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U.S. Department of Justice
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National Institute of Justice

Research Report

Project To Develop a Model Anti-Stalking Code for States

144477

About the National Institute of Justice

The National Institute of Justice, a component of the Office of Justice Programs, is the research and development agency of the U.S. Department of Justice. NIJ was established to prevent and reduce crime and to improve the criminal justice system. Specific mandates established by Congress in the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and the Anti-Drug Abuse Act of 1988 direct the National Institute of Justice to:

- *Sponsor special projects and research and development programs* that will improve and strengthen the criminal justice system and reduce or prevent crime.
- *Conduct national demonstration projects* that employ innovative or promising approaches for improving criminal justice.
- *Develop new technologies* to fight crime and improve criminal justice.
- *Evaluate the effectiveness of criminal justice programs* and identify programs that promise to be successful if continued or repeated.
- *Recommend actions* that can be taken by Federal, State, and local governments as well as private organizations to improve criminal justice.
- *Carry out research on criminal behavior.*
- *Develop new methods of crime prevention* and reduction of crime and delinquency.

The National Institute of Justice has a long history of accomplishments, including the following:

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- Research that confirmed the link between drugs and crime.
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- Pioneering scientific advances such as the research and development of DNA analysis to positively identify suspects and eliminate the innocent from suspicion.
- The evaluation of innovative justice programs to determine what works, including drug enforcement, community policing, community anti-drug initiatives, prosecution of complex drug cases, drug testing throughout the criminal justice system, and user accountability programs.
- Creation of a corrections information-sharing system that enables State and local officials to exchange more efficient and cost-effective concepts and techniques for planning, financing, and constructing new prisons and jails.
- Operation of the world's largest criminal justice information clearinghouse, a resource used by State and local officials across the Nation and by criminal justice agencies in foreign countries.

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Project To Develop a Model Anti-Stalking Code for States

National Criminal Justice Association

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U.S. Department of Justice
National Institute of Justice

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A Final Summary Report Presented to the National Institute of Justice
October 1993

National Institute of Justice

Michael J. Russell
Acting Director

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The National Institute of Justice is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance, Bureau of Justice Statistics, Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime.

PREFACE

I am pleased to present the final report of the U. S. Department of Justice, National Institute of Justice (NIJ)-funded project to develop a model anti-stalking code for the states.

The model code development project was undertaken to satisfy §109(b) of the U. S. Departments of Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Act for Fiscal Year 1993 (Pub. L. 102-395) in which the Congress charged the U. S. attorney general, through the NIJ, to develop and distribute among the states a "constitutional and enforceable" model anti-stalking code. The Congress directed further that this work be completed by Sept. 30, 1993.

The model code development project was carried out by the National Criminal Justice Association under the direction and oversight of an NIJ project monitor and in collaboration with a project resource group composed of individuals from the National Governors' Association, the National Conference of State Legislatures, the American Bar Association, the Police Executive Research Forum, the American Civil Liberties Union, and other public and special interest groups.

The final report includes model code provisions and commentary on issues that arose in drafting the model code. In addition, the final report contains a profile of existing state stalking statutes; an overview of police agencies' current management of stalking incidents; and discussion and recommendations for states' consideration concerning bail and sentencing, code implementation, and stalking-related research.

The final report represents the best thinking of project resource group members and staff about a complex and evolving area of law. Our judgments and recommendations are based upon analysis of the most complete body of information that could be compiled on provisions and applications of states' anti-stalking statutes. We hope that the work of the model code development project will prove useful to legislators, public policymakers, and criminal justice officials and will guide them in making informed decisions about anti-stalking laws and policies.

Gwen A. Holden
Executive Vice President
National Criminal Justice Association

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ACKNOWLEDGEMENTS

The final report for the Project to Develop a Model Anti-Stalking Code reflects the skills and hard work of the project staff, resource group, and consultants, as well as numerous state, local, and federal officials who gave generously of their time to the project.

The U. S. Department of Justice, National Institute of Justice (NIJ) project monitor, Charles A. Lauer, special assistant to the assistant attorney general for the U. S. Department of Justice's Office of Justice Programs, provided valuable guidance on constitutional and other legal issues, as well as practical advise on issues involving implementation.

