a defendant is committed to a mental institution as a result of an evaluation, he or she may be institutionalized for a longer time than would have been the case if the individual has been sentenced to prison, allowing the victim a longer period of respite.

After careful consideration, the resource group reaffirmed its position that counseling should be considered as a condition of pretrial release or probation in all cases. Although mental health professionals cannot always predict whether a person will be helped by counseling, some stalkers may benefit even though they are reluctant to recognize the problem initially. The resource group recognized that treatment and counseling may be more useful in obsessive, vengeful, or domestic situations than in less common stalking cases involving organized crime, gang activity, or abortion protesters.

Uncooperative Victims

Although stalking victims may also be victims of domestic violence, the relationship between the defendant and the victim in stalking cases is often very different from that in cases of domestic violence. Stalking victims often cooperate more readily with law enforcement officials and prosecutors than do victims of domestic violence because stalking victims are more likely to have made a decision not to continue a relationship, if there was one, with the stalker.

In domestic cases involving stalking, if the victim has not ended the relationship with the alleged stalker or is unwilling to testify against the stalker, problems of proof can arise, and prosecutors may be unable to build a convincing case.

Although this problem was not addressed in the final report of the model code development project, it was discussed at the regional seminars and by the resource group following the regional seminars.

The resource group agreed that victims and prosecutors must have information about the consequences of their decisions. Many prosecutors have established no-drop policies in stalking cases, which require a prosecutor to prosecute the case regardless of whether the victim will cooperate. As a result, victims often are left out of the decision-making process or discredited on the witness stand. A victim who is still married to a stalker may in some States take advantage of the privilege not to testify against a spouse in a criminal case. Many States have created exceptions to this privilege in cases of domestic violence, but the exceptions may not extend to stalking.

Victims' rights advocates have attempted to reconcile the sometimes conflicting goals of pursuing and prosecuting offenders and, at the same time, empowering victims by allowing them to regain a sense of control. Forcing victims to testify against their will can negate efforts to make them feel in control.

Many victims' advocates believe that victims should have a voice, but not a veto, in the prosecution of a stalker or an abuser. Often a victim's refusal to testify may be a result of direct or indirect coercion by the defendant. Victims' advocates are in the best position to provide advice concerning what course of action is in victims' best interest. Advocates attempt to empower victims and enable them to make their own decisions. However, empowerment does not mean that victims should always have the final say about whether to prosecute a case, some victims' advocates emphasize.

In some circumstances, victims have been so traumatized that they are incapable of deciding what is in their best interests. Advocates must ensure that a victim's decision is as fully informed and independent as possible.

Victims' advocates should inform victims about the potential consequences of failing to testify. If a victim's decision not to pursue prosecution is based on a threat to the victim or a family member or the fact that the defendant is the victim's main source of economic support, these issues should be discussed.

Whenever possible, victims' advocates should work to resolve external factors such as threats or fear of economic deprivation that may hinder their decision to cooperate in the prosecution of a stalker. In many States, police must provide victims with information about services that are available to them when an incident is investigated.

It is important to make a distinction between victims who refuse to testify because they are afraid and those who do not wish to testify because they have reconciled with their partners. When provided with information and support, those who are afraid may realize that they have other options and, therefore, may be more willing to testify than those who believe that they have reconciled and that the abuse will not occur again.

Although no-drop policies may help remove the onus from the victim and make the stalker less likely to hold the victim responsible for the prosecution, the defendant may still hold the

victim responsible for reporting the incidents to the police. Moreover, stalkers often have obsessive personalities and are likely to exaggerate the victims' role in the prosecution.

The resource group agreed that mandatory no-drop policies are not feasible because they remove discretion from prosecutors and fail to take into account other factors that may weigh in favor of a dismissal, such as lack of evidence. The group agreed that there should be a presumption against dropping a case but that the existence of certain factors could serve to rebut that presumption.

In stalking cases, it is particularly difficult to prove a victim's fear without his or her testimony. However, it is important for prosecutors to recognize that they can effectively prosecute a case even if the victim is unable or unwilling to cooperate. Police should conduct an independent investigation to learn whether probable cause exists. Furthermore, in States that require evidence of "reasonable fear," it may be sufficient to prove that a reasonable person would be in fear.

The National College of District Attorneys (NCDA) conducted a seminar on "Prosecuting Domestic Violence Cases Without the Victim" in 1994 in San Diego, California. Many of the following tactics recommended at that seminar could benefit prosecutors throughout the country in stalking cases:

- Prosecutors should develop a trusting relationship with victims and their families as early as possible. When victims trust the prosecutor, they are more likely follow through with the case.
- Keeping a defendant in custody may prevent witness intimidation and influence and may expedite a guilty plea.
- Prosecutors should consider preparing a case from the beginning as if there will be no victim cooperation, even if the victim appears cooperative at the outset. Prosecutors can build a case through corroborating evidence such as tapes and printouts from a 911 emergency call; damaged property; weapons; employee records; telephone records; letters from the defendant if the victim is willing to divulge them; photographs of the defendant, if possible; and interviews with neighbors, children, and other witnesses.
- Prosecutors should determine the number of hearsay exceptions available in the evidence rules of their States. Excited utterances by the victim, admissions by the defendant, former testimony, and declarations of state of mind may all be used to admit statements that would otherwise be inadmissible hearsay.
- If a defendant violates a protective order, the victim may not have to testify if there is documentation of the violation. Even if a victim is unwilling to testify in person, the

victim may be willing to provide a victim impact statement that the prosecutor can read to the court prior to sentencing.

Other Observations and Recommendations

Seminar participants offered these additional observations and recommendations:

- Early intervention and prosecution is crucial to prevent the behavior from escalating to the level of criminal stalking.
- Participants noted that law enforcement officers, prosecutors, judges, and victims' advocates should receive special training in handling stalking cases. Training on stalking should be a two-tier process: the first tier to impart general information about stalking and the second to provide information about specific steps that can be taken and tools that can be used to manage stalking cases effectively. In addition, criminal justice practitioners should receive some incentive to participate in the training programs, which should be offered frequently because of high turnover rates in law enforcement and prosecutors' and public defenders' offices.
- Several participants noted that violence is likely to escalate when a person is abusing alcohol or drugs and suggested research into the relationship between stalking and drug abuse.
- Because stalking statutes can often be more easily enforced than protective or restraining orders, stalking statutes can be used instead of protective orders in States that limit eligibility for protective orders.
- Participants recommended that even if there is insufficient evidence to arrest or charge an individual with stalking, police should investigate the case and file a report for future reference. Because stalking involves repetitive behavior, seminar participants emphasized that police officers should refer to previous reports concerning the same victim. If different police officers are called at different times to incidents involving the same parties, each incident may be viewed as an isolated event unless accurate and complete records are kept. Although maintaining a compilation of all reports on a victim is difficult, participants agreed that this practice should be encouraged so that police can recognize and quickly intervene in a pattern of abusive or stalking behavior.
- Participants noted that law enforcement and prosecutors must be creative in their use of stalking statutes. They stressed that prosecutors should use the numerous charges available in prosecuting these cases, such as violation of protective orders, disorderly conduct, harassment, terroristic threats, and trespass. For example, if children are involved, the prosecutor may be able to charge a stalker with endangering the welfare of a child. If several persons are working together to stalk or terrorize a victim,

prosecutors may be able to bring conspiracy charges. The stalking statutes of some States may be used to prosecute abortion protesters. Gang members who conduct questionable surveillance in public housing projects may be subject to stalking charges.

- Participants addressed the disadvantages of plea bargaining in stalking cases. For example, it was noted that corrections officials will devote fewer resources to an individual who has pled guilty to trespassing than to one who has been convicted of stalking. Moreover, in States that provide enhanced penalties for defendants who have been convicted of more than one stalking offense, a defendant who is permitted to plead to a lesser offense may not be subject to the enhanced penalty.
- Participants recommended that restitution be imposed in addition to, not as an alternative to, other sentences or punishment. Rather, restitution should be construed as paying a debt to the victim.
- Participants recommended that States agree to enforce protective orders from other jurisdictions and that States develop cooperative data bases so that information on incidents of stalking, domestic violence, and violation of protective orders in other jurisdictions can be provided to the courts as part of criminal history records.
- Participants recommended that there be interaction between criminal and civil courts in cases involving stalking in a domestic relationship. Communication between the two court systems will enable a judge presiding over a divorce or custody case to take into account previous charges and convictions for assault or stalking in making rulings.

Chapter 2. Profile of State Stalking Statutes

As noted in Chapter 1, 49 States have enacted antistalking laws since 1990, when California approved the Nation's first State-level statute on stalking. The California law was enacted in response to the unrelated murders of five women who had been stalking victims, including the young television actress Rebecca Schaeffer. Thirty other States followed suit 2 years later.² California expanded and increased penalties under its stalking law in 1992. Eighteen additional States and the District of Columbia approved antistalking legislation in 1993.³ Maine is the only State without a specific law to address stalking. However, the State uses a terrorizing statute to address stalking and added provisions to the State's protective order statute in 1993 that allow such orders to be issued to enjoin stalking.

Seventeen States have amended their stalking laws since the model code was promulgated in September 1993. Iowa, Virginia, and Utah amended their statutes to incorporate the language recommended by the model code. Wisconsin amended its code to include provisions that are similar to those in the model code, but does not incorporate the code's language regarding implicit threats. Other States that have approved amendments are Alabama, California, Colorado, Illinois, Kansas, Louisiana, North Carolina, Oklahoma, Rhode Island, South Carolina, South Dakota, Washington, and West Virginia. A complete list of statutory citations of State stalking statutes is provided in Table 1.

Stalking Defined

Although there is a common purpose underlying all State antistalking statutes, there is little uniformity in how they define and address the problem. The statutes typically define stalking as willful, malicious, and repeated following and harassing of another person. However, five States do not enumerate specifically the types of conduct that are prohibited. Three States proscribe lying in wait. Many stalking statutes prohibit nonconsensual communication. Seven States include surveillance in the description of stalking behavior.

Illinois considers a defendant who confines, restrains, or causes bodily harm to a victim guilty of aggravated stalking. Many State statutes require a pattern of conduct by the alleged stalker and specify that victims have a reasonable fear for their safety or of death or bodily injury. Texas requires that the stalking behavior continue after the victim has reported the conduct to law enforcement in order for a defendant to be charged under its stalking law.

2. The following States enacted stalking laws in 1992: Alabama, Arizona, Colorado, Connecticut, Delaware, Florida, Hawaii, Kansas, Idaho, Illinois, Iowa, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, Nebraska, New York, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, and Wisconsin.

3. The following States enacted stalking laws in 1993: Alaska, Arkansas, Georgia, Indiana, Maryland, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Oregon, Pennsylvania, Texas, Vermont, and Wyoming.

Table 1
Stalking Law Code Citations

State	Citation
Alabama	ALA. CODE §§13a-6-90 to 13a-6-94 (Supp. 1994)
Alaska	ALASKA STAT. §11.41 260-270 (Supp. 1993)
Arizona	ARIZ. REV. STAT. ANN. §13-2921 (1992 & Supp. 1993)
Arkansas	ARK. CODE ANN. §5-71-229 (Michie 1993)
California	CA PENAL §646.9 (West 1990 & Supp. 1994)
Colorado	COLO. REV. STAT. ANN. §18-9-111 (West 1990 & Supp. 1994)
Connecticut	CONN. GEN. STAT. 53a-181c & d (Supp. 1993)
Delaware	DEL. CODE ANN. tit. 11. §1312A (Supp.1992)
District of Columbia	D.C. CODE ANN. §22-504 (Supp. 1993)
Florida	FLA. STAT. ch. 784.048 (Supp. 1993)
Georgia	GA. CODE ANN. §16-5-90 - §16-5-93 (Supp. 1993)
Hawaii	HAW. REV. STAT. §711-1106-1106.5 (1988 & Supp. 1993)
Idaho	IDAHO CODE §18-7905 (Supp. 1993)
Illinois	720 ILCS 5/12-7.3-7.4, 5/13-14-5 (1993 & Supp. 1994)
Indiana	IND. CODE ANN. §§35-45-10-1 to 5 (Supp. 1993)
Iowa	1994 Iowa Legis Serv. S.F. 1093 (West) (to be codified at IOWA CODE ANN. § 708.11)
Kansas	KAN. STAT. ANN. §21-3438 (1994)
Kentucky	KY. REV. STAT. ANN. §508.130-.150 (Michie/Bobbs-Merrill 1993)
Louisiana	LA. REV. STAT. ANN. §14:40.2 (West Supp. 1995)
Maine ^a	ME REV. STAT. ANN. tit. 17-A §210 (West 1983 & Supp. 1993)
Maryland	MD. ANN. CODE ART. 27 §121B (Supp. 1993)
Massachusetts	MASS. GEN. L. ch. 265, Sect. 43 (Supp. 1993)
Michigan	MICH. COMP. LAWS ANN. §750.411h-i (1993 & Supp. 1994)
Minnesota	MINN. STAT. ANN. §609.749 (Supp. 1994)
Mississippi	MISS. CODE ANN. §97-3-107 (Supp. 1993)
Missouri	MO. ANN. STAT. §565.225 (Vernon Supp. 1994)
Montana	MONT. CODE ANN. § 45-5-220 (1993)

a. Information is for Maine's terrorizing statute.

Table 1
Stalking Law Code Citations

State	Citation
Nebraska	NEB. REV. STAT. §28-311.02-.05 (Supp. 1992 & 1993)
Nevada	NEV. REV. STAT. §200.575 (1993)
New Hampshire	N.H. REV. STAT. ANN. §633:3-a (Supp. 1993)
New Jersey	N.J. REV. STAT. §2C:12-10 (Supp. 1993)
New Mexico	N.M. STAT. ANN. §30-3A3 (Michie Supp. 1993)
New York ^b	N.Y. PENAL LAW §§120.13 & 120.14 (McKinney Supp. 1994)
North Carolina	N.C. GEN. STAT. §14-277.3 (1993 & Supp. 1994)
North Dakota	N.D. CENT. CODE §12.1-17-07.1 (Supp. 1993)
Ohio	OHIO REV. CODE ANN. §2903.211-215 (Anderson 1993 & Supp. 1994)
Oklahoma	OKLA. STAT. ANN. tit. 21, §1173 (West Supp. 1994)
Oregon	OR. REV. STAT. §163.730 -.750 (1993)
Pennsylvania	18 PA. CONS. STAT. §2709 (Supp. 1993)
Rhode Island	R.I. GEN. LAWS §§11-59-1 - 11-59-3 (Supp. 1993)
South Carolina	1994 S.C. Acts 472 (to be codified at S.C. CODE ANN. § 163-1070)
South Dakota	S.D. CODIFIED LAWS ANN. §22-19a-1-7 (Supp. 1994)
Tennessee	TENN. CODE ANN. §39-17-315 (Supp. 1993)
Texas	TEX. PENAL CODE ANN. §42.07 (West Supp. 1993); TEX. CRIM PROC. CODE ANN. §§ 17.46 (West 1989)
Utah	UTAH CODE ANN. §76-5-106.5 (Supp. 1993)
Vermont	VT. STAT. ANN. tit. 13, §§1061-1063 (Law. Co-op. Supp. 1993)
Virginia	VA. CODE ANN. §18.2-60.3 (Michie Supp. 1993)
Washington	WASH. REV. CODE 9A.46.110 (Supp. 1994)
West Virginia	W.VA. CODE §61-2-9a (Supp. 1993)
Wisconsin	WIS. STAT. ANN. 940.32 (West Supp. 1993)
Wyoming	WYO. STAT. §6-2-506 (Supp. 1993)

b. Information is for New York's menacing statute.

A list of acts prohibited in State stalking statutes appears in Table 2. A comparison of acts prohibited by State laws before and after release of the model code appears in Table 3.

Threat Required

The two chief elements of most stalking statutes are threatening behavior and criminal intent by the defendant. Fourteen States require that the perpetrator make a threat against the victim in order to be charged under the stalking code. Colorado and New Mexico require that the perpetrator make a threat and then engage in additional conduct in furtherance of the threat. Forty States and the District of Columbia have provisions that encompass stalking actions that would cause a reasonable person to feel threatened even if there has been no verbal threat by the perpetrator. Eight States require that the defendant has the intent and/or the apparent ability to carry out the threat. Some States allow threats made against members of the victim's immediate family to be presented as evidence of stalking. Four States require that a threat be made to prove aggravated stalking, but not stalking. Statutes in Hawaii and Texas prohibit threats in conjunction with intent to damage property and threats in conjunction with intent to cause personal injury. A description of the threat provisions in State stalking statutes appears in Table 4. A comparison of threat provisions included in State statutes before and after publication of the model code is provided in Table 5.

Intent Provisions

To convict a person of stalking in most States, it must be shown that the defendant demonstrated criminal intent to cause fear in the victim. The course of conduct must be willful, purposeful, intentional, or knowing. Seven States require that the prosecution prove that the defendant intended to cause alarm or annoyance. Sixteen States do not require such proof provided that the alleged stalker intended to do the act that resulted in fear. In these States, if the victim has reasonable cause to feel frightened, the intent element of the crime has been met. In Indiana and Missouri, if there is proof that the defendant intended to cause fear, the crime is elevated to aggravated stalking. A description of the intent provisions of State stalking statutes is provided in Table 6. A comparison of State intent provisions before and after publication of the model code is provided in Table 7.

Course of Conduct

State stalking laws almost always require that the alleged stalker engage in a course of conduct, not just a single act, to fall under their provisions. Typically, a course of conduct is characterized as a series of acts over a period of time, however short, evidencing a continuity of purpose.

A few States specify how many acts must occur and during what period of time the conduct must take place in order to constitute stalking. Illinois refers to "acts done on at least two occasions. . ."; Michigan specifies a "series of two or more separate, noncontinuous acts";

**Table 2
Proscribed Acts^a**

State	Visual or Physical Proximity	Presence	Approaching	Pursuing or Following	Surveillance	Lying in Wait	Intimidating	Nonconsensual Communication	Harassing^b	Trespass	Possess or Show Weapon	Disregard Warning	Confine/Restrain	Vandalism	Bodily Harm
Alabama				X					X				X		
Alaska		X	X	X				X		X					
Arizona				X				X	X			X			
Arkansas				X	X			X	X						X
California				X					X						
Colorado				X				X							X
Connecticut				X		X									
Delaware				X					X						
District of Columbia				X				X	X						
Florida				X					X						
Georgia				X	X		X	X		X					
Hawaii				X	X										
Idaho				X					X						
Illinois				X	X										

a. Some States proscribe some of the acts below in other statutes, for example, terroristic, threatening, or trespass statutes. They are not charted here. Additionally, this chart uses the language of the specific statute to indicate what acts are proscribed. It should be noted that some statutes may use different language to proscribe the same activities.

b. Some of the stalking statutes list “harassing” as a prohibited activity. These statutes either define harassing within the stalking statute or refer to the State’s harassment statute for the definition. In those instances, the proscribed acts from the harassment definition are included.

**Table 2
Proscribed Acts^a**

State	Visual or Physical Proximity	Presence	Approaching	Pursuing or Following	Surveillance	Lying in Wait	Intimidating	Nonconsensual Communication	Harassing^b	Trespass	Possess or Show Weapon	Disregard Warning	Confine/Restrain	Vandalism	Bodily Harm
Indiana				X				X	X						
Iowa	X							X							
Kansas				X											
Kentucky	No specific acts – no proscribed conduct is enumerated in the statute														
Louisiana				X					X						
Maine ^c	No specific acts – no proscribed conduct is enumerated in the statute														
Maryland			X	X											
Massachusetts				X					X						
Michigan		X	X	X				X	X	X					
Minnesota				X	X			X		X					
Mississippi				X					X						
Missouri				X	X				X						
Montana				X			X	X	X						

a. Some States proscribe some of the acts below in other statutes, for example, terroristic, threatening, or trespass statutes. They are not charted here. Additionally, this chart uses the language of the specific statute to indicate what acts are proscribed. It should be noted that some statutes may use different language to proscribe the same activities.

b. Some of the stalking statutes list “harassing” as a prohibited activity. These statutes either define harassing within the stalking statute or refer to the State’s harassment statute for the definition. In those instances, the proscribed acts from the harassment definition are included.

c. The information is for Maine’s terrorizing statute.

**Table 2
Proscribed Acts^a**

State	Visual or Physical Proximity	Presence	Approaching	Pursuing or Following	Surveillance	Lying in Wait	Intimidating	Nonconsensual Communication	Harassing ^b	Trespass	Possess or Show Weapon	Disregard Warning	Confine/Restrain	Vandalism	Bodily Harm
	Nebraska	No specific acts – no proscribed conduct is enumerated in the statute													
Nevada	No specific acts – no proscribed conduct is enumerated in the statute														
New Hampshire		x		x			x								
New Jersey				x											
New Mexico				x	x				x						
New York				x				x			x				x
North Carolina		x		x								x			
North Dakota									x						
Ohio	No specific acts – no proscribed conduct is enumerated in the statute														
Oklahoma		x	x	x				x	x	x					
Oregon		x		x				x	x	x				x	
Pennsylvania				x											
Rhode Island				x					x						
South Carolina				x					x						

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b. Some of the stalking statutes list “harassing” as a prohibited activity. These statutes either define harassing within the stalking statute or refer to the State’s harassment statute for the definition. In those instances, the proscribed acts from the harassment definition are included.

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State	Visual or Physical Proximity	Presence	Approaching	Pursuing or Following	Surveillance	Lying in Wait	Intimidating	Nonconsensual Communication	Harassing^b	Trespass	Possess or Show Weapon	Disregard Warning	Confine/Restrain	Vandalism	Bodily Harm
South Dakota				X					X						
Tennessee	X							X	X					X	
Texas				X				X							
Utah	X														
Vermont				X		X		X	X					X	
Virginia	X														
Washington	X			X											
West Virginia				X		X			X						
Wisconsin	X														
Wyoming				X	X			X						X	

a. Some States proscribe some of the acts below in other statutes, for example, terroristic, threatening, or trespass statutes. They are not charted here. Additionally, this chart uses the language of the specific statute to indicate what acts are proscribed. It should be noted that some statutes may use different language to proscribe the same activities.

b. Some of the stalking statutes list harassing as a prohibited activity. These statutes either define harassing with the stalking statute or refer to the State's harassment statute for the definition. In those instances, the proscribed acts from the harassment definition are included.

Table 3
Comparison of Proscribed Acts Provisions Before
and After Publication of the Model Code

State	Visual or Physical Proximity		Presence		Approaching		Pursuing or Following		Surveillance		Lying in Wait		Intimidating		Nonconsensual Communication		Harassing ^a		Trespass		Possess or Show Weapon		Disregard Warning		Confine/Restrain		Vandalism		Bodily Harm		No Specific Acts			
	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994				
Alabama							X	X									X	X							X	X								
Alaska			X	X	X	X	X	X							X	X			X	X														
Arizona							X	X				X		X	X		X						X	X										
Arkansas							X	X	X	X					X	X	X	X											X	X				
California							X	X									X	X																
Colorado							X	X							X	X												X	X					
Connecticut							X	X			X	X																						

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	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994			
Delaware							X	X									X	X															
District of Columbia							X	X							X	X	X	X															
Florida							X	X									X	X															
Georgia							X	X	X	X			X	X	X	X			X	X													
Hawaii							X	X	X	X					X								X										
Idaho							X	X									X	X															
Illinois							X	X	X	X																							

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	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994		
Indiana								X							X	X	X	X	X													
Iowa		X					X								X	X	X															
Kansas							X	X									X															
Kentucky																																X
Louisiana							X	X									X	X														
Maine																															X	X

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	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994		
Maryland					X	X	X	X									X															
Massachusetts							X	X								X	X															
Michigan			X	X	X	X	X	X						X	X	X	X	X	X				X									
Minnesota							X	X	X	X					X	X			X	X												
Mississippi							X	X									X	X														
Missouri							X	X		X							X															
Montana							X	X					X	X	X	X	X	X														

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	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994		
Nebraska							X								X		X															X
Nevada																															X	X
New Hampshire			X	X			X	X					X	X																		
New Jersey							X	X																								
New Mexico							X	X	X	X							X	X														
New York							X	X							X	X					X	X							X	X		
North Carolina			X	X			X	X															X	X								

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	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994		
North Dakota														X		X		X	X													
Ohio																														X	X	
Oklahoma			X	X	X	X	X	X							X	X	X	X	X	X												
Oregon			X	X			X	X							X	X	X	X	X	X			X			X	X					
Pennsylvania							X	X																								
Rhode Island							X	X									X	X														

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Comparison of Proscribed Acts Provisions Before
and After Publication of the Model Code

State	Visual or Physical Proximity		Presence		Approaching		Pursuing or Following		Surveillance		Lying in Wait		Intimidating		Nonconsensual Communication		Harassing ^a		Trespass		Possess or Show Weapon		Disregard Warning		Confine/Restrain		Vandalism		Bodily Harm		No Specific Acts	
	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994		
South Carolina							X	X									X	X														
South Dakota							X	X									X	X														
Tennessee		X					X								X		X											X				
Texas							X	X						X	X								X									
Utah		X					X										X															
Vermont							X	X			X	X			X	X	X	X									X	X				

a. Some of the stalking statutes list "harassing" as a prohibited activity. These statutes either define harassing within the stalking statute or refer to the State's harassment statute for the definition. In those instances, the proscribed acts from the harassment definition are included.

Table 3
Comparison of Proscribed Acts Provisions Before
and After Publication of the Model Code

State	Visual or Physical Proximity		Presence		Approaching		Pursuing or Following		Surveillance		Lying in Wait		Intimidating		Nonconsensual Communication		Harassing ^a		Trespass		Possess or Show Weapon		Disregard Warning		Confine/Restrain		Vandalism		Bodily Harm		No Specific Acts	
	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993	1994		
Virginia		X															X															
Washington		X					X	X																								
West Virginia							X	X		X	X						X	X														
Wisconsin		X																												X		
Wyoming							X	X	X	X					X	X												X				
Totals	0	6	6	6	4	4	43	40	7	8	3	3	5	3	20	18	28	25	7	6	1	1	5	2	3	1	2	4	3	3	4	5

a. Some of the stalking statutes list “harassing” as a prohibited activity. These statutes either define harassing within the stalking statute or refer to the State’s harassment statute for the definition. In those instances, the proscribed acts from the harassment definition are included.

**Table 4
Threat Requirements**

State	Explicit or Implicit Threat^a	Explicit Threat	Intent and Apparent Ability^b	Threat and Conduct^c
Alabama			X	I
Alaska	X			
Arizona	X			
Arkansas				TT
California	X		X	
Colorado				X ¹
Connecticut	X			
Delaware	X			
District of Columbia	X			
Florida	X	CT – Aggrav		
Georgia	X			
Hawaii	X			
Idaho	X			
Illinois	X ²			
Indiana	X			
Iowa	X			

TT – terroristic threat CT – credible threat	T – threat I – implied threat sufficient	Aggrav – aggravated stalking AA – only requires apparent ability
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a. 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 .

b. Statutes that require the intent and apparent ability to carry out the threat in addition to making the threat.

c. Statutes that require a threat and conduct to satisfy the elements of the crime of stalking.

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

2. On at least two occasions.

**Table 4
Threat Requirements**

State	Explicit or Implicit Threat^a	Explicit Threat	Intent and Apparent Ability^b	Threat and Conduct^c
Kansas	X			
Kentucky	X			
Louisiana	X			
Maine ³		T	X	
Maryland	X			
Massachusetts				T
Michigan	X	CT – Aggrav		
Minnesota	X			
Mississippi	X			
Missouri	X	CT – Aggrav		
Montana	X			
Nebraska	X			
Nevada	X	Aggrav		
New Hampshire	X			
New Jersey	X		X	
New Mexico			X	X

TT – terroristic threat	T – threat	Aggrav – aggravated stalking
CT – credible threat	I – implied threat sufficient	AA – only requires apparent ability

a. 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.

b. Statutes that require the intent and apparent ability to carry out the threat in addition to making the threat.

c. Statutes that require a threat and conduct to satisfy the elements of the crime of stalking.

4. Threat followed by additional conduct in furtherance of threat is required.

**Table 4
Threat Requirements**

State	Explicit or Implicit Threat^a	Explicit Threat	Intent and Apparent Ability^b	Threat and Conduct^c
New York	X			
North Carolina	X			
North Dakota	X			
Ohio	X			
Oklahoma	X			
Oregon	X			
Pennsylvania	X			
Rhode Island			X	CT
South Carolina			X	CT
South Dakota	X			
Tennessee	X			
Texas				X^d
Utah	X			
Vermont	X			
Virginia	X			
Washington	X			

TT – terroristic threat	T – threat	Aggrav – aggravated stalking
CT – credible threat	I – implied threat sufficient	AA – only requires apparent ability

a. 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.

b. Statutes that require the intent and apparent ability to carry out the threat in addition to making the threat.

c. Statutes that require a threat and conduct to satisfy the elements of the crime of stalking.

5. Conduct must occur after the person toward whom the conduct is specifically directed has reported to a law enforcement agency the conduct described.

**Table 4
Threat Requirements**

State	Explicit or Implicit Threat^a	Explicit Threat	Intent and Apparent Ability^b	Threat and Conduct^c
West Virginia			AA	CT
Wisconsin	X			
Wyoming	X			

TT – terroristic threat	T – threat	Aggrav – aggravated stalking
CT – credible threat	I – implied threat sufficient	AA – only requires apparent ability

a. 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.

b. Statutes that require the intent and apparent ability to carry out the threat in addition to making the threat.

c. Statutes that require a threat and conduct to satisfy the elements of the crime of stalking.

5. Conduct must occur after the person toward whom the conduct is specifically directed has reported to a law enforcement agency the conduct described.

Table 5
Comparison of Threat Requirement Provisions Before
and After Publication of the Model Code

State	Explicit or Implicit Threat ^a		Explicit Threat		Intent and Apparent Ability ^b		Threat and Conduct ^c	
	1993	1994	1993	1994	1993	1994	1993	1994
Alabama					X	X	X	X
Alaska	X	X						
Arizona	X	X						
Arkansas							X	X
California		X			X	X	X	
Colorado							X	X
Connecticut	X	X						
Delaware	X	X						
District of Columbia	X	X						
Florida	X	X						
Georgia	X	X						
Hawaii	X	X						
Idaho		X					X	
Illinois		X					X	
Indiana		X					X	
Iowa		X			X ^d		X	

a. 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.

b. Statutes that require the intent and apparent ability to carry out the threat in addition to making the threat.

c. Statutes that require a threat and conduct to satisfy the elements of the crime of stalking.

d. Apparent ability only.

Table 5
Comparison of Threat Requirement Provisions Before
and After Publication of the Model Code

State	Explicit or Implicit Threat ^a		Explicit Threat		Intent and Apparent Ability ^b		Threat and Conduct ^c	
	1993	1994	1993	1994	1993	1994	1993	1994
Kansas	X	X						
Kentucky	X	X						
Louisiana		X			X ^d		X	
Maine			X	X	X	X		
Maryland	X	X						
Massachusetts							X	X
Michigan	X	X						
Minnesota	X	X						
Mississippi	X	X						
Missouri	X	X						
Montana	X	X						
Nebraska		X					X	
Nevada	X	X						
New Hampshire	X	X						
New Jersey	X	X			X	X		
New Mexico					X	X	X	X

a. 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.

b. Statutes that require the intent and apparent ability to carry out the threat in addition to making the threat.

c. Statutes that require a threat and conduct to satisfy the elements of the crime of stalking.

d. Apparent ability only.

Table 5
Comparison of Threat Requirement Provisions Before
and After Publication of the Model Code

State	Explicit or Implicit Threat ^a		Explicit Threat		Intent and Apparent Ability ^b		Threat and Conduct ^c	
	1993	1994	1993	1994	1993	1994	1993	1994
New York	X	X						
North Carolina	X	X						
North Dakota	X	X						
Ohio	X	X						
Oklahoma		X			X		X	
Oregon	X	X						
Pennsylvania	X	X						
Rhode Island					X	X	X	X
South Carolina					X	X	X	X
South Dakota	X	X					X	
Tennessee	X	X			X ^d			
Texas	X							X
Utah		X					X	
Vermont	X	X						
Virginia	X	X						

a. 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.

b. Statutes that require the intent and apparent ability to carry out the threat in addition to making the threat.

c. Statutes that require a threat and conduct to satisfy the elements of the crime of stalking.

d. Apparent ability only.

Table 5
Comparison of Threat Requirement Provisions Before
and After Publication of the Model Code

State	Explicit or Implicit Threat ^a		Explicit Threat		Intent and Apparent Ability ^b		Threat and Conduct ^c	
	1993	1994	1993	1994	1993	1994	1993	1994
Washington	X	X						
West Virginia					X ^d	X ^d	X	X
Wisconsin		X			X		X	
Wyoming	X	X						
Totals	32	41	1	1	13	8	19	9

a. 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.

b. Statutes that require the intent and apparent ability to carry out the threat in addition to making the threat.

c. Statutes that require a threat and conduct to satisfy the elements of the crime of stalking.

d. Apparent ability only.

**Table 6
Intent Requirements**

State	Intent to and Actually Causes Reasonable Fear^a	Intent to and Actually Causes Alarm/Annoyance^b	Actually Causes Reasonable Fear^c
Alabama	X		
Alaska			X
Arizona		X	
Arkansas	X		
California	X		
Colorado		X	
Connecticut	X		
Delaware	X		
District of Columbia			X
Florida	3rd Degree Felony		1st Degree Misdemeanor
Georgia	X		
Hawaii		X	
Idaho	X ¹		
Illinois	X		
Indiana	Aggravated		X
Iowa			X
Kansas	X ²		

a. 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.

b. This is a lesser standard than fear, and although some States have it in their stalking statutes, most reserve this language for their harassment statutes.

c. 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.

1. The defendant must act “willfully or maliciously.”

2. The defendant must act “intentionally and maliciously.”

**Table 6
Intent Requirements**

State	Intent to and Actually Causes Reasonable Fear^a	Intent to and Actually Causes Alarm/Annoyance^b	Actually Causes Reasonable Fear^c
Kentucky	X		
Louisiana	X		
Maine ³			X
Maryland	X		
Massachusetts	X		
Michigan			X
Minnesota			X
Mississippi	X		
Missouri	Aggravated	X	
Montana	X ⁴		
Nebraska	X		
Nevada	Aggravated		X
New Hampshire			X
New Jersey		X	
New Mexico	X		
New York	X		
North Carolina	X		

a. 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.

b. This is a lesser standard than fear, and although some States have it in their stalking statutes, most reserve this language for their harassment statutes.

c. 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.

3. Information is for Maine’s terrorizing statute.

4. The defendant must act “purposely or knowingly.”

Table 6
Intent Requirements

State	Intent to and Actually Causes Reasonable Fear^a	Intent to and Actually Causes Alarm/Annoyance^b	Actually Causes Reasonable Fear^c
North Dakota			X
Ohio	X		
Oklahoma	X ⁵		
Oregon	X		
Pennsylvania	X		
Rhode Island	X		
South Carolina	X		
South Dakota	X		
Tennessee	X		
Texas		X	
Utah			X
Vermont			X
Virginia			X
Washington			X
West Virginia	X		
Wisconsin			X
Wyoming		X	

a. 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.

b. This is a lesser standard than fear, and although some States have it in their stalking statutes, most reserve this language for their harassment statutes.

c. 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.

5. The defendant must act “willfully or maliciously.”

Table 7
Comparison of Intent Requirement Provisions Before
and After Publication of the Model Code

State	Intent to and Actually Causes Reasonable Fear ^a		Intent to and Actually Causes Alarm/Annoyance ^b		Actually Causes Reasonable Fear ^c	
	1993	1994	1993	1994	1993	1994
Alabama	X	X				
Alaska	X					X
Arizona			X	X		
Arkansas	X	X				
California	X	X				
Colorado				X	X	
Connecticut	X	X				
Delaware	X	X				
District of Columbia					X	X
Florida					X	X
Georgia	X	X				
Hawaii				X	X	
Idaho	X	X				
Illinois	X	X				
Indiana	X					X
Iowa	X					X
Kansas	X	X			X	
Kentucky	X	X				

a. 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.

b. This is a lesser standard than fear, and although some States have it in their stalking statutes, most reserve this language for their harassment statutes.

c. 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.

Table 7
Comparison of Intent Requirement Provisions Before
and After Publication of the Model Code

State	Intent to and Actually Causes Reasonable Fear ^a		Intent to and Actually Causes Alarm/Annoyance ^b		Actually Causes Reasonable Fear ^c	
	1993	1994	1993	1994	1993	1994
Louisiana	X	X				
Maine						X
Maryland	X	X				
Massachusetts	X	X				
Michigan					X	X
Minnesota					X	X
Mississippi	X	X				
Missouri			X	X		
Montana		X			X	
Nebraska	X	X				
Nevada					X	X
New Hampshire					X	X
New Jersey			X	X		
New Mexico	X	X				
New York	X	X				
North Carolina	X	X				
North Dakota					X	X
Ohio	X	X				

a. 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.

b. This is a lesser standard than fear, and although some States have it in their stalking statutes, most reserve this language for their harassment statutes.

c. 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.

Table 7
Comparison of Intent Requirement Provisions Before
and After Publication of the Model Code

State	Intent to and Actually Causes Reasonable Fear ^a		Intent to and Actually Causes Alarm/Annoyance ^b		Actually Causes Reasonable Fear ^c	
	1993	1994	1993	1994	1993	1994
Oklahoma	X	X				
Oregon	X	X				
Pennsylvania	X	X				
Rhode Island	X	X				
South Carolina	X	X				
South Dakota	X	X				
Tennessee	X	X				
Texas			X	X		
Utah	X					X
Vermont					X	X
Virginia	X					X
Washington					X	X
West Virginia	X	X				
Wisconsin	X					X
Wyoming				X	X	
Totals	33	28	4	7	14	16

a. 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.

b. This is a lesser standard than fear, and although some States have it in their stalking statutes, most reserve this language for their harassment statutes.

c. 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.

Oklahoma, “two or more separate acts”; and Colorado and North Carolina, “on more than one occasion.”