Project staff also is grateful to the National Conference of State Legislatures (NCSL), the Criminal Justice Section of the American Bar Association (ABA), and the Police Executive Research Forum (PERF) for the excellent work they did on the project under contracts with the National Criminal Justice Association (NCJA). The NCJA is particularly indebted to the dedicated members of the project resource group who generously shared their experiences and insights with project staff. The resource group members included David Beatty, director of public affairs, National Victim Center; Sophia D. Carr, research associate, PERF; Michael T. Farmer, manager of security, Mobil Exploration and Producing, Mobil Corporation; Jon R. Felde, general counsel, NCSL; Susan W. Hillenbrand, director of special projects, Criminal Justice Section, ABA; Sally T. Hillsman, vice president of research, National Center for State Courts; Donna Hunzeker, criminal justice program manager, NCSL; Nolan E. Jones, director, Committee on Justice and Public Safety, National Governors' Association; John C. Lane, lieutenant, Threat Management Unit, Los Angeles Police Department; Helen M. Lardner; Victoria O'Brien, acting director of operations, Special Projects Division, U. S. Department of Justice's Office of Victims of Crime; Dwight C. Price, director of government affairs and senior attorney, National District Attorneys' Association; Roxann M. Ryan, deputy attorney general, State of Iowa; John H. Stein, deputy director, National Organization for Victim Assistance; John R. Stedman, senior researcher, PERF; Brian Vossekuil, special agent in charge, Research, Training, and Threat Analysis Branch, Office of Protective Research, U. S. Department of the Treasury's U. S. Secret Service; and Michael Ward, assistant U. S. attorney.

Project staff also benefitted greatly from the advice and counsel provided by the following consultants to the project: Antonio J. Califa, chief legislative counsel, American Civil Liberties Union; Robert A. Fein, visiting fellow, NIJ and consultant psychologist, U. S. Department of the Treasury's U. S. Secret Service; Kenneth R. Thomas, legislative attorney, Congressional Research Service, U. S. Congress.

In an effort to gather experiential information on the management of stalking cases, project staff conducted numerous interviews with prosecutors, defense attorneys, and probation officers. The following individuals gave generously of their time and provided valuable information to project staff: Bryan Bates, assistant district attorney, Hamilton County (Tenn.); Jerry J. Bowles, director and chief prosecutor, Domestic Violence/Sexual Assault Unit, Jefferson County (Ky.); Maria Burnett, assistant state attorney, State of Illinois; Thomas E. Casey, probation officer, Brighton (Mass.) District Court; Amy Clifford, assistant solicitor, Ninth Judicial Circuit (S.C.); Glenn Churchill, assistant solicitor, State of South Carolina; Al Harris, senior assistant county attorney, Hennepin County (Minn.); Robert G. Kelman, assistant state's attorney, DuPage County (Ill.); Jeff Kendall, assistant state's attorney, DuPage County (Ill.); Bob Kleman, assistant state's attorney, State of Illinois; Dennis Labell, prosecuting attorney, State of Michigan; Peter N. Letang, deputy attorney general, State of Delaware; Phillip Middleton, defense attorney, Charleston, S.C.; Alice Ozedick, assistant public defender, State of Connecticut; Kathleen Panazza, assistant to State Senator Thomas Luby, Connecticut State Senate; Liz Rivera, deputy chief of sex crimes unit, Cook County (Ill.); Tom Robertson, Prosecutor's Advisory Council, State of Michigan; Mary Schostok, assistant state's attorney, Lake County (Ill.); James Tanizaki, deputy district attorney, Orange County (Calif.); Diane Teran, district attorney III, Los Angeles County (Calif.); Michael Waller, Lake County (Ill.) state's attorney; and Richard Walmark, deputy district attorney, State of California.

The PERF conducted a survey of its general membership, as well as of police chiefs from the largest cities in the 10 states with no PERF members. Project staff is grateful to the respondents to this survey who provided pertinent information concerning law enforcement agencies' management of stalking cases.

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The following NCJA legal researchers spent hours conducting interviews, analyzing state stalking statutes, and reviewing relevant case law: Anne W. Creech, Richard L. Jones, Sarah E. Marcin, Jonathan B. Muroff, Nadine M. Rapacioli, and Natalie S. Wolf.

Finally, the NCJA would like to acknowledge the work of the following staff members: Paul E. Lawrence, director of administration and information systems; Lisa Doyle Moran, assistant director for legal affairs; Robert A. Kapler, senior staff associate; Carolyn J. Reid, administrative assistant; and Wanda A. Meredith, secretary/receptionist.

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RESOURCE GROUP BIOGRAPHIES

The model anti-stalking code and supplemental materials are the products of a collaborative effort involving a project resource group and project consultants and staff. The U. S. Department of Justice gratefully acknowledges the outstanding work of this dedicated group of professionals who gave generously of their time and talents.

Project Resource Group:

DAVID BEATTY. Mr. Beatty currently is the director of public affairs at the National Victim Center. In this capacity, he is responsible for all matters related to legislative and legal issues regarding victims' rights and interests. Mr. Beatty also serves as director of the Center's Crime Victim Litigation Project and the Coalition of Victims' Attorneys and Consultants. He currently serves on the Victim Committee of the American Bar Association and is a member of the American Restitution Association and the National Constitutional Amendment Network. Mr. Beatty holds a bachelor of arts degree in political science from Colorado College and a Juris Doctor from the University of Iowa School of Law.

SOPHIA D. CARR. Ms. Carr is a research associate with the Police Executive Research Forum (PERF) in Washington, D. C., serving as the PERF's project manager and project director of METAPOL, the organization's on-line telecommunications system. Prior to joining the PERF, Ms. Carr was a research assistant at the Criminal Justice Statistics Association and served as a program assistant for the National Organization for Black Law Enforcement Executives. Ms. Carr holds a bachelor's degree in criminal justice from the University of Maryland, and is pursuing a master's degree in criminal justice and criminology at the university.

MICHAEL T. FARMER. Mr. Farmer currently serves as manager of security for the Exploration and Producing Division of the Mobil Oil Corporation. Prior to assuming his current position, he was manager of corporate and security planning at Mobil. Before joining Mobil, Mr. Farmer served as a special consultant to the Supreme Court of New Jersey and as director of the Criminal Justice Center, John Jay College, City University of New York. Previously, he served as director of research and field operations for the Police Executive Research Forum. Between 1973 and 1976, Mr. Farmer served as special assistant to the administrator of the Law Enforcement Assistance Administration (LEAA) and as acting director of the Office of Evaluation in the U. S. Department of Justice's National Institute of Justice. He began his career in 1969 with the Kentucky Crime Commission, where he served as the director of planning. Mr. Farmer holds a bachelor's degree in sociology and psychology from the University of Kentucky and a master's degree in regional planning from the University of North Carolina at Chapel Hill.

JON R. FELDE. Mr. Felde is general counsel of the National Conference of State Legislatures (NCSL) and director of the NCSL's Committee on Law and Justice. Prior to joining the NCSL in 1986, he practiced law in Franklin, Ky., with the firm of Harlin, Parker & Rudloff. Mr. Felde holds a bachelor of arts degree from Harvard College, Mass., and a law degree from the University of Kentucky College of Law.

SUSAN W. HILLENBRAND. Ms. Hillenbrand has worked for the American Bar Association (ABA) for over 10 years and currently is director of special projects for the ABA's Section for Criminal Justice, where she has served in various positions since 1980. During her tenure, Ms. Hillenbrand has contributed to a variety of victim assistance research projects and publications. She also has served as a consultant to the National College of the Judiciary and as a contractor for the U. S. Department of Labor, Office of the Assistant Secretary for Policy, Evaluation, and Research. Ms. Hillenbrand holds a bachelor's degree in political science from Marymount College in Tarrytown, N.Y., and a certificate from the Paralegal Institute in New York, N.Y.

SALLY T. HILLSMAN. Ms. Hillsman is vice president of research for the National Center of State Courts (NCSC) in Williamsburg, Va., overseeing all NCSC federal grant proposals and national projects. From 1979 to 1991, Ms. Hillsman served as the associate director and research director of the Vera Institute of Justice in New York City. Ms. Hillsman holds a bachelor of arts degree from Mount Holyoke College, Mass., attended the University of Edinburgh in Scotland, and holds a Ph.D. in sociology from Columbia University, N.Y.