Sentencing

Many States have both misdemeanor and felony stalking classifications. Typically, a stalker convicted of a misdemeanor may receive a jail sentence of up to 1 year. Penalties of 3 to 5 years are typical for felony convictions. Some States allow 10- and 20-year sentences. Enhanced penalties are available in most States if a stalker violates a protective order, brandishes a weapon, directs his conduct toward a victim who is under age 16, or has committed a prior stalking offense. In 14 States, the prior offense must have been against the same victim. Nine States permit enhanced penalties for stalking if the defendant previously has been convicted of another felony. A description of sentencing provisions of the State stalking statutes is provided in Table 8. A comparison of sentencing provisions in State laws before and after the model code is provided in Table 9.

Recently, several States have enacted legislation that mandates a life sentence in prison without parole for those who have been convicted of a violent offense for the third time (“three strikes, you’re out” laws). In States that classify stalking as a violent crime, such provisions may become relevant in stalking cases.

Bail

Eleven States include bail or pretrial release provisions for stalking defendants in their stalking laws or in related law. Arkansas, Maryland, Texas, and West Virginia require a no-contact order as a condition of pretrial release. Georgia, in addition to requiring a no-contact order, provides that bail may be denied if evidence shows that the defendant previously violated conditions of pretrial release, probation, or parole arising from a stalking offense.

In Illinois, bail may be denied after a hearing if the State proves that the defendant would pose a threat to the stalking victim.⁴ The Ohio statute lists specific factors that a court must consider in determining the amount and conditions of bail. In Montana, the defendant may not be released without appearing before a judge, and the court must notify the victim of pretrial release. In California, a hearing must be held before a person arrested for stalking or domestic abuse is released on bail that is different from that specified in the bail schedule or if the individual is released on his or her own recognizance. Vermont law considers stalking a violent crime, and bail is determined according to State guidelines for violent crimes. In a number of States, the constitutional right to bail does not apply to persons charged with felony offenses if the alleged offense was committed while the accused was out on bail,

4. The Illinois Appellate Court, First District - Third Division reversed a decision by the Cook County Circuit Court to deny bail based upon the no-bail provision of the Illinois statute. The appellate court did not, however, issue a written opinion in the case. *People v. Incandella*, No. 1-92-3767, Dec. 10, 1992.

**Table 8
Sentencing Provisions**

State	Penalty	Enhancement	Evaluation/ Counseling
Alabama	1–10 years	VO: 2–20 years	
Alaska	Up to 1 year, \$5,000	VO: Up to 5 years 16: Up to 5 years W: Up to 5 years PF: Up to 5 years	X ¹
Arizona	4–6 months	AG: Up to 1 year	
Arkansas	3–10 years	VO: 5–20 years W: 5–20 years 2d ² : 5–20 years	
California	Up to 1 year, \$1,000	VO ³ : 2–4 years 2d: 2–4 years 3d: 2–4 years	X ⁴
Colorado	6–24 months, \$500–\$5,000	VO: Consecutive sentences required 2d: Mandatory minimum 30 days	
Connecticut	1 year	VO: 1–5 years 2d: 1–5 years 16: 1–5 years	

16:	Victim under 16 years of age	CT:	Credible threat
18:	Victim under 18 years of age	FI:	Committing the crime by false impersonation
2nd:	Second stalking offense	PC:	Prior conviction
2dAG:	Second conviction for aggravated stalking	PF:	Prior felony
3d:	Third stalking offense and each subsequent offense	T:	Threat
3F:	Third felony	TJS:	Committing the crime to tamper with the judicial system or officials in connection with judicial proceedings
AG:	Aggravated	Twice:	Stalking occurs on more than one occasion
B:	Bias motivated	VO:	Violate court order—includes protection orders, probation, conditions of release, etc.
BH:	Bodily harm to victim	W:	Weapon
CC:	Criminal complaint pending		
CR:	Confining or restraining the victim		

1. Court may require counseling as a condition of pretrial release.

2. Repeat offense within 10 years or under another State’s statutory provisions.

3. Same victim.

4. Court may recommend evaluation and counseling.

**Table 8
Sentencing Provisions**

State	Penalty	Enhancement	Evaluation/ Counseling
Delaware	Up to 3 years	VO: 6 months, \$1,000 2d ⁵ : 1 year, \$1,000	
District of Columbia	Up to 1 year, \$500	VO: 1 year, \$500, and 1 year bond 2d ⁶ : Up to 1.5 years, \$750 3d: Up to 3 years, \$1,500	
Florida	Mis: Up to 1 year Fel: Up to 5 years, \$5,000 ⁷	VO: Up to 5 years, \$5,000	
Georgia	Up to 12 months	2d: 1–5 years VO: 1–5 years, \$10,000	X ⁸
Hawaii	Up to 30 days, \$1,000	Twice: Up to 1 year, \$2,000	X ⁹
Idaho	Up to 1 year, \$1,000	VO ¹⁰ : 1 year, \$1,000 2d ¹¹ : Up to 5 years, \$10,000	

16:	Victim under 16 years of age	CT:	Credible threat
18:	Victim under 18 years of age	FI:	Committing the crime by false impersonation
2d:	Second stalking offense	PC:	Prior conviction
2dAG:	Second conviction for aggravated stalking	PF:	Prior felony
3d:	Third stalking offense and each subsequent offense	T:	Threat
3F:	Third felony	TJS:	Committing the crime to tamper with the judicial system or officials in connection with judicial proceedings
AG:	Aggravated	Twice:	Stalking occurs on more than one occasion
B:	Bias motivated	VO:	Violate court order—includes protection orders, probation, conditions of release, etc.
BH:	Bodily harm to victim	W:	Weapon
CC:	Criminal complaint pending		
CR:	Confining or restraining the victim		

-
5. Subsequent conviction within 7 years.
 6. Second offense within 2 years.
 7. If the stalker has the intent to cause fear, the crime of stalking is a felony offense.
 8. Court may order a mental health evaluation and counseling as a condition of probation.
 9. Court may order counseling.
 10. Same victim.
 11. Second or subsequent conviction within 7 years.

**Table 8
Sentencing Provisions**

State	Penalty	Enhancement	Evaluation/ Counseling
Illinois	Up to 3 years, \$10,000	2d: Up to 5 years, \$10,000 BH: Up to 5 years, \$10,000 CR: Up to 5 years, \$10,000 VO: Up to 5 years, \$10,000 2dAG: Up to 7 years, \$10,000	X ¹²
Indiana	Up to 180 days, \$1,000	T: Up to 1 year, \$5,000 VO: Up to 1 year, \$5,000 CC: Up to 1 year, \$5,000 W: 1.5 years with not more than 1.5 years added for aggravated circumstances, and not more than 1 year subtracted for mitigating circumstances, \$10,000 2d: same as W	
Iowa	Up to 2 years, \$500–\$5,000	VO: Up to 5 years, \$500 W: Up to 5 years, \$500 18: Up to 5 years, \$500 2d: Up to 5 years, \$500 3d: Up to 10 years, \$500–\$10,000	
Kansas	Up to 1 year, \$100,000, 24 months probation	VO: Up to 13 months jail, \$100,000, 24 months probation 2d ¹³ : Up to 17 months jail, \$100,000, 24 months probation	

16:	Victim under 16 years of age	CT:	Credible threat
18:	Victim under 18 years of age	FI:	Committing the crime by false impersonation
2d:	Second stalking offense	PC:	Prior conviction
2dAG:	Second conviction for aggravated stalking	PF:	Prior felony
3d:	Third stalking offense and each subsequent offense	T:	Threat
3F:	Third felony	TJS:	Committing the crime to tamper with the judicial system or officials in connection with judicial proceedings
AG:	Aggravated	Twice:	Stalking occurs on more than one occasion
B:	Bias motivated	VO:	Violate court order—includes protection orders, probation, conditions of release, etc.
BH:	Bodily harm to victim	W:	Weapon
CC:	Criminal complaint pending		
CR:	Confining or restraining the victim		

12. An order of counseling is one of the remedies that may be included in an order of protection.

13. Subsequent conviction within 7 years, same victim.

Table 8
Sentencing Provisions

State	Penalty	Enhancement	Evaluation/ Counseling
Kentucky	Up to 1 year	VO: 1–5 years 2d ¹⁴ : 1–5 years W: 1–5 years CC ¹⁵ : 1–5 years PF ¹⁶ : 1–5 years	
Louisiana	Up to 6 months, \$1,000	VO: 30 days to 1 year, \$5,000 2d ¹⁷ : 90 days to 2 years, \$5,000	
Maine ¹⁸	Less than 1 year, \$2,000		
Maryland	Up to 5 years, \$5,000	Allows concurrent convictions of multiple offenses	
Massachusetts	Up to 5 years, \$1,000	VO: 1–5 years 2d: 2–10 years	

16:	Victim under 16 years of age	CT:	Credible threat
18:	Victim under 18 years of age	FI:	Committing the crime by false impersonation
2d:	Second stalking offense	PC:	Prior conviction
2dAG:	Second conviction for aggravated stalking	PF:	Prior felony
3d:	Third stalking offense and each subsequent offense	T:	Threat
3F:	Third felony	TJS:	Committing the crime to tamper with the judicial system or officials in connection with judicial proceedings
AG:	Aggravated	Twice:	Stalking occurs on more than one occasion
B:	Bias motivated	VO:	Violate court order—includes protection orders, probation, conditions of release, etc.
BH:	Bodily harm to victim	W:	Weapon
CC:	Criminal complaint pending		
CR:	Confining or restraining the victim		

14. Second offense within 5 years

15. A criminal complaint is currently pending with a court, law enforcement agency, or prosecutor by the same victim or victims and the defendant has been given actual notice.

16. The defendant has been convicted or pleaded guilty within the previous 5 years to a felony or misdemeanor, other than another stalking violation, against the same victim or victims.

17. Same victim.

18. Information is for Maine’s terrorizing statute.

**Table 8
Sentencing Provisions**

State	Penalty	Enhancement	Evaluation/ Counseling
Michigan	Up to 1 year, \$1,000 Probation for up to 5 years	T: Up to 5 years, \$10,000; minimum probation of 5 years VO: Up to 5 years, \$10,000; minimum probation of 5 years 2d: Up to 5 years, \$10,000; minimum probation of 5 years PF: Up to 5 years, \$10,000; minimum probation of 5 years	X ¹⁹
Minnesota	Up to 1 year, \$3,000	B: Up to 10 years, \$20,000 FI: Up to 10 years, \$20,000 18: Up to 10 years, \$20,000 TJS: Up to 10 years, \$20,000 2d ²⁰ : Up to 10 years, \$20,000 W: Up to 10 years, \$20,000	X ²¹
Mississippi	Up to 6 months, \$1,000	VO: Up to 1 year, \$1,000 2d: Up to 2 years, \$2,000 T ²² : Up to 2 years, \$2,000 T ²³ : Up to 2 years, \$2,000	

16:	Victim under 16 years of age	CT:	Credible threat
18:	Victim under 18 years of age	FI:	Committing the crime by false impersonation
2d:	Second stalking offense	PC:	Prior conviction
2dAG:	Second conviction for aggravated stalking	PF:	Prior felony
3d:	Third stalking offense and each subsequent offense	T:	Threat
3F:	Third felony	TJS:	Committing the crime to tamper with the judicial system or officials in connection with judicial proceedings
AG:	Aggravated	Twice:	Stalking occurs on more than one occasion
B:	Bias motivated	VO:	Violate court order—includes protection orders, probation, conditions of release, etc.
BH:	Bodily harm to victim	W:	Weapon
CC:	Criminal complaint pending		
CR:	Confining or restraining the victim		

19. Mental evaluation and counseling may be imposed as a condition of probation.

20. Second offense within 10 years.

21. If a person is convicted, the court is required to order an evaluation. The evaluation may be waived if an adequate assessment was conducted prior to the conviction. If the assessment indicates that the offender is in need of treatment, the court shall include in the sentence a requirement that the offender undergo treatment.

22. Second or subsequent conviction within 7 years.

23. Second or subsequent conviction within 7 years.

Table 8
Sentencing Provisions

State	Penalty	Enhancement	Evaluation/ Counseling
Missouri	6 months to 1 year	T: Up to 5 years 2d ²⁴ : Up to 5 years 2dAG: Up to 7 years	
Montana	Up to 1 year, \$1,000 ²⁵	VO: Up to 5 years, \$10,000 2d: Up to 5 years, \$10,000	
Nebraska	Up to 1 year, \$1,000	2d ²⁶ : Up to 5 years, \$10,000	
Nevada	6 months, \$1,000 ²⁷	VO: 1 year, \$2,000 2d: 1 year, \$2,000 CT: 1–6 years, \$5,000	
New Hampshire	Up to 1 year, \$2,000	2d: 2.5–7 years, \$4,000	
New Jersey	Up to 18 months	2d: 3–5 years VO: 3–5 years	
New Mexico	Up to 1 year, \$1,000	2d ²⁸ : Mandatory minimum 72 hours 3d: 18 months, \$5,000	

16:	Victim under 16 years of age	CT:	Credible threat
18:	Victim under 18 years of age	FI:	Committing the crime by false impersonation
2d:	Second stalking offense	PC:	Prior conviction
2dAG:	Second conviction for aggravated stalking	PF:	Prior felony
3d:	Third stalking offense and each subsequent offense	T:	Threat
3F:	Third felony	TJS:	Committing the crime to tamper with the judicial system or officials in connection with judicial proceedings
AG:	Aggravated	Twice:	Stalking occurs on more than one occasion
B:	Bias motivated	VO:	Violate court order—includes protection orders, probation, conditions of release, etc.
BH:	Bodily harm to victim	W:	Weapon
CC:	Criminal complaint pending		
CR:	Confining or restraining the victim		

24. Second or subsequent offense within 5 years.

25. Defendant may be required to pay all medical, counseling, and other costs incurred by or on behalf of victim as a result of the offense.

26. Subsequent offense within 7 years against same victim.

27. Multiple penalties may be imposed for other criminal offenses arising from the same conduct.

28. Without suspension, deferral, or other advisement.

Table 8
Sentencing Provisions

State	Penalty	Enhancement	Evaluation/ Counseling
New York	Up to 90 days, \$500 ²⁹ or up to 1 year, \$1,000 ³⁰	2d ³¹ : Up to 4 years, \$5,000	
North Carolina	Up to 6 months, \$1,000	VO: Up to 2 years, \$2,000 2d ³² : Up to 5 years	
North Dakota	1 year, \$1,000	VO: Up to 5 years, \$5,000 2d: Up to 5 years, \$5,000 PF ³³ : Up to 5 years, \$5,000	
Ohio	Up to 6 months, \$1,000	2d ³⁴ : Up to 5 years, \$2,500 SF ³⁵ : Up to 5 years, \$2,500	X ³⁶

16:	Victim under 16 years of age	CT:	Credible threat
18:	Victim under 18 years of age	FI:	Committing the crime by false impersonation
2d:	Second stalking offense	PC:	Prior conviction
2dAG:	Second conviction for aggravated stalking	PF:	Prior felony
3d:	Third stalking offense and each subsequent offense	T:	Threat
3F:	Third felony	TJS:	Committing the crime to tamper with the judicial system or officials in connection with judicial proceedings
AG:	Aggravated	Twice:	Stalking occurs on more than one occasion
B:	Bias motivated	VO:	Violate court order—includes protection orders, probation, conditions of release, etc.
BH:	Bodily harm to victim	W:	Weapon
CC:	Criminal complaint pending		
CR:	Confining or restraining the victim		

29. For physical “menacing,” placing victim in fear.

30. Repeated harassment or following or displaying a firearm to place in fear.

31. Within 10 years, only for stalking or displaying weapon.

32. Within 5 years.

33. In North Dakota or another State involving same victim.

34. Same victim.

35. Same victim.

36. Court may order an evaluation.

**Table 8
Sentencing Provisions**

State	Penalty	Enhancement	Evaluation/ Counseling
Oklahoma	Up to 1 year, \$1,000	VO: Up to 5 years, \$2,500 2d ³⁷ : Up to 5 years, \$2,500 PF ³⁸ : Up to 5 years, \$2,500 3d ³⁹ : Up to 10 years, \$2,500–\$10,000	
Oregon	Up to 1 year, \$2,500	2d: Up to 5 years, \$100,000 VO: Up to 5 years, \$100,000	
Pennsylvania	Up to 5 years	2d ⁴⁰ : Up to 7 years PF ⁴¹ : Up to 7 years VO: Up to 7 years	
Rhode Island	Up to 1 year, \$3,000	VO: Up to 2 years, \$6,000 2d ⁴² : Up to 5 years, \$10,000	
South Carolina	Up to 1 year, \$1,000	VO: Up to 3 years, \$5,000 2d ⁴³ : Up to 5 years, \$10,000	

16:	Victim under 16 years of age	CT:	Credible threat
18:	Victim under 18 years of age	FI:	Committing the crime by false impersonation
2d:	Second stalking offense	PC:	Prior conviction
2dAG:	Second conviction for aggravated stalking	PF:	Prior felony
3d:	Third stalking offense and each subsequent offense	T:	Threat
3F:	Third felony	TJS:	Committing the crime to tamper with the judicial system or officials in connection with judicial proceedings
AG:	Aggravated	Twice:	Stalking occurs on more than one occasion
B:	Bias motivated	VO:	Violate court order—includes protection orders, probation, conditions of release, etc.
BH:	Bodily harm to victim	W:	Weapon
CC:	Criminal complaint pending		
CR:	Confining or restraining the victim		

37. Second offense within 10 years.

38. Within 10 years.

39. Includes one previous conviction for stalking with violation of a protective order.

40. Second or subsequent offense.

41. Previous crime of violence against same victim.

42. Same victim within 7 years.

43. Within 7 years, same victim.

**Table 8
Sentencing Provisions**

State	Penalty	Enhancement	Evaluation/ Counseling
South Dakota	1 year, \$1,000	VO: 2 years, \$2,000 2d ⁴⁴ : Up to 5 years, \$5,000	
Tennessee	Up to 1 year, \$2,500	VO: 1–6 years, \$3,000 2d ⁴⁵ : 1–6 years, \$3,000	
Texas	Up to 1 year, \$3,000	2d ⁴⁶ : 2–10 years, or 1 year community correctional facility, \$10,000	
Utah	Up to 6 months	2d: Up to 1 year PF ⁴⁷ : Up to 1 year PC ⁴⁸ : Up to 1 year 3d ⁴⁹ : Up to 5 years 3F ⁵⁰ : Up to 5 years W: Up to an additional 5 years to run consecutively	

16:	Victim under 16 years of age	CT:	Credible threat
18:	Victim under 18 years of age	FI:	Committing the crime by false impersonation
2d:	Second stalking offense	PC:	Prior conviction
2dAG:	Second conviction for aggravated stalking	PF:	Prior felony
3d:	Third stalking offense and each subsequent offense	T:	Threat
3F:	Third felony	TJS:	Committing the crime to tamper with the judicial system or officials in connection with judicial proceedings
AG:	Aggravated	Twice:	Stalking occurs on more than one occasion
B:	Bias motivated	VO:	Violate court order—includes protection orders, probation, conditions of release, etc.
BH:	Bodily harm to victim	W:	Weapon
CC:	Criminal complaint pending		
CR:	Confining or restraining the victim		

44. Second or subsequent conviction within 7 years.

45. Second or subsequent conviction within 7 years.

46. Repeat offense toward same person.

47. In Utah or another jurisdiction against same victim.

48. In another jurisdiction for a crime substantially similar to stalking.

49. In Utah or for a substantially similar offense in another jurisdiction.

50. In Utah or another jurisdiction against same victim.

Table 8
Sentencing Provisions

State	Penalty	Enhancement	Evaluation/ Counseling
Vermont	Up to 2 years, \$5,000	VO: Up to 5 years, \$25,000 2d: Up to 5 years, \$25,000 PF ⁵¹ : Up to 5 years, \$25,000 16: Up to 5 years, \$25,000	
Virginia	Up to 6 months, \$500	VO: Up to 1 year, \$1,000 2d ⁵² : Up to 1 year, \$1,000 3d ⁵³ : 1–5 years, \$1,000	
Washington	Up to 1 year, \$5,000	VO: Up to 5 years, \$10,000 2d: Up to 5 years, \$10,000 PC ⁵⁴ : Up to 5 years, \$10,000	

16:	Victim under 16 years of age	CT:	Credible threat
18:	Victim under 18 years of age	FI:	Committing the crime by false impersonation
2d:	Second stalking offense	PC:	Prior conviction
2dAG:	Second conviction for aggravated stalking	PF:	Prior felony
3d:	Third stalking offense and each subsequent offense	T:	Threat
3F:	Third felony	TJS:	Committing the crime to tamper with the judicial system or officials in connection with judicial proceedings
AG:	Aggravated	Twice:	Stalking occurs on more than one occasion
B:	Bias motivated	VO:	Violate court order—includes protection orders, probation, conditions of release, etc.
BH:	Bodily harm to victim	W:	Weapon
CC:	Criminal complaint pending		
CR:	Confining or restraining the victim		

51. Same victim.

52. Second offense within 5 years.

53. Third offense within 5 years.

54. Prior conviction for any crime of harassment against the same victim or the victim's family or other person named in a no-contact or no-harassment order.