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DONNA HUNZEKER. Ms. Hunzeker is criminal justice program manager for the National Conference of State Legislators (NCSL) in Denver, Colo. She staffs NCSL's Criminal Justice Committee. Prior to joining the NCSL in 1989, Ms. Hunzeker was a community action planner and spent seven years with a justice-oriented nonprofit organization where she was editor of a corrections magazine. Ms. Hunzeker holds a bachelor's degree in sociology and has done graduate work in journalism at the University of Nebraska-Lincoln.

NOLAN E. JONES, PH.D. Dr. Jones is the director for the Committee on Justice and Public Safety of the National Governors' Association (NGA). He has served as staff director for the NGA's Task Force on Alcohol and Drug Abuse. Previously, Dr. Jones was assistant professor of political science at the University of Michigan in Ann Arbor. Recently, Dr. Jones was elected to the governing council of the American Political Science Association. He holds an undergraduate degree from Texas Southern University and a doctoral degree in political science from Washington University in St. Louis, Mo.

JOHN C. LANE. Lt. Lane is a 21-year veteran of the Los Angeles (Calif.) Police Department and serves as the officer in charge of the department's Threat Management Unit, which focuses on abnormal, long-term threat and harassment cases. Lt. Lane, who developed the unit, holds a bachelor's degree in physical education from California State University at Long Beach and a master's degree in public administration from the University of Southern California.

HELEN M. LARDNER. Ms. Lardner was born in Worcester, Mass. She holds a bachelor's degree in English from Xavier University in Ohio and a Juris Doctor from the Catholic University of America in Washington, D. C. She has practiced law at private firms since 1986.

CHARLES A. LAUER. Mr. Lauer is the special assistant to the assistant attorney general of the Office of Justice Programs in the U. S. Department of Justice, where he has worked for the past 25 years. Before assuming his current post, Mr. Lauer was a national juvenile justice policy analyst in the Office of National Drug Control Policy, and served as general counsel of the Justice Department's Office of Justice Programs. Mr. Lauer holds a bachelor of arts degree in economics from St. Francis College, Pa., and a Juris Doctor degree from the American University's Washington College of Law, Washington, D. C.

VICTORIA O'BRIEN. Ms. O'Brien currently serves as acting director of operations for the Special Projects Division of the U. S. Department of Justice's Office of Victims of Crime (OVC), which administers training and technical assistance to victim service providers and criminal justice system professionals. Previously, she served as a legal advisor and grant monitor at the Legal Services Corporation. Ms. O'Brien also served as a community organizer for the VISTA/Student Community Service Program in Denver, Colo. She holds a bachelor of arts degree from Denison University in Granville, Ohio and a Juris Doctor from the Loyola University Law School of Chicago.

DWIGHT C. PRICE. Mr. Price is director of government affairs and a senior attorney for the National District Attorneys' Association in Alexandria, Va. Prior to assuming that post, he was in private practice with the law firm of Finley, Kumble, Wagner, Hein, Underberg, Manley & Casey in Washington, D. C.; an assistant state's attorney for Montgomery County, Md.; executive director of the Pre-Trial Option Projects, Inc.; and a private investigator. Mr. Price holds a bachelor of science degree from the University of Maryland, and a Juris Doctor from Georgetown University Law Center, Washington, D. C.

ROXANN M. RYAN. Ms. Ryan currently serves as deputy attorney general of Iowa in charge of criminal justice activities. She has worked in the Iowa Attorney General's Office since 1980, previously serving as division head and staff attorney in the criminal appeals division. Ms. Ryan is a member of the Board of Governors for the Iowa State Bar Association; the Polk County, Iowa Bar Association; the Polk County Woman Attorneys; and the Iowa Organization of Woman Attorneys. She also is a member of the American Bar Association. Ms. Ryan holds a bachelor's degree in economics and a Juris Doctor from Iowa State University.

JOHN H. STEIN. Mr. Stein has been deputy director of the National Organization for Victim Assistance (NOVA) since 1981. Previously, he served as vice president of the NOVA Board. Mr. Stein's extensive experience in victim services has entailed helping to train an experimental team of community service officers in the Dayton (Ohio) Police Department and designing paralegal roles for the U. S. Attorney's Office in Washington, D. C. He also served as

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deputy director of the Criminal Justice and the Elderly project at the National Council of Senior Citizens, where he helped design service programs for elderly crime victims and provided technical assistance to elderly crime projects across the nation. Mr. Stein holds a bachelor's degree from Yale College, New Haven, Conn., and a law degree from the George Washington University, Washington, D. C.

JOHN R. STEDMAN. Mr. Stedman is a senior researcher for the Police Executive Research Forum (PERF) in Washington, D. C. Prior to assuming that post, Mr. Stedman spent 16 years with the Alexandria (Va.) Police Department, serving as a patrol officer, police investigator, sergeant, and lieutenant. During his tenure, he was commander of several divisions, including the patrol and special investigations divisions. He also is the former director of the PERF's Senior Management Institute for Police. Currently he serves as assistant project director of the PERF's Comprehensive Gang Initiative Project and its Asset Forfeiture Training and Technical Assistance Project. Mr. Stedman holds a bachelor of arts degree in sociology from Bowling Green State University, Ohio, and a master's degree in psychology from George Mason University, Va.

BRIAN VOSSEKUIL. Mr. Vossekuil is a special agent of the U. S. Department of the Treasury's U. S. Secret Service. He currently serves as assistant special agent in charge of the Research, Training, and Threat Analysis Branch of the Office of Protective Research. Special Agent Vossekuil co-directs the Secret Service Exceptional Case Study Project, a multi-year operational study of violence directed at public officials and public figures. During his 17-year career with the Secret Service, Special Agent Vossekuil has served in the Detroit, Mich. field office; in the Presidential Protective Division; and in the Intelligence Division.

MICHAEL WARD. Mr. Ward currently serves as an assistant U. S. attorney in Minneapolis, Minn. He has prosecuted stalking behavior using the federal threatening letter statute and participated in the drafting of the anti-stalking statute enacted this year by Minnesota. Previously, Mr. Ward was an attorney with the firm of Shearman and Sterling in both New York, N. Y., and San Francisco, Calif. He is a graduate of the National Law Center of George Washington University in Washington, D. C., and served a judicial clerkship with the Honorable Oliver Seth of the U. S. Court of Appeals in Santa Fe, N. M.

Project Consultants:

ANTONIO J. CALIFA. At the time he served as a consultant to the model anti-stalking code project, Mr. Califa was chief legislative counsel for the American Civil Liberties Union (ACLU) where he also has served as legislative counsel. He also is currently an adjunct professor for the American University's Washington College of Law in Washington, D. C. In December 1992, Mr. Califa served as a member of the Clinton/Gore transition's Justice/Civil Rights cluster group. Previously, he was deputy assistant secretary and director for litigation, enforcement, and policy in the U. S. Department of Education's Office for Civil Rights. Between 1978 and 1980, Mr. Califa served as associate deputy director and deputy director for standards, policy, and research in the U. S. Department of Health, Education and Welfare's (HEW) Office for Civil Rights, and branch chief of the Civil Rights Division in the department's Office of the General Counsel. Prior to his work at the HEW, he was an assistant attorney general in the litigation branch of the Colorado Attorney General's Office. Mr. Califa also was an associate attorney with the law firm of Holme, Roberts and Owen in Denver, Colo. He holds a bachelor's degree in government from the University of Texas at Austin and a Juris Doctor from Yale Law School.

ROBERT A. FEIN. Dr. Fein is a forensic psychologist who currently is a visiting fellow of the U. S. Department of Justice's National Institute of Justice and a consultant psychologist with the U. S. Department of the Treasury's U. S. Secret Service. He co-directs the Secret Service Exceptional Case Study Project, a multi-year operational study of violence directed at public officials and public figures. Previously, Dr. Fein worked for 15 years as a clinical and forensic psychologist with mentally disordered offenders in Massachusetts and with the mental health and correctional systems that access and care for them. He holds a bachelor's degree in American studies from Amherst College in Massachusetts and a doctorate in clinical psychology and public practice from Harvard University in Massachusetts.