Table 8
Sentencing Provisions

State	Penalty	Enhancement	Evaluation/ Counseling
West Virginia ⁵⁵	Up to 6 months, \$1,000	VO: 90 days to 1 year, \$2,000–\$5,000 2d ⁵⁶ : 90 days to 1 year, \$2,000–\$5,000 3d ⁵⁷ : 1–5 years penitentiary, \$3,000–\$10,000 2d and VO: 6 months to 1 year, \$2,000–\$5,000	X ⁵⁸
Wisconsin	Up to 9 months, \$10,000	2d ⁵⁹ : Up to 2 years, \$10,000 BH: Up to 2 years, \$10,000	
Wyoming	Up to 6 months, \$750	VO ⁶⁰ : Up to 10 years PF: Up to 10 years 2d ⁶¹ : Up to 10 years BH: Up to 10 years	

16:	Victim under 16 years of age	CT:	Credible threat
18:	Victim under 18 years of age	FI:	Committing the crime by false impersonation
2d:	Second stalking offense	PC:	Prior conviction
2dAG:	Second conviction for aggravated stalking	PF:	Prior felony
3d:	Third stalking offense and each subsequent offense	T:	Threat
3F:	Third felony	TJS:	Committing the crime to tamper with the judicial system or officials in connection with judicial proceedings
AG:	Aggravated	Twice:	Stalking occurs on more than one occasion
B:	Bias motivated	VO:	Violate court order—includes protection orders, probation, conditions of release, etc.
BH:	Bodily harm to victim	W:	Weapon
CC:	Criminal complaint pending		
CR:	Confining or restraining the victim		

55. Court has discretion to impose home confinement with electronic monitoring as alternative sentence.

56. Second offense within 5 years.

57. Third or subsequent conviction within 5 years.

58. Any convicted person shall have as a condition of probation or suspension that he or she participate in counseling or medical treatment.

59. Second offense within 7 years, same victim.

60. In State, or under similar law of another jurisdiction.

61. Within 5 years in State, or under similar law of another jurisdiction.

Table 9
Comparison of Sentencing Provisions Before
and After Publication of the Model Code

State	Stalking				Enhanced Penalties			
	Maximum Sentence Up to 1 Year		Maximum Sentence 1 Year or More		Maximum Sentence Up to 1 Year		Maximum Sentence 1 Year or More	
	1993	1994	1993	1994	1993	1994	1993	1994
Alabama			X	X			X	X
Alaska	X	X					X	X
Arizona	X	X			X	X		
Arkansas			X	X			X	X
California	X	X					X	X
Colorado	X			X			X	X
Connecticut			X	X			X	X
Delaware			X	X			X	X
District of Columbia	X	X					X	X
Florida			X	X			X	X
Georgia	X	X					X	X
Hawaii	X	X			X	X		
Idaho	X	X					X	X
Illinois			X	X			X	X
Indiana	X	X					X	X
Iowa	X			X			X	X
Kansas	X	X					X	X
Kentucky	X	X					X	X
Louisiana	X	X					X	X
Maine	X	X			X	X		X

Table 9
Comparison of Sentencing Provisions Before
and After Publication of the Model Code

State	Stalking				Enhanced Penalties			
	Maximum Sentence Up to 1 Year		Maximum Sentence 1 Year or More		Maximum Sentence Up to 1 Year		Maximum Sentence 1 Year or More	
	1993	1994	1993	1994	1993	1994	1993	1994
Maryland			X	X			X	X
Massachusetts			X	X			X	X
Michigan	X	X					X	X
Minnesota	X	X					X	X
Mississippi	X	X					X	X
Missouri	X	X					X	X
Montana	X	X					X	X
Nebraska	X	X					X	X
Nevada	X	X					X	X
New Hampshire	X	X					X	X
New Jersey			X	X			X	X
New Mexico	X	X					X	X
New York	X	X					X	X
North Carolina	X	X					X	X
North Dakota			X	X			X	X
Ohio	X	X					X	X
Oklahoma	X	X					X	X
Oregon	X	X					X	X
Pennsylvania			X	X			X	X
Rhode Island	X	X					X	X
South Carolina	X	X					X	X

Table 9
Comparison of Sentencing Provisions Before
and After Publication of the Model Code

State	Stalking				Enhanced Penalties			
	Maximum Sentence Up to 1 Year		Maximum Sentence 1 Year or More		Maximum Sentence Up to 1 Year		Maximum Sentence 1 Year or More	
	1993	1994	1993	1994	1993	1994	1993	1994
South Dakota			X	X			X	X
Tennessee	X	X					X	X
Texas	X	X					X	X
Utah	X	X			X			X
Vermont			X	X			X	X
Virginia	X	X					X	X
Washington	X	X					X	X
West Virginia	X	X					X	X
Wisconsin	X	X					X	X
Wyoming	X	X					X	X
Totals	38	36	13	15	4	3	47	48

probation, or parole for another offense or if the accused previously has been convicted of a felony. In those States, a charge of felony stalking may allow the court to determine that the defendant is ineligible for bail.

Special Provisions

In 1994, some States amended their statutes to include fear of sexual assault as part of the fear element. The West Virginia statute specifies that the stalker has a relationship, had a relationship, or is seeking to establish a relationship with the victim through his or her conduct.

Several States permit police to arrest stalking suspects without a warrant, provided there is probable cause. Many States allow a warrantless arrest if there has been a violation of a protective order. Implicit in such statutes is the provision that the officer need not see the violation. Pennsylvania's law makes such a provision explicit.

In Montana, New Hampshire, North Dakota, and Washington, it is presumed that the defendant acted with intent to harass if the defendant has been warned that the victim does not wish to be contacted.

In Michigan and Oklahoma, evidence that the defendant continued to engage in a course of conduct, after having been requested to discontinue contact, gives rise to a rebuttable presumption that the conduct caused the victim to feel frightened.

New Hampshire enforces protective orders issued by other States if the order is in effect in the issuing State.

Some States require training for law enforcement, prosecutors, and the judiciary in handling stalking cases.

Some States may require electronic monitoring of the defendant as a condition of pretrial release or probation, or as an alternative to jail. In California, the electronic monitoring program is dependent on the defendant's consent. Other States allow a court to order monitoring.

Montana provides that a person convicted of stalking may be required to pay all medical, counseling, and other costs incurred by or on behalf of the victim as a result of the offense.

In Maryland, a sentence under the State's antistalking law may be imposed separately from and consecutive to or concurrent with a sentence for any other offense.

In California, an incarcerated person who makes a threat against another person can be prosecuted under the State antistalking law.

In Florida, a juvenile may be transferred to adult criminal court if charged with aggravated stalking.

Arizona, Minnesota, Montana, and Wisconsin allow stalking victims to keep their addresses confidential under certain circumstances.

In California, State employees are prohibited from releasing the registration or driver's license records of individuals who verify to the Department of Motor Vehicles that they have reasonable cause to believe that they are being stalked or to fear death or great bodily injury.

Wyoming requires law enforcement agencies to provide emergency assistance to victims, including making recommendations regarding available services. However, the statute makes law enforcement immune from civil liability for failure to provide these services.

Some States require that victims be notified if the an alleged stalker is released before trial. Some also require that the victim be notified when a stalker is released after conviction. Victim-notification provisions are included in the antistalking laws of California, Georgia, Indiana, Minnesota, Montana, Nevada, Texas, and Washington.

Since July 1, 1994, a person convicted of stalking in North Carolina has been required to provide a DNA sample.

Civil Remedies

Stalking laws appear to provide a stronger link between civil protection orders and criminal law. Some States have amended their domestic abuse and/or protective order statutes to make it possible to issue protective orders in stalking cases. Other States have included provisions in their antistalking laws designed to strengthen the enforcement of civil protection orders.

In Oregon, California, and Wyoming, a victim can bring a civil action against a stalker to recover damages incurred as a result of the stalking behavior. In Wyoming, the civil cause of action is permissible even if an alleged stalker has not been charged or convicted of stalking, and a civil suit does not bar subsequent criminal prosecution, regardless of the outcome of the civil case.

At the Federal level, the Violence Against Women Act of 1994 creates civil liability for crimes of violence motivated by gender bias. The statute, codified at 42 U.S.C. §13981, states, "A person . . . who commits a crime of violence motivated by gender . . . shall be liable to the party injured, in an action for the recovery of compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate." As defined in the law, a crime of violence includes an act that would constitute a felony against the person.

This statute and similar ones may prompt States to explore further the possibility of making civil remedies available to stalking victims.

Mental Evaluation and Civil Commitment

None of the State stalking laws specifically address civil commitment, although several States provide guidance to courts regarding mental health evaluations, treatment, or counseling. In many States, courts may order an evaluation or counseling before trial or may order counseling as a condition of probation. Minnesota and West Virginia require courts to order evaluation and counseling for all stalking defendants. Laws that recommend mental health treatment for convicted stalkers allow medical professionals to determine the treatment to be provided.

State statutes regarding the civil commitment of mentally disordered persons do not apply to individuals who commit domestic violence. Sex offenses are the only violent crimes for which States have enacted or are considering civil commitment measures. Some States are considering broadening the criteria for civil commitment to include the inability to take care of oneself and substance abuse.

Related Laws

Prior to enactment of antistalking legislation, law enforcement agencies handled stalking through laws regarding criminal trespass, terroristic threat, and harassment. Stalking laws are unique in the elements they require, their application to a variety of intimidating and threatening situations, their ties to civil protection, and their penalty structures. However, the types of behavior could constitute trespass, harassment, or stalking.

Some State antistalking laws operate in conjunction with related laws to suggest gradations of behavior and punishment. States that pair stalking with harassment or trespass are Colorado, Indiana, Minnesota, Nevada, New Mexico, New York, Ohio, Pennsylvania, Texas, Washington, and Wisconsin.

The 46 States that have criminal trespass laws generally describe the offense as knowingly and unlawfully entering or remaining in a dwelling, a building, or upon real property if notice against trespass is given. A person also may commit criminal trespass if he remains in any place in defiance of a lawful order to leave.

Twenty-eight States have harassment statutes. These usually prohibit intentionally annoying or alarming another person by subjecting him to offensive physical contact, public insults, or false reports about the victim. Some harassment laws contain provisions for handling threats or violations of restraining orders.

Nineteen States have laws against terrorizing or making terroristic threats. Terrorizing usually means threatening to commit a crime of violence or unlawfully causing the

evacuation of a building or facility. Terroristic threat is generally described as threatening to kill another with the purpose of putting that person in fear of imminent death and under circumstances that would reasonably cause the victim to believe that the threat will be carried out.

Chapter 3. Stalking Case Law: State Appellate Court Decisions

When the model antistalking code was released, there were no appellate court decisions on stalking statutes. Since then, several State appellate courts have decided stalking cases. Although legal challenges and court interpretations of antistalking laws vary widely, all appellate courts that have addressed the issue of constitutionality have upheld the laws.

Courts in California, Florida, Georgia, Oklahoma, and Virginia have found State stalking statutes to be constitutional, rejecting arguments that the laws are so vague or overly broad that they deny defendants their First Amendment right to free speech.

Other courts, although not addressing constitutional issues, have clarified statutory language. The Supreme Judicial Court of Massachusetts overturned a stalking conviction, ruling that the lower court's interpretation of the stalking statute was incorrect. The Appellate Court of Illinois, based on its interpretations of the legislative intent, clarified the language of the State stalking statute.

The following sections discuss selected State appellate cases. A complete list of citations for State appellate court decisions is provided in Appendix F.

California Statute Upheld

In *People v. Heilman*,⁵ for example, the California Court of Appeal rejected a vagueness challenge and found that the State's stalking statute was constitutional under the State constitution. The case stemmed from the 1992 shooting death of Janice Davis in the building where she worked. Police charged her ex-boyfriend, John Heilman, with first-degree murder, alleging that he had gone to her place of employment, followed her into the elevator, and shot her. According to court records, Davis' assailant ripped the emergency phone out of the elevator wall to prevent her from calling for help and fled.

Heilman was convicted of the murder charge as well as charges of aggravated stalking and violating a restraining order that Davis had obtained against him. In appealing his conviction, the defendant focused on the wording of the California statute that defines the crime of stalking: "Any person who willfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat with the intent to place the person in reasonable fear of death or bodily injury is guilty of the crime of stalking." Heilman argued that the term "repeatedly" is vague. When a statute is held invalid for vagueness, it either does not inform a person of the conduct that is proscribed, or it creates the danger of arbitrary law enforcement.

5. 30 Cal. Rptr. 2d 422 (Cal. Ct. App. 1994).

The court interpreted the statute as proscribing two different courses of conduct: willful and malicious harassment, and the repeated following of a victim. The court held that the term “repeatedly” modifies the word “follows,” not the word “harasses,” because harassment already implies a series of acts, and to require repeated harassment would not comport with the intent of the statute. Therefore, a key issue in deciding the case was to determine whether Heilman’s actions constituted harassment, repeated following, or both.

Heilman and Davis had dated intermittently for 3 or 4 years. After the relationship ended, Heilman called Davis on numerous occasions. He left angry, profane messages on her answering machine at home and called her at work. Heilman often went to Davis’ car while she was at work and left threatening notes. He also left a beer bottle covered with a condom and ketchup on the hood of her car and damaged her car by placing super glue on the gas cap and door locks. Davis told security officers at her office that she was afraid, and they distributed reports containing Heilman’s picture to building management and security personnel.

Because Heilman engaged in conduct that constituted willful and malicious harassment, the section of the statute that prohibits repeated following did not apply to him, the court found. The court continued, however, that even if the section proscribing repeated following did apply to the defendant, the statute still would survive a constitutional attack. The court held that the word “repeatedly” has a common meaning—more than one time—so that it adequately informs a person of what is prohibited. The court also held that the law does not create the danger of discriminatory enforcement because perpetrators have to follow their victims more than once and communicate a credible threat before police can arrest them.

Florida Statute Upheld

A Florida District Court of Appeal held that the Florida stalking law is constitutional under the U.S. Constitution. Several other appellate courts in the State have cited this case in upholding the statute.

In *Pallas v. State*,⁶ John Pallas was charged with aggravated stalking after harassing his wife, Edie Pallas, from whom he was separated. He pleaded no contest to the charge, reserving the right to appeal.

The arrest was based on threatening calls that John Pallas allegedly made to his estranged wife, Edie, while she was staying with her parents, the Raglands, during divorce proceedings. The prosecution said that one Sunday during January 1993, the defendant began calling the Raglands’ residence at 7:00 a.m. He called continually throughout the day, forcing Edie’s parents to take the telephone off the hook several times. When he did get

6. 636 So. 2d 591 (Fla. Dist. Ct. App. 1994).

through, he cursed and threatened the Raglands. Testimony at trial also revealed that during the marriage, the defendant beat Edie and broke her jaw.

Pallas argued that the aggravated stalking statute under which he was charged is unconstitutional because it is vague and overly broad. Under the Florida law, “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 definition of “harasses” is “to engage in a course of conduct directed at a specific person that causes substantial emotional distress. . . .” Pallas argued that the phrase “substantial emotional distress” in the definition of “harasses” creates an entirely subjective standard, so that an unreasonably sensitive victim could arbitrarily place a defendant in jeopardy of prosecution. Pallas also contended that the statute is overly broad in that it encompasses constitutionally protected expression in its prohibitions.

The court found that Pallas harassed and threatened his estranged wife but did not follow her. Unlike the California court, the court in *Pallas* held that the word “repeatedly” modifies both “follows” and “harasses” and held that the defendant’s actions met the requirements for the elements of the crime.

The court held that the “substantial emotional distress” language creates a reasonable person standard. Only if a reasonable person would be disturbed by the defendant’s action could the conduct be considered criminal.

Although some protected expression may be encompassed, the statute was not broad enough to invalidate the statute, the court found. The perpetrator’s conduct must be “willful, malicious, and repeated,” indicating that the person must have malevolent intent before his speech can be curtailed by the statute. Furthermore, the prohibition requires that speech be combined with some conduct, and the standard for protecting speech mixed with conduct is lower than for protecting speech alone.

Georgia Statute Upheld

The Supreme Court of Georgia ruled in *Johnson v. State*,⁷ that the Georgia stalking statute is constitutional under the State constitution. The defendant was charged with misdemeanor stalking and burglary. In Georgia, an element of burglary is the intent to commit a felony, and court records indicated that the defendant intended to commit aggravated stalking as an element of the burglary. After a jury convicted the defendant on both counts, he sought to overturn the convictions by arguing that the stalking statute was vague and overly broad.

7. 449 S.E. 2d 94 (Ga. 1994).

The defendant challenged a section of the stalking statute that prohibits “[contacting] another person . . . without the consent of the other person . . .,” arguing that the statutory language could outlaw much constitutionally protected conduct, and therefore was overly broad. The court rejected the argument, stating that a person who engages in nonconsensual contact must do so with “the purpose of harassing and intimidating the other person.” The specification that there be an intent to harass on the part of the defendant and the element requiring that the victim be in “reasonable fear of death or bodily harm to himself or herself or to a member of his or her immediate family” saves the statute from criminalizing protected conduct. It is clear that the defendant must be engaging in conduct that does not have a legal purpose to fall under the coverage of the statute, the court said.

The defendant also argued that the stalking statute is vague because it does not require an explicit threat of bodily injury or death, nor does it require that the defendant’s conduct actually cause substantial emotional distress. The court disagreed, holding that because the statute requires that the victim be “in reasonable fear of death or bodily harm to himself or herself or to a member of his or her immediate family,” the language is sufficiently clear to ordinary people to protect the statute from a vagueness challenge.

Oklahoma Statute Upheld

The Court of Criminal Appeals of Oklahoma unanimously upheld the Oklahoma statute in *State v. Saunders*⁸ and found the statute constitutional under the Fourteenth Amendment of the U.S. Constitution. Saunders, who was charged with stalking in 1993, filed a motion to dismiss the charges before trial, alleging that the statute was unconstitutionally vague and overly broad. The trial court granted the defendant’s motion, and the State appealed.

Under Oklahoma’s stalking statute, “Any person who willfully, maliciously, and repeatedly follows or harasses another person in a manner that: (1) would cause a reasonable person or a member of the immediate family of that person . . . to feel frightened, intimidated, threatened, harassed, or molested; and (2) actually causes the person being followed or harassed to feel terrorized, frightened, intimidated, threatened, harassed, or molested . . . shall be guilty of the crime of stalking.”

The court stated that the basic rule of statutory interpretation requires a court to indulge the intent of the legislature in favor of constitutionality whenever possible. It found that the statute is not vague because it gives fair notice of the prohibited. The court wrote, “Stalking statutes must be defined as broadly as possible to maximize victim protection, but narrowly enough to prevent serious abuse.” The Oklahoma statute’s use of the words “willfully, maliciously, and repeatedly” indicate a specific intent element. Statutes that require specific intent have been found constitutional because the defendant must know that the conduct is

8. 886 P. 2d 496 (Okla. Crim. App. 1994).

wrong in order to create the intent. The court also relied upon cases in other jurisdictions, such as *Pallas v. State* and *People v. Heilman*, to support its holding.

The defendant also challenged a part of the statute that gives rise to a rebuttable presumption that the victim felt terrorized, frightened, intimidated, threatened, harassed, or molested if the victim has asked the defendant to cease the conduct, and the defendant disregards the warning and continues the course of conduct.

A rebuttable presumption is void if there is no rational connection between the facts proved and the presumption, the court said. In this case, the court found that there was a rational connection between the facts proved—the warning by the victim and the defendant’s continued conduct—and the presumption that the victim was fearful. “Clearly the victim would not have requested the perpetrator to stop the conduct if the conduct was not causing a problem The continuation of such conduct would naturally lead the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested,” the court said. Therefore, it denied the defendant’s motion to dismiss on this ground.

Virginia Statute Upheld

In *Woolfolk v. Commonwealth*,⁹ the Court of Appeals of Virginia upheld the constitutionality of the Virginia statute under the State and U.S. constitutions. The statute has since been amended to reflect the language of the model code.

Anderson Woolfolk was arrested and charged with stalking after maintaining surveillance over his estranged wife’s house for 4 consecutive days. Woolfolk told police that he was monitoring his children’s environment, but a jury convicted him of stalking.

The statute under which Woolfolk was convicted read in part: “Any person who on more than one occasion engages in conduct with the intent to cause emotional distress to another person by placing that person in reasonable fear of death or bodily injury shall be guilty of a Class 2 misdemeanor.”

The case stemmed from activities that began in 1987 when Woolfolk and his wife, Jane, were separated. Anderson Woolfolk allegedly began following his estranged wife and watching her home. In 1991, the couple was divorced after 15 years of marriage.

Court records show that in 1992, when Jane began dating another man, her ex-husband’s surveillance activities increased. He frequently drove up and down the street where his ex-wife lived and parked near the house. He watched the house for hours at a time, day and night, and even followed her out of town to a wedding.

9. 47 S.E. 2d 530 (Va. App. 1994).

After Jane Woolfolk's tires were deflated in her driveway, Anderson Woolfolk was served with a "no trespass" warning. He continued to drive past the home and park near there.

One morning, her new boyfriend received a telephone call from a man who threatened, "If you don't stop seeing her, I'm going to shoot [both of you]." The boyfriend recognized the voice as that of Anderson Woolfolk.

On appeal, Woolfolk argued that the statutory phrase "intent to cause emotional distress" is unconstitutionally vague and that the statute was overly broad.

The court held that "emotional distress" is a common and well-recognized legal term. Emotional distress is "suffering or mental anguish that arises from being placed in reasonable fear of death or bodily injury and is so severe that no reasonable person could be expected to endure it." The court held that the statute creates a reasonable person standard, not a subjective standard, so that the proscribed conduct does not depend on the sensitivity of the victim.

The court rejected the assertion that the statute is overly broad, holding that the only proscribed actions are those that have no legitimate purpose and that are intended to cause fear in the victim. Therefore, very little, if any, constitutionally protected expression is encompassed by the statute.

Massachusetts Overturns Conviction

In Massachusetts, the State supreme court overturned a stalking conviction, ruling that the lower court misinterpreted the stalking statute. In doing so, the supreme court provided guidance on the proper interpretation of the statute.

The case, *Commonwealth v. Kwiatkowski*,¹⁰ stemmed from an incident in which James Kwiatkowski visited his estranged wife's home in violation of a restraining order and threatened her when she called the police. Kwiatkowski was arrested and eventually convicted of stalking and of violating a restraining order.

In 1991, Mary Kwiatkowski filed for divorce after 7 years of marriage. James Kwiatkowski was served with a restraining order that prohibited him from abusing Mary, visiting her home, or telephoning her. The prohibition on telephone calls was added to the order after James Kwiatkowski made more than 150 threatening calls in 1 week.

On appeal, Kwiatkowski argued that the statute is invalid because it is unconstitutionally vague. Under the statute, a person is guilty of stalking if he or she "willfully, maliciously,

10. 637 N.E. 2d 854 (Mass. 1994).

and repeatedly follows or harasses another person, and makes a threat with the intent to place that person in imminent fear of death or serious bodily injury.”

In rendering its decision, the Massachusetts supreme court weighed the facts of the case against the meaning of the statutory language. One weekend, while the couple’s children were visiting James Kwiatkowski, he called his estranged wife at 2:45 a.m. and said that one of the children had a nightmare. When she asked to speak with the child, he said the child was asleep. He told his estranged wife that he wanted to work things out with her but when he asked her if there were men at her apartment, she hung up. Immediately, the phone rang again. Mary Kwiatkowski hung up again, and left the telephone off the hook for the rest of the night.

When Kwiatkowski showed up at his ex-wife’s home with the children about 2 hours later, she called the police. Kwiatkowski threatened her and was arrested when the police arrived.

The court agreed with the defendant that the statute was vague because it prohibited someone from repeatedly harassing, although the crime of harassment already denotes a series of acts over time. Under the lower court interpretation, repetition of an act is required to meet the elements of the crime of stalking.

The court held that the intent of the legislature was likely to criminalize one pattern of conduct, not several, but that this intent was not sufficiently clear in the way the statute was drafted. “The result is that the portion of the stalking statute concerning harassing conduct lacks any reasonably discernible unambiguous application, and the defendant may properly assert a facial challenge to it.”

The court wrote that from the date of its opinion, the crime of stalking would be committed if a person “willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress, and . . . also makes a threat with the intent to place that person in imminent fear of death or bodily injury.”

Repeated conduct is not an element of the crime, but the legislature’s intent is included in the phrases “pattern of conduct” and “series of acts” because both require more than one incident of stalking behavior.

Illinois' Interpretation

In *People v. Krawiec*,¹¹ the Appellate Court of Illinois sought to clarify an Illinois stalking law by holding that the law allows an act to be considered threatening even if the act does not result in violence.

After threatening his estranged wife and placing her under surveillance, Thomas Krawiec was convicted of stalking and sentenced to 30 months of probation with conditional discharge.

The prosecution alleged that Krawiec had made threatening telephone calls to his estranged wife and had taken his 11-year-old son to his wife's home to show him that she was having sex with another man. Krawiec videotaped his estranged wife and another man in the bedroom and pushed her when she tried to stop him. Krawiec also allegedly knocked two television sets to the floor and told his wife that he was going to play the video for their daughter. The tape was later admitted into evidence against the defendant.

Under the Illinois statute: "A person commits stalking when he or she transmits to another person a threat with the intent to place that person in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint, and in furtherance of the threat knowingly does any one or more of the following acts on at least two separate occasions: (1) follows the person, other than within the residence of the defendant; (2) places the person under surveillance by remaining present outside his or her school, place of employment, vehicle, other place occupied by the person, or residence other than the residence of the defendant."

On appeal, the defendant questioned the meaning of the phrases "in furtherance of the threat," and "places the person under surveillance."

The court held that an act may be threatening even if the perpetrator did not intend for the act to be threatening and the act does not result in violence. The court held that an act is threatening if the threat is reinforced by further conduct. In this case, the broken television sets and the fact that the defendant pushed Marilyn Krawiec were sufficient to meet the element of "in furtherance of the threat."

The court also clarified the meaning of placing a person under surveillance. "It is the act of remaining in the vicinity of the would-be victim's house, with the requisite intent to further a threat that is prohibited," the court wrote. The court noted that it is irrelevant whether the victim is at home or is aware that the stalker is watching.

11. 634 N.E. 2d 1173 (Ill. App. Ct. 1994).

Chapter 4. Using Civil Protective Orders in Stalking Cases

The final report of the model antistalking code contained a chapter on the use of protective orders in stalking cases. However, since publication of that report, there have been several developments in the area of protective order law, which are outlined in this chapter. A number of States have expanded the eligibility provisions of their statutes to make protective orders available to all stalking victims. In addition, a number of State appellate courts have decided cases involving the constitutionality of bringing criminal charges based upon conduct for which the defendant already has faced criminal contempt charges for violating a protective order.

One characteristic of stalking is the element of escalation. Behavior that initially may be bothersome and annoying, but legal, escalates to the level of obsessive, dangerous, violent, and even fatal acts. Stalking victims, therefore, need appropriate means to protect themselves against potential acts of violence.

Protective orders can serve as the first formal intervention in the stalker's behavior. The protective order puts the suspected stalker on notice that this behavior is unwanted and that any further similar behavior will be regarded as criminal and will result in more severe intervention by the criminal justice system. In addition, protective orders provide a means for protecting a victim by allowing law enforcement officials to take defendants into custody immediately if they violate the order.

However, two factors may limit the applicability and effectiveness of protective orders in stalking cases. Statutory provisions limiting the category of individuals eligible to apply for protective orders may prohibit certain stalking victims from obtaining protective orders. Furthermore, recent studies suggest a need to reexamine and improve the enforcement of civil protection orders.

Eligibility for Civil Protective Orders

Most States have statutes authorizing civil orders of protection in domestic abuse cases. States should consider reviewing their protective order statutes to determine whether protective orders would be available to all stalking victims. A list of statutory citations of State protective order provisions is provided in Table 10.

All protective order statutes establish some eligibility limits, but the limits vary among States. Thirteen States offer broad eligibility, permitting victims of harassment to obtain protective orders. In 1994, California enacted legislation that permits an employer to obtain a protective order on behalf of an employee. In most States, protective orders are available to individuals who have been married; persons who live with, or who once lived with, another individual; individuals who have a child in common; and persons related by blood or marriage. Some States have stricter eligibility limitations. Some States, for example, require

Table 10
Citations for Protective Order Provisions

State	Citation
Alabama	ALA. CODE §§30-5A-1-7 (Supp. 1993).
Alaska	ALASKA STAT. §§18.65.520 (1991), 12.30.025, 25.35.010-.050, 25.35.200 (1991 & Supp. 1993).
Arizona	ARIZONA REV. STAT. ANN. §§12-1809, 13-3601 to 3602 (1989 & Supp. 1993)
Arkansas	ARK. CODE ANN. §§9-15-101 to 211 (Michie 1993).
California	CAL. CODE CIV. PROC. §§543-553 (1972 & Supp. 1994), 527.6; CAL FAM. CODE §§6211, 6250 (Supp. 1994).
Colorado	COLO. REV. STAT. §§14-4-101-105, 18-1-1001 (1987 & Supp. 1993)
Connecticut	CONN. GEN. STAT. §46b-15, 46b-38a to -38d,-38f (1986 & Supp. 1993).
Delaware	DEL. CODE ANN. tit. 10 §§921-923, 943, 945-952 (1975 & Supp. 1993).
District of Columbia	D.C. CODE ANN. §§16-1001 to -1006 (1989 & Supp. 1993).
Florida	FLA. STAT. ch. 741.30 -.31. (Supp. 1993).
Georgia	GA. CODE ANN. §§17-4-20.1, 17-5-7, 19-13-1 to -6, 19-13-20 to -22, 19-13-30 to -31 (1991 & Supp. 1993).
Hawaii	HAW. REV. STAT. §§586-1-11 (1988 & Supp. 1993)
Idaho	IDAHO CODE, Ch. 63, tit. 39-6301-6317 (1993)
Illinois	725 ILCS 5/111-8, 5/112A-A31 (Supp. 1994)
Indiana	IND. CODE ANN. §§34-4-5.1-1 to 1-2, 1-4 to 1-6 (Burns 1986 & Supp. 1994)
Iowa	IOWA CODE §§236.1-.18 (1993)
Kansas	KAN. STAT. ANN. §§60-3101-3111 (1993)
Kentucky	KY REV. STAT. ANN. §§403.715-.785 (Baldwin 1993)
Louisiana	LA. REV. STAT. ANN. §§46:2131-2142 (West Supp. 1994)
Maine	ME. REV. STAT. ANN. tit. 5, §§4654-4655, 4659 to 4660-A (West 1989 & Supp. 1993) tit. 19, §§761-A to 762, 765-766, 769-770 (West 1981 & Supp. 1993) tit. 22 §4032 (West 1992).
Maryland	MD. CODE ANN., FAM. LAW §§4-501, -504 to -510, -513, -515 (1991 & Supp. 1993). MD. ANN. CODE, Article 27 §594B (1992 & Supp. 1993).
Massachusetts	MASS. ANN. LAWS. ch.209A, §1-10, ch.209C, §15 (Law. Co-op. 1987 & Supp. 1993).
Michigan	MICH. COMP. LAWS ANN. §§552.14, 600.2950a (West 1988)
Minnesota	MINN. STAT. ANN. §518B.01 (West 1990 & Supp. 1994)
Mississippi	MISS. CODE ANN. §§93-21-1 to 29 (1972 & Supp. 1993)
Missouri	MO. ANN. STAT. §§455.010-.085 (Vernon Supp. 1994)
Montana	MONT. CODE ANN. §§40-4-121-125 (1993)
Nebraska	NEB. REV. STAT. §§42-901-927 (1978)

Table 10
Citations for Protective Order Provisions

State	Citation
Nevada	NEV. REV. STAT. ANN. §§33.017-.100, 200.591 (1986 & Supp. 1993)
New Hampshire	N.H. REV. STAT. ANN. §173-B:1 to :11-b (Supp. 1993).
New Jersey	N.J. REV. STAT. §§2C:25-17 to -33 (Supp. 1993).
New Mexico	N.M. STAT. ANN. §31-1-7 (1984 & Supp. 1993), 40-13-2 (Supp. 1993)
New York	N.Y. CRIM. PROC. LAW §530.11-.12 (McKinney, 1984 & Supp. 1994); N.Y. DOM. REL. LAW §252 (McKinney, 1986 & Supp. 1994); N.Y. FAM. CT. ACT §§153-b to 158, 812-813, 821-828, 846-847 (McKinney, 1983 & Supp. 1994).
North Carolina	N.C. GEN. STAT. §§50B-1 to -9 (1989 & Supp. 1993).
North Dakota	N.D. CENT. CODE §§14-07.1-.01 to .18 (1991 & Supp. 1993)
Ohio	OHIO REV. CODE ANN. §§3113.31 et seq. (Anderson 1989 & Supp. 1993)
Oklahoma	OKLA. STAT. ANN. tit. 22 §§60-60.7 (1992 & Supp. 1994)
Oregon	OR. REV. STAT §§107.700-.750, §163.735-163.747 (Supp. 1993); OR. LEGIS. SERV. 643 (1993)
Pennsylvania	23 PA. CONS. STAT. ANN. §6101-6117 (1991).
Rhode Island	R.I. GEN. LAWS §§15-15-1 to -7 (1988 & Supp. 1993).
South Carolina	S.C. CODE ANN. §§20-4-10 to -130 (Law. Co-op 1976 & Supp. 1993).
South Dakota	S.D. CODIFIED LAWS ANN. §§25-10-1-33 (1992 & Supp. 1994)
Tennessee	TENN. CODE ANN. §§36-3-601-615 (1991 & Supp. 1993), §§40-7-103 (1993).
Texas	TEX. FAM. CODE ANN. §71.01-.19 (1986 & Supp. 1994); TEX. PENAL CODE §25.08 (1989 & Supp. 1994)
Utah	UTAH CODE ANN. §§30-6-1--10 (1989 & Supp. 1994); UTAH CODE CRIM. PROC. §§77-3-1-12 (1990 & Supp. 1993)
Vermont	VT. STAT. ANN. tit. 15, §§1101-1109 (1989 & Supp. 1993).
Virginia	VA. CODE ANN. §§16.1-253 to -253.2, -253.4, -279.1 (Michie 1988 & Supp. 1993).
Washington	WASH. REV. CODE ANN. §§10.99.020 (1990 & Supp. 1994), 26.50.010-.902 (1990 & Supp. 1993)
West Virginia	W. VA. CODE §48-2A-1 to -10 (1992 & Supp. 1993).
Wisconsin	WIS. STAT. ANN. §§813.12 (West Supp. 1993)
Wyoming	WYO. STAT. ANN. §§7-3-507-509, 35-21-101-107 (Supp. 1993)
Virgin Islands	V.I. CODE ANN. tit. 16, §90-99b (Supp. 1993).
Puerto Rico	P.R. LAWS ANN. tit. 8, §§601-602, 621-628, 631-641 (Supp. 1990).

that the applicant live or have lived in the same residence as the person against whom the protective order is sought.

To provide for early intervention in stalking cases, States should consider amending their statutes to ensure that all stalking victims, regardless of their relationship with the alleged stalker, can obtain protective orders. Eligibility provisions are provided in Table 11.

Enforcement of Protective Orders

For protective orders to be enforced effectively, all parties, including the victim, the defendant, the judge, and probation and parole officer must be aware that an order is in effect and its specific terms. States should review their protective order notification procedures to ensure that adequate instructions are given for notifying all parties of the existence and specific terms of an order. For example, States should consider implementing procedures to ensure that defendants receive a copy of a protective order issued against them and an explanation of the possible consequences of a violation.

In most States, law enforcement officers can arrest a person without a warrant if they have probable cause to believe that the person has violated a protective order. In many States, violating a protective order is a misdemeanor. In many jurisdictions, violation of a protective order results in civil or criminal charges. In some States, courts can enforce protective orders issued by another jurisdiction.

Seminar participants indicated a need to reexamine and improve the enforcement of civil protection orders. Victims need to be better informed of their rights once they have obtained a protection order and of the process for reporting violations. Similarly, defendants need to be better informed about what constitutes a violation of a protective order.

Police need to be better informed about how to respond to violations of protective orders. Judges and prosecutors need a better understanding of the sanctions available when protective orders are violated. Many States now require that judges and prosecutors have domestic violence awareness training.

Double Jeopardy Implications of Protective Orders

Although civil protection orders can provide early intervention in stalking cases, there are questions about whether they violate the double jeopardy clause of the Constitution, which prohibits trying a defendant twice for the same offense. In June 1993, in *United States v. Dixon*,¹² the U.S. Supreme Court, ruled that law enforcement officials can enforce protective orders through criminal contempt proceedings in addition to bringing subsequent criminal charges based on the same conduct.

12. *United States v. Dixon*, 113 S. Ct. 2849 (1993).

Table 11
Eligibility Provisions for Civil Protective Orders

State	Spouse	Ex-Spouse	Child	Minor	Parent	Child in common*	Related by blood or marriage and living with offender	Related by blood or marriage	Currently or formerly living with offender	Currently living with offender	Currently or formerly living with offender as a spouse	Currently or formerly living with offender as a sexual partner	Has or had romantic relationship with offender	Victim of stalking or harassment	Current or former sexual partner
AL	X		X		X			X			X				
AK	X	X	X ¹		X ²					X	X		X	X ³	
AZ	X	X	X		X	X ⁴		X ⁵		X ⁶				X	
AR	X	X	X		X			X ⁷	X						
CA	X	X	X			X		X ⁸	X					X	

-
1. Or grandchild.
 2. Or grandparent.
 3. As a condition of pretrial release.
 4. Or woman is pregnant.
 5. In the second degree.
 6. Must be of the opposite sex.
 7. Blood only.
 8. In the second degree.

* Irrelevant whether parents have lived together or have been married.

Table 11
Eligibility Provisions for Civil Protective Orders

State	Spouse	Ex-Spouse	Child	Minor	Parent	Child in common*	Related by blood or marriage and living with offender	Related by blood or marriage	Currently or formerly living with offender	Currently living with offender	Currently or formerly living with offender as a spouse	Currently or formerly living with offender as a sexual partner	Has or had romantic relationship with offender	Victim of stalking or harassment	Current or former sexual partner
CO	X	X	X ⁹			X		X ¹⁰	X					X ¹¹	X
CT	X	X	X		X	X									
DE	X	X	X		X	X				X ¹²					
DC	X	X	X		X ¹³	X	X								
FL	X	X				X									
GA	X	X	X ¹⁴	X	X ¹⁵	X									

9. Includes stepchildren and foster children.

10. Defined as current or former relation.

11. Against any person charged with a crime.

12. Must be of the opposite sex.

13. By blood or legal custody.

14. Includes stepchildren and foster children.

15. Includes stepparent and foster parent.

* Irrelevant whether parents have lived together or have been married.

**Table 11
Eligibility Provisions for Civil Protective Orders**

State	Spouse	Ex-Spouse	Child	Minor	Parent	Child in common*	Related by blood or marriage and living with offender	Related by blood or marriage	Currently or formerly living with offender	Currently living with offender	Currently or formerly living with offender as a spouse	Currently or formerly living with offender as a sexual partner	Has or had romantic relationship with offender	Victim of stalking or harassment	Current or former sexual partner
HI	X	X	X		X			X	X						
ID	X	X				X		X	X						
IL	X	X	X ¹⁶		X ¹⁷	X		X	X				X		
IN	Any person who suffers or is threatened with bodily injury or damage to property may apply for a protective order on behalf of himself/herself or of a household member.														
IA	X	X	X		X	X	X ¹⁸	X	X ¹⁹		X				
KS									X						
KY	X	X	X ²⁰		X	X		X							

16. Includes stepchildren.

17. Includes stepparents.

18. Who have lived together within the past year.

19. Within the last year.

20. Includes stepchildren.

* Irrelevant whether parents have lived together or have been married.

**Table 11
Eligibility Provisions for Civil Protective Orders**

State	Spouse	Ex-Spouse	Child	Minor	Parent	Child in common*	Related by blood or marriage and living with offender	Related by blood or marriage	Currently or formerly living with offender	Currently living with offender	Currently or formerly living with offender as a spouse	Currently or formerly living with offender as a sexual partner	Has or had romantic relationship with offender	Victim of stalking or harassment	Current or former sexual partner
LA	X	X	X ²¹		X ²²					X ²³					
ME	X	X				X	X ²⁴				X ²⁵	X			
MD	X	X	X ²⁶		X ²⁷	X	X ²⁸					X ²⁹			
MA	X	X				X							X ³⁰		

21. Includes stepchildren and foster children.

22. Includes stepparent who resides or resided with the offender or the victim for at least 90 days within 1 year before the filing of the petition.

23. Living as a spouse and there are minor children who also live in the household.

24. Must be adults.

25. Holding oneself out as a spouse is unnecessary to constitute living as a spouse.

26. Includes stepchildren who reside or resided with the offender or the victim for at least 90 days within 1 year before the filing of the petition.

27. Includes stepparents who reside or resided with the offender or the victim for at least 90 days within 1 year before the filing of the petition.

28. Or who has lived with the offender for at least 90 days before the filing of the petition.

29. Person who has had a sexual relationship with the offender and resided with the offender for 90 days within 1 year before the filing of the petition.

30. The relationship will be adjudged by courts, considering the length of time of the relationship.

* Irrelevant whether parents have lived together or have been married.

**Table 11
Eligibility Provisions for Civil Protective Orders**

State	Spouse	Ex-Spouse	Child	Minor	Parent	Child in common*	Related by blood or marriage and living with offender	Related by blood or marriage	Currently or formerly living with offender	Currently living with offender	Currently or formerly living with offender as a spouse	Currently or formerly living with offender as a sexual partner	Has or had romantic relationship with offender	Victim of stalking or harassment	Current or former sexual partner
MI	X	X												X	
MN	X	X	X		X	X		X ³¹	X		X				
MS	X	X	X		X			X			X				
MO	X					X		X	X ³²						
MT	X	X	X ³³		X ³⁴		X	X ³⁵	X				X ³⁶	X	
NE	X	X				X		X	X						
NV	X	X				X		X	X					X	

31. Blood only.

32. Must be of the opposite sex.

33. Includes stepchildren, foster children, and adopted children.

34. Includes stepparents, foster parents, and adoptive parents.

35. Blood only.

36. Must be of the opposite sex.

* Irrelevant whether parents have lived together or have been married.

Table 11
Eligibility Provisions for Civil Protective Orders

State	Spouse	Ex-Spouse	Child	Minor	Parent	Child in common*	Related by blood or marriage and living with offender	Related by blood or marriage	Currently or formerly living with offender	Currently living with offender	Currently or formerly living with offender as a spouse	Currently or formerly living with offender as a sexual partner	Has or had romantic relationship with offender	Victim of stalking or harassment	Current or former sexual partner
NH	X	X	X ³⁷		X		X						X		
NJ	X	X				X									
NM ³⁸	X	X	X			X		X	X				X ³⁹		
NY	X	X	X		X	X	X								
NC	X	X	X	X							X ⁴⁰				
ND	X	X	X		X	X		X		X			X ⁴¹		
OH	X	X	X		X			X			X ⁴²				

37. A guardian ad litem may be appointed to represent the interests of the children of either or both parties.

38. Cohabitation is unnecessary for all categories.

39. Defined as a "continuing personal relationship."

40. Must be of the opposite sex.

41. In a current dating relationship.

42. Within 1 year.

* Irrelevant whether parents have lived together or have been married.

Table 11
Eligibility Provisions for Civil Protective Orders

State	Spouse	Ex-Spouse	Child	Minor	Parent	Child in common*	Related by blood or marriage and living with offender	Related by blood or marriage	Currently or formerly living with offender	Currently living with offender	Currently or formerly living with offender as a spouse	Currently or formerly living with offender as a sexual partner	Has or had romantic relationship with offender	Victim of stalking or harassment	Current or former sexual partner
OK	X ⁴³	X ⁴⁴	X			X		X	X					X	
OR	X	X				X		X ⁴⁵	X					X	X ⁴⁶
PA	X	X	X	X	X	X					X				X
RI	X	X	X	X ⁴⁷											
SC	X	X	X	X	X										
SD	X					X		X	X						
TN	X					X ⁴⁸		X		X ⁴⁹					

43. All categories include elderly and handicapped persons.

44. Includes present spouses of ex-spouses.

45. Adult persons.

46. Within 2 years immediately preceding the filing of the petition.

47. A minor who is not related to the adult offender and with whom the offender is living or has lived in the past 3 years.

48. Includes current pregnancies.

49. As a spouse.

* Irrelevant whether parents have lived together or have been married.

Table 11
Eligibility Provisions for Civil Protective Orders

State	Spouse	Ex-Spouse	Child	Minor	Parent	Child in common*	Related by blood or marriage and living with offender	Related by blood or marriage	Currently or formerly living with offender	Currently living with offender	Currently or formerly living with offender as a spouse	Currently or formerly living with offender as a sexual partner	Has or had romantic relationship with offender	Victim of stalking or harassment	Current or former sexual partner
TX	X	X	X ⁵⁰		X ⁵¹	X		X	X					X ⁵²	
UT	X	X				X		X	X		X				
VT	X	X	X								X ⁵³				
VA	X	X	X												
WA	X	X				X		X ⁵⁴	X					X	
WV	X	X	X ⁵⁵	X	X ⁵⁶	X					X				X

50. Includes foster children.

51. Includes foster parents.

52. As a condition of pretrial release.

53. Must be of the opposite sex.

54. Adult persons.

55. Includes stepchildren.

56. Includes stepchild.

* Irrelevant whether parents have lived together or have been married.

Table 11
Eligibility Provisions for Civil Protective Orders

State	Spouse	Ex-Spouse	Child	Minor	Parent	Child in common*	Related by blood or marriage and living with offender	Related by blood or marriage	Currently or formerly living with offender	Currently living with offender	Currently or formerly living with offender as a spouse	Currently or formerly living with offender as a sexual partner	Has or had romantic relationship with offender	Victim of stalking or harassment	Current or former sexual partner
WI	X	X	X		X			X ⁵⁷	X						
WY	X	X	X ⁵⁸			X					X			X	

57. Blood only.

58. Adult children only.

* Irrelevant whether parents have lived together or have been married.

A lower court had cited a 1990 U.S. Supreme Court decision, *Grady v. Corbin*,¹³ in which the court ruled that a subsequent prosecution is barred under the double jeopardy provision if, in order to establish an essential element of the crime, the government had to prove conduct that constituted an offense for which the defendant already had been prosecuted.

Justice Antonin Scalia, writing for the majority in *Dixon*, overruled the *Grady* decision. Three justices dissented from the portion of the opinion overruling *Grady*.

The Court reestablished the “same-elements” test used prior to *Grady* to determine whether a subsequent prosecution violated the prohibition against double jeopardy. The test requires a court to analyze whether each offense contains an element not present in the other. If the charged offenses have some different elements, the offenses are not barred from prosecution by double jeopardy. If all elements of the crime already have been litigated in the first proceeding, the double jeopardy clause applies and the second prosecution is barred.

By violating a protective order, a defendant also may be committing an act which, if combined with other conduct, constitutes stalking. A critical element of any stalking conviction is evidence that the defendant repeatedly engaged in the stalking behavior. Therefore, in order to obtain a stalking conviction, the State would have to prove the element of repeated behavior.

However, to find a defendant in criminal contempt for violating a protective order, the State must prove that the defendant knew about the protective order and engaged in the prohibited behavior on one occasion. Since the elements needed to prove each offense differ, it appears that, under the majority decision in *Dixon*, the State would not be barred from prosecuting the defendant for stalking, even if he or she has been found in criminal contempt. Policymakers, legislators, and law enforcement officials should be aware that the law in this area is somewhat unsettled, as evidenced by the reversal of the *Grady* test, which was established only in 1990. At least 11 State supreme courts have adopted the *Dixon* “same-elements” test.¹⁴ Since the *Dixon* decision, at least one State supreme court has rejected the “same-elements” test, ruling that the State constitution’s double jeopardy provision provides greater protection than does the provision in the U.S. Constitution.¹⁵ The reestablished standard has been the basis of much litigation in State courts, and many States have cases pending in the intermediate appellate courts.

13. *Grady v. Corbin*, 495 U.S. 508 (1990).

14. *People v. Allen*, 868 P.2d 379 (Colo. 1994); *People v. Correa*, 623 N.E.2d 268 (Ill. 1993); *Buie v. State* 633 N.E.2d 250 (Ind. 1994); *Eldred v. Commonwealth*, 1994 WL 587834 (Ky., Oct. 27, 1994); *State v. Fairfield*, 644 A.2d 1052 (Me. 1994); *State v. Burns*, 877 S.W. 2d 111 (Mo. 1994); *State v. Barker*, 858 P.2d 360 (Mont. 1993); *People v. Latham*, 609 N.Y.S. 2d 141 (N.Y. 1994); *State v. Mertz*, 514 N.W.2d 662 (N.D. 1994); *State v. Stephenson*, 878 S.W. 2d 530 (Tenn. 1994); *State v. Kurzawa*, 509 N.W. 2d 712 (Wisc. 1994).

15. *Hawaii v. Lessary*, 865 P.2d 150 (Haw. 1994).

Two Florida courts have reached opposite decisions in considering whether a subsequent prosecution for aggravated stalking after a conviction for criminal contempt based on violation of a protective order would violate the double jeopardy clause.

In *State v. Johnson*,¹⁶ Robert Johnson was charged with criminal contempt for violating an injunction against domestic violence when he broke into the house of Andrea Green. Simultaneously, the State charged him with “aggravated stalking by violating a prior injunction.” In Florida, an element of aggravated stalking is violation of an injunction against violence. Johnson pleaded no contest to the criminal contempt charge and moved to have the aggravated stalking charge dismissed.

The State appellate court dismissed the aggravated stalking charge, holding that according to the test articulated in *Dixon*, prosecuting Johnson for aggravated stalking based on violating an injunction was forbidden under the double jeopardy clause because each element of the aggravated stalking charge was subsumed in the violation of the injunction charge. The court wrote, “There is no conceivable way in which [Johnson] could have committed aggravated stalking against the victim without also violating the terms of the injunction, a crime for which he had already been convicted.”

A separate appellate court in *State v. Miranda*¹⁷ came to the opposite conclusion. Humberto Miranda was charged with criminal contempt for violating a domestic violence injunction and aggravated stalking. Miranda pleaded guilty to the criminal contempt charge and moved to dismiss the aggravated stalking charge on the grounds that it violated the double jeopardy clause. The court found that the defendant was charged with aggravated stalking for conduct he engaged in after the conduct for which the violation of the injunction was based.

The court, using the test articulated in *Dixon*, examined the elements of the criminal contempt charge and the aggravated stalking statute. The court noted that *Dixon* required that in order to prosecute for both offenses, each offense must contain at least one element that the other does not. Both the aggravated stalking statute and the contempt charge required that the State prove that an injunction for protection had been issued.

In continuing its analysis, the court found that in order to prove aggravated stalking, the prosecution had to prove that the defendant “knowingly, willfully, maliciously, and repeatedly follow[ed] or harass[ed] another person” and “engage[d] in a course of conduct directed at a specific person that cause[d] substantial emotional distress.” These requirements, however, were not elements of the charge of violating the conditions of the injunction.

16. *State v. Johnson*, 644 So. 2d 1028 (Fla. Dist. Ct. App. 1994).

17. *State v. Miranda*, 644 So. 2d 342 (Fla. Dist. Ct. App. 1994).

The court also found that the contempt charge included an element that was not part of the aggravated stalking charge—that the defendant had entered on or about the victim’s place of employment. Because each offense contained at least one element that the other did not, prosecution for both offenses was constitutionally permissible.

Protective orders and domestic violence were the focus of much State legislative activity in the past year. For example, the provisions listed below were approved during the 1994 State legislative sessions.

- Arizona: The address of a person seeking a court order of protection from harassment or domestic violence may not be listed on the petition and cannot be disclosed to anyone except by court order, unless it was the common residence of the plaintiff and defendant during the past 5 years. A protection order expires if it is not served within 1 year from the date it is signed. (Ariz. Rev. Stat. Ann. §12-1809 (1994 and Supp. 1994)).
- California:
 - A person subject to a protective order is prohibited from owning or possessing a firearm. (Cal. Fam. Code §6389 (West Supp. 1995)).
 - Each county is required to increase enforcement procedures for protective orders among jurisdictions. (Cal. Fam. Code §6385 (West 1994)).
 - A mandatory minimum sentence is imposed for second and subsequent convictions of spousal battery within 7 years. (Cal. Penal Code §273.6 (West 1988 and Supp. 1995)).
 - An employer is authorized to obtain a temporary restraining order on behalf of an employee. (Cal. Civ. Proc. Code §527.8 (West Supp. 1995)).
 - A prosecutor may recharge a misdemeanor crime based on domestic violence within 6 months if the reason the case was originally dismissed was because the complaining witness refused to testify after being served with a subpoena. (Cal. Penal Code §1387 (1982 and Supp. 1995)).
 - A person convicted of battery may be required to pay up to \$5,000 to a battered women’s shelter, and a court may order the individual to participate in a batterer’s program as a condition of probation. (Cal. Penal Code §243 (1988 and Supp. 1995)).
- Colorado: The definition of domestic violence includes the invasion or threat of invasion of home or property. (Colo. Rev. Stat. Ann. §18-6-800.3 (West 1990 and Supp. 1995)).

- Hawaii: A person subject to a protective order may not possess a firearm or ammunition. (Haw. Rev. Stat. §134-7 (1988 and Supp. 1995)).
- Indiana: The protective order laws were amended to require increased enforcement among jurisdictions and to allow protective orders to remain in effect for 1 year. (Ind. Code Ann. §§5-2-9-6, 31-1-11.5-7, 31-11-5-8.2, 34-4-5.1-2 (West Supp. 1995)).
- Louisiana: The duration of protective orders is increased from 3 months to 6 months. (La. Rev. Stat. Ann. §46:2136 (West Supp. 1995)).
- New Hampshire:
 - Previous reconciliation can no longer be grounds for denial of a protective order. (1994 N.H. Laws 259) (to be codified at N.H. Rev. Stat. Ann. §173-B:4).
 - A minor can seek relief from domestic violence without being accompanied by a parent or guardian. The court is authorized to require counseling for the abuser. (1994 N.H. Laws 259) (to be codified at N.H. Rev. Stat. Ann. §173-B:3).
- Rhode Island: The definition of domestic assault now includes persons who are in a substantive dating or engagement relationship. (R.I. Gen. Laws §8-8.1-1 (1985 & Supp. 1994)).
- South Dakota: Law enforcement officers and prosecutors are required to attend training on domestic abuse, and law enforcement agencies are required to develop policies pertaining to domestic abuse. (S.D. Codified Laws Ann. §§23-3-39.4, -39.7, -42.1 (Supp. 1994)).
- West Virginia: Several laws relating to domestic violence are amended. (W. Va. Code §§48-2A-6, -10, -14, 61-2-28 (1994)).
- Wisconsin: The laws relating to restraining orders are amended. (Wis. Stat. Ann. §§46.95, 813.12, 968.075 (West Supp. 1995)).

Sources for Further Information

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Appendix A

Model Antistalking Code and Commentary

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;
- (c) “Immediate family” means a spouse, parent, child, sibling, or “any other person who regularly resides in the household or who, within the prior 6 months, regularly resided in the household.”

Section 2. Any person is guilty of stalking 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; and
- (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.

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, nonconsensual 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 the stalker 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

In contrast to many State stalking statutes, the model code does not use the phrase “credible threat.” Stalking defendants often do not threaten their victims verbally or in writing but instead engage in conduct which, taken in context, would cause a reasonable person to 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 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.”

States that are considering further expanding the definition of “immediate family” 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 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 nonthreatening 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 specific 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 The decision about how to classify stalking and how to establish a 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 are also likely to 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

1. This 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 anti-stalking 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 anti-stalking 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*, *Geo L.J.* 81(2771). 1993.

2. *Ibid.*

fear bodily injury or death, as well as psychological injury. Nevertheless, States may wish to consider expanding the language of felony stalking statutes to include 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 to fear and have or should have knowledge that the person toward whom the conduct is directed will be placed in 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.

Suspected stalkers often suffer under a delusion that their victims actually are in love with them or that, if properly pursued, the victims will begin to love them. Therefore, a stalking defendant may not intend to cause fear but instead may intend to establish a relationship with the victim. Nevertheless, the suspected stalker's actions cause fear in the victim.

As long as stalking defendants know or should know that their actions cause fear, they can be prosecuted for stalking. Protection orders can serve as notice to alleged stalkers that their behavior is unwanted and that it is causing the victim to fear.

Fear Element

Since stalking statutes criminalize behavior that might otherwise be legitimate conduct because 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 B

Principal Recommendations of the Final Report of the Project To Develop an Antistalking Model Code

Principal Recommendations of the Final Report of the Project To Develop an Antistalking Model Code

A Model Antistalking Code for the States

- Because stalking often is characterized by a series of increasingly serious acts, States should consider establishing a continuum of charges that law enforcement agencies can use to intervene at various stages in a stalking case.
- States should consider creating a felony charge of stalking 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 policy for stalking that makes incarceration an option for all stalking convictions.
- If a State decides not to treat stalking as a felony, it should consider incorporating aggravating factors into its sentencing policy for stalking so that a particular incident can be elevated from a misdemeanor to a felony if an aggravating factor(s) 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 establish a separate crime category—for example, aggravated stalking—to deal with convicted stalkers who have committed previous felonies or stalking offenses.
- States' stalking sentencing policies 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 convicted stalkers who are about to be placed 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 on 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, they 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 pretrial release or bail laws that require authorities to make reasonable efforts to provide victims with copies of relevant pretrial release orders, together with information about how and to whom they report alleged violations, and the sanctions for violations.

Strategies for Implementing Stalking Statutes and Protocols

- States should consider developing a multidisciplinary approach emphasizing early intervention in suspected stalking. This approach should involve the law enforcement community, the judicial system, correctional and social services agencies, victims' services, advocacy groups, and community organizations in the characteristics and behavior of stalkers.
- Criminal justice officials should receive training in the characteristics and behaviors of stalkers. 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: stalking law provisions and evidentiary requirements; identifying and monitoring stalking incidents; assessing the potential danger posed by a suspected stalker; and assisting stalking victims. Training for police officials should be incorporated into police recruit and roll call and in-service 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 recommendations for substance abuse monitoring and treatment and mental health counseling into restraining orders, when the existence of these conditions can be documented.
- States should consider reviewing the notification procedures in their protective order statutes to ensure that they provide adequate notification to all parties that a protective order has been issued and notify them of the terms of the order.
- States should consider enacting legislation that would allow the courts to enforce protective orders issued by another jurisdiction.
- Law enforcement agency administrators should establish formal department policies and procedures for handling stalking cases.
- States should consider enacting legislation and establishing procedures that encourage judges to use defendants' criminal history record information when making decisions about pretrial release conditions, sentencing, and issuing 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.

A National Research Agenda on Stalking

- Research should be undertaken on stalkers' behavioral histories to respond to the following questions:
 - What information is available about stalkers and their behavioral histories?
 - Is stalking a new behavior? Have allegations of stalking behavior increased during the past 3 years? How prevalent was stalking 20 years ago?
 - Do stalkers as a group exhibit any common characteristics or patterns of behavior?

- How many stalkers have records of prior felony arrests and convictions unrelated to the stalking incident?
- What behaviors do stalkers exhibit immediately before committing a violent act?
- Are there any mental disorders associated with stalking behavior?
- Research should be undertaken on handling stalking cases to answer the following questions:
 - How many persons are arrested each year for stalking?
 - How many of these arrests for stalking were made under stalking statutes? What charges were filed in stalking cases in which arrests were made under nonstalking statutes?
 - How many individuals arrested for stalking were convicted?
 - How many individuals arrested for stalking were convicted under stalking statutes?
 - How many individuals were convicted for stalking-like behavior under nonstalking statutes?
 - What sentences did stalkers receive in cases adjudicated under stalking statutes?
 - What sentences did stalkers receive in cases adjudicated under nonstalking statutes?
 - How many stalkers are under the jurisdiction of a civil or criminal court?
 - Is information on stalkers and their behaviors being used to guide law enforcement and other criminal justice officials in handling stalking cases?
- Research should be undertaken on protective orders to answer the following questions:
 - How well do defendants understand the terms of civil protection orders issued against them?
 - How well do individuals who obtain civil protection orders understand their rights and the process by which violations should be reported?

- How well do law enforcement officials and judges understand the enforcement process for civil protection orders?
- Research should be undertaken on how private corporations are handling alleged incidents in which an employee is a victim of stalking or an employee is using corporate resources to engage in stalking behavior.
- Regional seminars should be conducted to help the criminal justice community explore legislative and programmatic approaches to addressing the problem of stalking.

Appendix C
Participant Lists

Developing and Implementing Antistalking Codes Eastern Region Seminar

March 31–April 1, 1994
Tampa, Florida

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Developing and Implementing Antistalking Codes Western Region Seminar

May 12–13, 1994
Portland, Oregon

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Developing and Implementing Antistalking Codes Central Region Seminar

October 27–28, 1994
Chicago, Illinois

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Appendix D
Seminar Agenda

Developing and Implementing Antistalking Codes Eastern Region Seminar

hosted by the
National Criminal Justice Association
and
U.S. Department of Justice, Bureau of Justice Assistance
in cooperation with the
Florida Department of Law Enforcement

March 31 and April 1, 1994
Wyndham Harbour Island Hotel
725 South Harbour Island Boulevard
Tampa, Florida

Agenda

A principal feature of the 2-day regional seminar will be an examination of three hypothetical stalking cases, based on common elements of actual stalking cases, as the basis for demonstrating the possible practical implications for policymakers, legislators, and criminal justice officials of the model antistalking code provisions. The hypothetical cases will serve as vehicles for examining the experiences of the States with existing stalking statutes and current policies and practices for handling stalking cases. Finally, the hypothetical cases will provide the means and opportunity to explore possible options for handling the complex and unique legal, social, and mental health issues raised by stalking cases.

Thursday, March 31

Convene 1 p.m.

Welcome and Opening Remarks

Description of the stalking problem; history of efforts to address the problem

Charles A. Lauer, Special Assistant to the Assistant Attorney General
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Gwen A. Holden, Executive Vice President
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Overview of the Model Antistalking Code for the States

Review of the methodology and collaborative process used to develop the model code and explanation of the arguments for and against various options that were considered in formulating code provisions

- Principles that guided statutory construction.
- Uses and limitations of the model antistalking code.
- Model antistalking code provisions and related commentary.

Mr. Lauer

Profile of Antistalking Statutes of Eastern Region States

Lisa Doyle Moran, Assistant Director for Legal Affairs
National Criminal Justice Association

Recess 5 p.m.

Friday, April 1

Reconvene 9 a.m.

Introduction of Stalking Case Studies

- Explanation of interactive process to be used by panelists in discussing case studies with seminar participants.
- Overview of hypothetical stalking cases.
- Overview of critical issues identified by the model antistalking code project's resource group, including implementing stalking and related legislation; the use of protective orders in stalking cases; and dealing with alleged and convicted stalkers in light of limited financial and treatment resources.

Ms. Holden

Practical Exercise: Three Hypothetical Stalking Cases

Facilitator

Ms. Holden

Panelists

Joseph A. Claps, First Assistant Attorney General
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Robert Fein, Consulting Psychologist
U.S. Department of the Treasury, U.S. Secret Service and
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John F. Gorczyk, Commissioner
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Lt. John Lane
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Laura Scott, Victims Advocate Coordinator
Pinellas County (Fla.) Sheriff's Office

The Honorable Susan Sweetser
Vermont State Senator

Adjourn 3 p.m.

Developing and Implementing Antistalking Codes Western Region Seminar

hosted by the
National Criminal Justice Association
and
U.S. Department of Justice, Bureau of Justice Assistance
in cooperation with the
**Criminal Justice Services Division of the
Oregon Administrative Services Department**

May 12–13, 1994
The Governor Hotel
Southwest 10th at Alder
Portland, Oregon

Agenda

A principal feature of the 2-day regional seminar will be an examination of three case studies, using hypothetical stalking fact patterns, as the basis for demonstrating the possible practical implications for policymakers, legislators, and criminal justice officials of the model antistalking code provisions. The case studies will serve as vehicles for examining the experiences of the States with existing stalking statutes and current policies and practices for handling stalking cases. Finally, the case studies will provide the means and opportunity to explore possible options for handling the complex and unique legal, social, and mental health issues raised by stalking cases.

Thursday, May 12

Convene 1 p.m.

Welcome and Opening Remarks

Description of the stalking problem; history of efforts to address the problem

Gwen A. Holden, Executive Vice President
National Criminal Justice Association

Overview of the Model Antistalking Code for the States

Review of the methodology and collaborative process used to develop the model code and explanation of the arguments for and against various options that were considered in formulating code provisions

- Principles that guided statutory construction.

- Uses and limitations of the model antistalking code.
- Model antistalking code provisions and related commentary.

Ms. Holden

Lisa Doyle Moran, Assistant Director for Legal Affairs
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Stalker Profiles

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Profile of Antistalking Statutes of Western Region States

Ms. Doyle Moran

Discussion of Recent Constitutional Challenges to the Oregon Antistalking Statute

The Honorable Ron Cease
Oregon State Senator

Recess 5 p.m.

Friday, May 13

Reconvene 9 a.m.

Introduction of Stalking Case Studies

- Explanation of interactive process to be used by presenters in discussing case studies with seminar participants.
- Overview of stalking case studies.
- Overview of critical issues identified by the model antistalking code project's resource group, including implementing stalking and related legislation; using protective orders in stalking cases; and dealing with alleged and convicted stalkers in light of limited financial and treatment resources.

Ms. Holden

Practical Exercise: Three Stalking Case Studies

Facilitators

Ms. Holden

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Panelists

Mr. Claps

Mr. Fein

John Stein, Deputy Director
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Adjourn 3 p.m.

Developing and Implementing Antistalking Codes Central Region Seminar

hosted by the
National Criminal Justice Association
and
U.S. Department of Justice, Bureau of Justice Assistance
in cooperation with the
**Illinois Criminal Justice Information Authority,
the Illinois Attorney General's Office, and
the Chicago Police Department**

**October 27–28, 1994
The Westin Hotel/O'Hare
6100 River Road
Rosemont, Illinois**

Agenda

A principal feature of the 2-day regional seminar will be an examination of three hypothetical cases, based on common elements of actual stalking cases, as the basis for demonstrating the possible practical implications for policymakers, legislators, and criminal justice officials of the model antistalking code provisions. The hypothetical cases will serve as vehicles for examining the experiences of the States with existing stalking statutes and current policies and practices for handling stalking cases. Finally, the hypothetical cases will provide the means and opportunity to explore possible options for handling the complex and unique legal, social, and mental health issues raised by stalking cases.

Thursday, October 27

Convene 1 p.m.

Welcome and Opening Remarks

Description of the stalking problem; history of efforts to address the problem

Gwen A. Holden, Executive Vice President
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Overview of the Model Antistalking Code for the States

Review of the methodology and collaborative process used to develop the model code and explanation of the arguments for and against various options that were considered in formulating code provisions

- Principles that guided statutory construction.
- Uses and limitations of the model antistalking code.
- Model antistalking code provisions and related commentary.

Ms. Holden

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Stalkers: What Do We Know?

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Profile of Antistalking Statutes of Central Region States

Ms. Doyle Moran

Recess 5 p.m.

Friday, October 28

Reconvene 9 a.m.

Introduction of Stalking Case Studies

- Explanation of interactive process to be used by presenters in discussing case studies with seminar participants.
- Overview of hypothetical stalking cases.

Practical Exercise: Three Hypothetical Stalking Cases

Facilitators

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Adjourn 3 p.m.

Appendix E

Hypothetical Stalking Cases

Hypothetical Case No. 1

The branch manager/victim and the teller/stalker, both males, are coworkers in a suburban branch of a major national bank.

The bank branch is located in a stand-alone building in a suburban shopping mall that also houses a carry-out restaurant next to the bank and several offices. There is no full-time security guard posted in the branch.

The branch manager has been employed by the bank for 15 years and has served as manager of the branch in which he and the teller currently work for 5 years.

The teller has worked for the bank for 2 years and has spent that entire time employed as a teller under the branch manager's supervision. During the teller's employment with the bank, the branch manager has identified, documented, and placed in the teller's personnel file several reports of problems with the teller's performance. These problems have escalated during the 2 years of his employment with the bank and include unexcused absences, suspected alcohol use during working hours, and conflicts with and aggressive behavior directed toward coworkers and customers.

In the teller's most recent personnel evaluation, the branch manager rated the teller's performance unsatisfactory. Continuing performance problems culminate in the branch manager firing the teller. The firing is triggered by three occurrences of significant shortages in the teller's daily cash settlement over a period of 1 month and the suspicion that the missing funds are being taken by the teller. The teller is notified of his dismissal and advised of the reasons for his dismissal in a meeting held during regular banking hours, involving only the branch manager and the teller.

The meeting becomes confrontational. Notwithstanding the branch manager's review of the variety of performance problems that contributed to the teller's firing, the teller tells the branch manager that he believes that he is being fired unjustly because of false allegations of theft. The teller leaves the meeting in an extremely agitated state, verbalizing his outrage with the branch manager as he moves from the branch manager's office into the bank itself and past bank personnel and customers, toward the bank's exit.

One week after the teller was fired, the teller contacts the branch manager's direct supervisor, the consumer banking manager, by telephone and accuses the branch manager of unjustly firing him. The teller alleges that the false accusation was made to deflect blame from the branch manager who, the teller says, actually took the missing money. The consumer banking manager, who is familiar with the teller's performance history and aware of his dismissal by the branch manager, concludes that the teller's behavior is an irrational response to his dismissal and that his accusations against the branch manager are without merit. The consumer banking manager contacts the branch manager to report the teller's call and the content of the call and then summarily dismisses the matter.

After contacting the consumer banking manager, the teller begins to appear every morning at the carry-out restaurant located next to the bank, where the branch manager routinely stops for his morning cup of coffee. He makes no direct contact with the branch manager. A week later, the teller enters the bank, approaches a former coworker, and loudly complains about the bank's handling of his personal account. After the teller returns to the bank a second time to continue his complaints, the branch manager instructs all bank employees to refer any further contacts with the teller, either by telephone or in person, directly to him. The branch manager informs the consumer banking manager of the teller's behavior and asks for a security guard to be assigned inside the branch during banking hours.

The teller begins to make frequent telephone calls to the branch manager, at his office and his home, in which he accuses the branch manager of ruining his life with false accusations that he stole the missing bank money. The branch manager notifies the consumer banking manager of the teller's telephone calls and requests an unlisted telephone number from the telephone company.

One evening the branch manager, returning home from work, observes the teller driving past his home. The teller drives past the branch manager's home several times that evening.

A week after the teller is observed in the branch manager's neighborhood, the branch manager's wife and two young children return home to find a note from the teller attached to the front door of their home. The note reiterates that the branch manager has ruined his life and states that he plans to ruin the branch manager's life in return. He informs the branch manager in the note that he owns a knife, but he makes no specific threat to use it.

The branch manager notifies the consumer banking manager and the police of the teller's actions and threat.

Case Assumptions

1. The stalking victim and the stalker are coworkers.
2. The stalking victim does not specifically ask the stalker to cease the stalking activity but attempts to deal with initial stalking incidents by seeking the bank's intervention.
3. The stalking incidents persisted after the bank hires the security guard.
4. The stalking victim's first contact with law enforcement authorities concerning the stalking was made after a series of stalking incidents occurred.
5. In the stalking victim's State of residence, an individual applying for a protective order must live with the individual against whom the order is sought.

Discussion Questions

1. Did the victim report the stalking activity to the police at the earliest possible time?
2. (a) Are there other individuals or agencies from whom the victim could have sought assistance? If so, at what point should the victim have contacted these individuals or agencies?

(b) How can police officials go about determining the credibility of the bank manager when he reports the stalking behavior?
 - What questions do police officials ask the bank manager?
 - What conditions and circumstances, should police officials look for?
(c) Should police officials contact the teller after the report is made of the stalking activity? If so, should the first contact with the teller be a warning, a warning that results in the filing of a report, or a formal contact that produces a report?
3. (a) What are the stalking events in this fact pattern?

(b) Looking back over the events listed in response to question 3(a), would the police have been able to intervene at an earlier stage?

(c) What events listed in response to question 3(a) could be used by the prosecution to build a stalking case? How will the defense respond?
4. Assuming the bank manager would be ineligible to petition for a protective order, what advice should law enforcement officials give to him if the teller is not charged or remains free on bail?
5. What types of conditions should be included in any pretrial release or probation orders resulting from this case? How should violations of conditions be dealt with?
6. Were the actions taken by the bank appropriate? Should the bank have taken any additional actions? Could the bank incur any liability based upon its actions or failure to take action?

Hypothetical Case No. 1: Supplemental Facts

- Several days after placing the note on the front door of the branch manager's door, the teller slashes the tires of the branch manager's personal car while the vehicle is parked in the bank's parking facilities. The branch manager/victim's supervisor and the police are contacted. No one observed the tires being slashed. Although it is strongly suspected that the damage was inflicted by the teller, it cannot be proved.

The police take and file a formal report of the incident. The bank's consumer banking manager makes arrangements for the security guard assigned to the bank's premises to make periodic tours of the branch parking facilities.

- The teller arrives at a local bar for the regular Friday night postwork gathering of bank employees. The branch manager also is at the gathering. The teller makes a loud and animated scene in which he again states that the branch manager falsely accused him of theft and asserts that he took the missing money himself. He announces to the bar patrons that he has obtained a handgun and plans to use it, but provides no specific information on how and when. The police are contacted by the proprietor of the bar.
- The teller shoots out several windows of the branch manager's home. He has conducted an informal surveillance of the branch manager/victim's home and carries out the shooting at a time of day when the family generally is away from the home. No one is injured in the shooting.
- The teller is arrested by police and charged with stalking (a felony) and with malicious destruction of property and trespass (misdemeanors). The teller agrees to plead guilty to the lesser charges in return for the prosecutor dropping the stalking felony charge. The teller is sentenced to 2 years of probation. As a condition of probation, the teller is required to undergo a mental health evaluation and counseling. He is ordered to have no further contact with the branch manager or his family and to stay away from the branch offices. He also is ordered to pay restitution.

Discussion Questions

1. Were there other charges that reasonably could have been brought against the teller?
2. Would a stalking prosecution of the teller have been successful?
3. Would dropping the stalking charge have any effect on prosecuting and sentencing if the teller engages in further stalking behavior?

Hypothetical Case No. 2

A husband/stalker and his wife/victim own their own home in a moderate middle-class neighborhood. The husband is a certified public accountant with a small accounting firm. The wife left a 4-year college after 2 years to marry her husband and currently stays home to care for the couple's two children, ages 2 and 4. She has no work experience and no professional skills. Two years ago, the wife decided to return to college in the evenings to complete her bachelor of arts degree. Despite a lack of enthusiasm for his wife's return to school, the husband agreed to make funds available to support this endeavor and to babysit the children on the evenings that she attends classes. A year later she began classes in the community college's evening division.

The relationship between the woman and her husband of 6 years has become increasingly strained and stressful during the past 9 months, ending almost a year of relative calm in a relationship that suffered a stormy beginning. Career uncertainties, a young child, money problems, and the death of the husband's father in the first 2 years of the marriage combined to create a volatile home environment. The husband began to criticize the victim's performance as a wife and mother. Twice in those early years, police were called by neighbors to intervene in fights between the woman and her husband. On one occasion, the husband pushed and shoved his wife, who received a sprained wrist and several bruises in the incident.

These incidents precipitated a 9-month separation during which the wife and the couple's children lived with her parents. During that separation, the wife sought and received a protective order prohibiting the husband from telephoning, writing, and following her. The husband continued his pursuit, and on two occasions the wife reported the husband's behavior to the police. On the first occasion, the husband was arrested by the police, spent a night in jail, and was released the next day when the woman refused to press charges for the violation of the protective order. On the second occasion, the wife refused to press charges when the police arrived at her home to take the complaint.

A promotion for the husband and a resulting improvement in the family's financial status apparently alleviated many of the husband's worries. The husband and the wife were reunited, a second child was born, and the couple's relationship improved markedly.

Now completing her second semester of classes, the wife is enrolled in two evening seminars, each meeting once a week for 3 hours. The husband's initial lack of enthusiasm for his wife's return to college now has been replaced by growing anger over the impact of the wife's educational pursuits on his personal schedule. The husband resents the 2 nights a week that he must stay home to care for the children while his wife attends classes, and he resents the disruption in the family routine caused by his wife's absence. The husband's anger and resentment are heightened further by the wife's enthusiastic accounts of her classes and classmates. Moreover, the husband recently has become suspicious of his wife's relationship with one of the men in her seminar with whom she has been working on a seminar project.

Completion of that project has involved the wife in several additional hours of class-related work and has exacerbated the husband's frustration over his wife's preoccupation with school. A Saturday meeting between the wife and her male project associate, from which the wife returns nearly 2 hours later than planned, preempts the husband's plans to attend a sporting event that afternoon. The husband becomes so enraged when the wife returns home that he tells her of his suspicions about her relationship with her male associate. The husband accuses his wife of abandoning her family, failing in her responsibilities as a wife and mother, and betraying him by entering into a relationship with her classmate while he stays at home taking care of a sick child. The wife vehemently denies any such relationship with her associate.

On several occasions, the husband follows his wife as she shops for groceries and carries out other household errands. After observing a conversation between his wife and a male pharmacist, the husband accuses his wife of flirtatious behavior. Several weeks later, when the wife returns home late after celebrating the end of classes with a drink with her seminar colleagues, the husband becomes verbally and physically abusive. He again accuses the wife of being unfaithful to him and of abandoning her family. He says that he and the couple's children have been following her to her classes and that they have observed her in the company of the male classmate. An episode of pushing and shoving concludes with injuries to the wife and a neighbor's telephone call to the police. The police arrest the husband and take him to the city lockup. The next morning, the wife appears at the police station and refuses to press charges despite the urging of neighbors and other friends to do so. The husband is released.

The wife and her children leave the home and move into the home of her parents. In a note, the wife informs the husband that she believes that they need time apart to consider their relationship. The wife says that she does not plan to seek a legal separation but that she does not want to speak with or hear from the husband during the separation. Notwithstanding this request for no contact, the husband continues daily attempts to reach the victim by telephone at her parent's home and is observed driving by the home each morning and evening. Despite the wife's objections, the mother contacts the police.

Case Assumptions

1. The stalking victim and the stalker are husband and wife.
2. The stalking victim and the stalker have a history of domestic problems. The stalking behavior is one element of those domestic problems.
3. The stalking victim attempts to deal with the initial stalking incidents as well as the other aspects of their domestic troubles first by reasoning with the stalker and second by separating from him.
4. Despite the stalking victim's attempts, the stalking persists.

5. In the stalking victim's State of residence, protective orders are available to spouses and former spouses.

Discussion Questions

1. Was the stalking activity reported at the earliest possible time?
2. (a) Are there other individuals or agencies from whom assistance could have been sought? If so, at what point should these individuals or agencies have been contacted?

(b) Should police officials contact the husband after the report is made of the stalking activity? If so, should the first contact with the husband be a warning, a warning that results in the filing of a report, or a formal contact that produces a report?
3. What charges, if any, could be filed against the husband after the wife's mother contacts the police? Would the fact that the husband had engaged in stalking activities during the couple's first separation play a role in determining what charges should be filed?
4. (a) What are the stalking events in this fact pattern?

(b) Looking back over the events listed in response to question 3(a), would the police have been able to intervene at an earlier stage?

(c) What events listed in response to question 3(a) could be used by the prosecution to build a stalking case? How will the defense respond?

(d) Could the wife's mother file stalking charges against the husband?
5. (a) How can law enforcement officials deal with a victim who is reluctant or refuses to take the actions they suggest, such as filing for a protective order?

(b) Should law enforcement officials push reluctant victims to file stalking complaints?

(c) What courses of action are available to law enforcement officials when a victim refuses to file a complaint?

(d) If a victim refuses to file a complaint and testify, to what extent can prosecutors rely on third parties in trying a stalking case? What problems does this present for the prosecution?
6. Assume that the wife had agreed to petition for, and obtained, a protective order and that the husband violated the order. Assume further that at a subsequent contempt

hearing the wife had expressed reluctance to testify against her husband. How should a judge handle this situation in light of the following possibilities:

- The court's primary concern is family preservation.
 - The husband is threatening the wife with violence if she testifies against him.
 - The judge has access to evidence suggesting that the wife may be in danger.
7. What types of evidence could a judge rely on to assess whether a stalking defendant poses a danger, and how should the judge weigh such evidence?
 8. What types of conditions should be included in any protection order, pretrial release, or probation order resulting from this case? How should violations be dealt with?

Hypothetical Case No. 2: Supplemental Facts

- The husband continues contact with the wife by sending several letters to her parents' home in which he at first implores her to return home and then threatens to take the children from her if she does not come home. On one occasion, the husband confronts the wife in a shopping mall parking lot and again threatens to take the children from her if she does not return home. A passerby alerts mall security of the altercation. As security approach the site, the husband returns to his car and leaves the mall area.
- On returning to her parents' home after the altercation at the mall, the wife tells her mother about the incident. The police are notified and arrive at the wife's parents' home to take a report on the mall parking lot incident and other recent incidents associated with the couple's problems. The police advise the wife to secure a protective order. The wife says she does not wish to do so. The following day, a friend of the wife's observes the husband in his car outside the school his children attend and notifies the wife of this.

Hypothetical Case No. 3

A local male sportswriter/victim stops each morning at a convenience store located in a small strip mall to pick up a cup of coffee and several newspapers that the convenience store clerk set aside for him.

The assistant manager/stalker of a dry cleaning business located next to the convenience store in the strip mall has seen the sportswriter enter and leave the convenience store every day for several months and has become infatuated with him. She also has seen him occasionally at the public recreation center where she regularly participates in aerobics classes. The assistant manager has hoped for a casual encounter with the sportswriter on one of his trips to the convenience store and has imagined a long-term romantic relationship. She casually has asked her friend, the convenience store clerk, for information about the sportswriter and has learned that he is a sportswriter with the local paper. To date no encounter has occurred between the assistant manager and the sportswriter.

The assistant manager decides to initiate contact with the sportswriter. For 2 consecutive days, the assistant manager arranges to be in the convenience store chatting with the store clerk when the sportswriter arrives to pick up his coffee and newspapers. On the first encounter, the assistant manager says good morning to the sportswriter and comments on the weather. The sportswriter returns the greeting but pursues no further conversation with the assistant manager and leaves the store. On the second day, the assistant manager again says good morning to the sportswriter and comments on the number of newspapers he buys. The sportswriter returns the greeting and acknowledges with a smile the assistant manager's comments about the newspapers, but he again leaves the store without pursuing any further conversation or contact with the assistant manager.

The assistant manager is frustrated by the failure of her first two attempts to initiate contact with the sportswriter, but is encouraged that the sportswriter smiled at her. She has interpreted that smile as signaling his interest in her and she decides to pursue more aggressively further contact with him.

The following day, the assistant manager again arranges to be in the convenience store when the sportswriter arrives. She greets the sportswriter and accompanies him out of the store to his car. The sportswriter is polite but unresponsive to the assistant manager's efforts to initiate a conversation with him. The assistant manager returns to the convenience store and laments to the convenience store clerk her failure to engage the sportswriter in a conversation. The clerk suggests to the assistant manager that she is being too obvious about her interest in the sportswriter and probably has scared him away. The clerk advises her friend to tone down her pursuit of him. The assistant manager is visibly angered by the clerk's remarks. In a loud, hostile voice, which is overheard by the handful of customers in the convenience store, the assistant manager tells the convenience store clerk that her "relationship" with the sportswriter is none of her friend's business and suggests that the

clerk is jealous of that relationship. The assistant manager leaves the convenience store, threatening to end her friendship with the convenience store clerk.

A few days later, the assistant manager encounters the sportswriter at the public recreational facility where he has been playing basketball with a few of his colleagues. The assistant manager greets the sportswriter and comments upon the frequency with which their paths appear to be crossing. She invites the sportswriter to join her for a drink. The sportswriter politely declines the assistant manager's invitation. The sportswriter rejoins his companions on the basketball court and the assistant manager overhears the sportswriter and his colleagues laughing. The assistant manager assumes that the sportswriter and his colleagues are laughing at her. She leaves the public recreational facility.

Hurt, angry, and embarrassed by the sportswriter's most recent rejection of her, the assistant manager anonymously mails him a copy of William Congreve's poem "The Mourning Bride," which contains the oft-quoted line, "Heaven has no rage like love to hatred turned, nor hell a fury like a woman scorned."

The sportswriter receives the poem in the mail at his home 2 days later. He doesn't know why the poem has been sent or who has sent it. The following night, he and his wife return home to find several telephone hangups recorded on their answering machine. Later that evening, the sportswriter's wife answers a telephone call. The caller is the assistant manager. Without identifying herself to the sportswriter's wife, the assistant manager asks to speak to the sportswriter. When he comes to the telephone, the assistant manager asks him if he received the poem she sent him and if he is sorry for hurting and embarrassing her in the company of his colleagues at the public recreation facility. The sportswriter asks the caller her identity and asserts that he does not know what she is talking about. The assistant manager replies angrily that he is lying and that she does not plan to tolerate his behavior toward her any longer. The sportswriter asserts that the caller is "some kind of nut," demands that she not call again, and hangs up.

The assistant manager is startled to learn that the sportswriter is married and is angered that he has further rejected her and called her a nut. She confronts him at the convenience store the next day. In a hostile, irrational diatribe, she accuses him of infidelity and enticing her into a romantic relationship only to reject her cruelly. She asserts that in payment for his unkindness to her she will ruin his reputation and career and says that she plans to report his infidelity to the editor of the newspaper that employs the sportswriter. The sportswriter notifies the police.

Case Assumptions

1. The stalking victim has no relationship, acquaintance, or association with the stalker (the stalker is a stranger).

2. The stalking victim's first contact with law enforcement authorities was made after a series of stalking incidents occurred.
3. In the stalking victim's State of residence, an individual applying for a protective order must live with the individual against whom the order is sought.

Discussion Questions

1. Did the victim(s) report the stalking activity to the police at the earliest possible time?
2. (a) Are there other individuals or agencies from whom the victim(s) could have sought assistance? If so, at what point should the victim(s) have contacted these individuals or agencies?

(b) How can police officials go about determining the credibility of the victim(s) reporting the stalking behavior?
 - What questions should police officials ask the victim(s)?
 - What conditions and circumstances should police officials look for?
3. (a) What are the stalking events in this fact pattern?

(b) Looking back over the events listed in response to question 3(a), would the police have been able to intervene at an earlier stage?

(c) What events listed in response to question 3(a) could be used by the prosecution to build a stalking case? How will the defense respond?
4. Assuming the sportswriter would be ineligible to petition for a protective order, what advice should law enforcement officials give to him if the assistant manager is not charged or remains free on bail?
5. What types of conditions should be included in any pretrial release or probation orders resulting from this case? How should violations of conditions be dealt with?

Hypothetical Case No. 3: Supplemental Facts

- The assistant manager shows up at the newspaper where the sportswriter works demanding to see him. The security officer at the newspaper, having been advised of the situation, refuses to admit her to the newspaper's office. The assistant manager leaves a message for the sportswriter with the security officer in which she tells the sportswriter that he will be sorry if he continues to refuse to see her.

- During the next few days, the assistant manager, unobserved by the sportswriter, monitors the movements of the sportswriter and his wife at home and at work. A week after the assistant manager's angry confrontation with the sportswriter at the convenience store, the assistant manager follows the sportswriter's wife to her place of business. The assistant manager intercepts and verbally and physically assaults the sportswriter's wife outside the wife's office building, accusing the wife of turning the sportswriter against her and stealing his affections. The police are summoned.
- The assistant manager is charged by the police with assault. She pleads no contest to the charge; a no-contact order is issued by the judge and the manager is released without supervision.

Discussion Questions

1. Could the assault on the sportswriter's wife be used as evidence to prove stalking charges brought by the sportswriter?
 - If not, would there be enough evidence to prosecute stalking charges brought by the sportswriter? What would the prosecution's strategy be, assuming the assault on the sportswriter's wife would not be admissible evidence to prove stalking charges brought by the sportswriter? How would the defense respond?
 - If the assault on the sportswriter's wife were admissible to prove stalking charges, would the constitutional prohibition against double jeopardy bar a separate assault charge?

Appendix F

Appellate Court Citations of Stalking Cases

Appellate Court Citations of Stalking Cases

Alabama

Morton v. State, 1994 WL 529354 (Ala. Cr. App. September 30, 1994).

California

People v. Heilman, 30 Cal. Rptr. 2d. 422 (Cal. Ct. App. 1994).

Florida

Bouters v. State, 634 So. 2d 246 (Fla. Dist. Ct. App. 1994).

Folsom v. State, 638 So. 2d 591 (Fla. Dist. Ct. App. 1994).

Gilbert v. Florida, 639 So. 2d 191 (Fla. Dist. Ct. App. 1994).

Huffine v. State, 648 So. 2d 783 (Fla. Dist. Ct. App. 1994).

Pallas v. State, 636 So. 2d 1358 (Fla. Dist. Ct. App. 1994).

Perez v. State, 648 So. 2d 784 (Fla. Dist. Ct. App. 1994).

Rosen v. State, 644 So. 2d 531 (Fla. Dist. Ct. App. 1994).

Salatino v. State, 644 So. 2d 1035 (Fla. Dist. Ct. App. 1994).

State v. Barron, 637 So. 2d 384 (Fla. Dist. Ct. App. 1994).

State v. Baugher, 637 So. 2d 384 (Fla. Dist. Ct. App. 1994).

State v. Johnson, 644 So. 2d 1028 (Fla. Dist. Ct. App. 1994).

State v. Kahles, 644 So. 2d 512 (Fla. Dist. Ct. App. 1994).

State v. Miranda, 644 So. 2d 342 (Fla. Dist. Ct. App. 1994).

State v. Tremmel, 644 So. 2d 102 (Fla. Dist. Ct. App. 1994).

Varney v. State, 638 So. 2d 1063 (Fla. Dist. Ct. App. 1994).

Georgia

Johnson v. State, 449 S.E. 2d 94 (Ga. 1994).

Illinois

People v. Krawiec, 634 N.E. 2d 1173 (Ill. App. Ct. 1994).

Massachusetts

Commonwealth v. Kwiatowski, 637 N.E. 2d 854 (Mass. 1994).

Minnesota

In Matter of Christensen, 1994 WL 233616 (Minn. App. May 31, 1994).

State v. Nash, 1994 WL 705355 (Minn. App. December 29, 1994).

Montana

State v. David, 880 P. 2d 1308 (Mont. 1994).

Ohio

Cleveland v. Walters, 1994 WL 734829 (Ohio App. 8 Dist. October 13, 1994).

State v. Benner, 644 N.E. 2d 1130 (Ohio Ct. App. 1994).

State v. Wasmire, 1994 WL 476462 (Ohio App. 5 Dist. August 6, 1994).

State v. Wegman, 1994 WL 159517 (Ohio App. 6 Dist. April 29, 1994).

State v. Wilcox, 1994 WL 590407 (Ohio App. 5 Dist. October 14, 1994).

State v. Woodgeard, 1994 WL 167928 (Ohio App. 5 Dist. April 29, 1994).

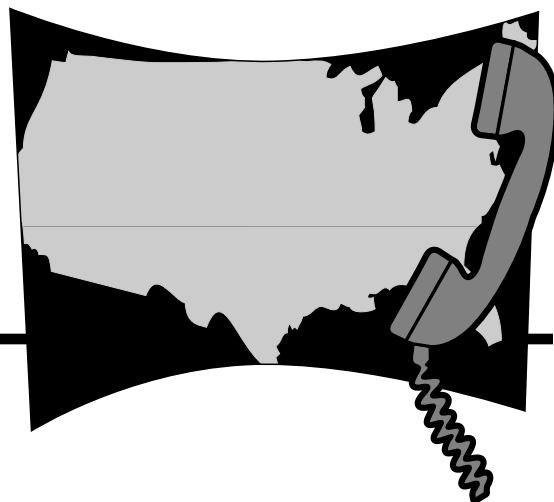
Oklahoma

State v. Saunders, 886 P. 2d 496 (Okla. Crim. App. 1994).

Virginia

Woolfolk v. Commonwealth, 47 S.E. 2d 530 (Va. App. 1994).

Bureau of Justice Assistance Clearinghouse



The Bureau of Justice Assistance (BJA) Clearinghouse, a component of the National Criminal Justice Reference Service (NCJRS), supplies reliable information about BJA programs, funding, technical assistance, training, and information dissemination—each designed to strengthen the criminal justice system. The Clearinghouse offers the following products and services to criminal justice professionals, policymakers, and the general public:

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