KENNETH R. THOMAS. Mr. Thomas is a legislative attorney with the Congressional Research Service of the U. S. Congress, specializing in constitutional and criminal law. Prior to assuming that post, Mr. Thomas served as a trial attorney for the U. S. Department of Education's Office of Civil Rights. He also has served as a professorial lecturer

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at the National Law Center at George Washington University, Washington, D. C. Mr. Thomas holds a bachelor of arts degree in philosophy from Colby College, Maine, and a Juris Doctor from the National Law Center.

Project Staff:

Gwen A. Holden, Executive Vice President
Paul E. Lawrence, Director of Administration and Information Systems
Lisa Doyle Moran, Assistant Director for Legal Affairs
Robert A. Kapler, Senior Staff Associate
Kim T. Conley, Senior Staff Associate
Anne W. Creech, Legal Researcher
Natalie S. Wolf, Legal Researcher
Nadine M. Rapacioli, Legal Researcher
Richard L. Jones, Legal Researcher
Jonathan B. Muroff, Legal Researcher
Sarah E. Marcin, Legal Researcher
Carolyn J. Reid, Administrative Assistant
Wanda A. Meredith, Secretary/Receptionist

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Stalking is a gender neutral crime, with both male and female defendants and victims. However, for convenience of style and consistency, "he," "his," and "him" are used throughout this report to refer to both male and female stalking defendants and victims.

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PRINCIPAL RECOMMENDATIONS CONTAINED IN THE FINAL REPORT OF THE PROJECT TO DEVELOP AN ANTI-STALKING MODEL CODE

CHAPTER II
A MODEL ANTI-STALKING CODE FOR THE STATES

- Since stalking defendants' behavior is often characterized by a series of increasingly more serious acts, states should consider establishing a continuum of charges that could be used by law enforcement officials to intervene at various stages.

- States should consider creating a stalking felony to address serious, persistent, and obsessive behavior that causes a victim to fear bodily injury or death.

CHAPTER III
SENTENCING CONVICTED STALKERS

- States should consider establishing a sentencing scheme for stalking that permits incarceration as an option for all stalking convictions.

- If a state decides not to treat stalking as a felony, the state should consider incorporating a system of aggravating factors into its stalking sentencing policy so that a particular stalking incident can be elevated from a misdemeanor to a felony if an aggravating factor is present.

- States should consider the same penalty enhancements for stalking convictions that they generally apply for aggravating circumstances such as violation of a protective order, a minor victim, or use of a weapon during commission of the crime. States should consider making severe enhancements available in instances in which the defendant has committed a previous felony or stalking offense. In such instances, states should consider requiring mandatory prison sentences.

- As an alternative to penalty enhancements, states may wish to create a separate crime--for example, aggravated stalking--to deal with convicted stalkers who have committed previous felonies or stalking offenses.

- States' stalking sentencing schemes should incorporate release options and conditions that increase in restrictiveness commensurate with the risk the stalker poses to the victim. At a minimum, states should consider no-contact orders as a condition of release for convicted stalkers released on probation or parole. States also may want to consider monitoring convicted stalkers released on probation or parole through electronic monitoring or house arrest.

- States may wish to consider requiring convicted stalkers, as part of their sentences, to pay restitution to their victims. Alternatively, states may wish to consider permitting victims to recover damages from convicted stalkers through civil causes of action.

- States should consider requiring evaluation and offering counseling as part of any sentence imposed upon a convicted stalker. States should consider further requiring counseling as a condition of release for convicted stalkers placed on probation or parole.

CHAPTER IV
PRETRIAL RELEASE: SUPERVISING ACCUSED STALKERS

- States should consider developing appropriate pretrial release conditions for accused stalkers. At a minimum, states should consider making it a condition of release that the accused refrain from deliberately contacting the victim and, if appropriate, members of the victim's immediate family.

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- States should consider including provisions in their pretrial release or bail laws requiring authorities to make reasonable efforts to provide victims with copies of relevant pretrial release orders together with information about how and to whom to report alleged violations and the sanctions for violations.

CHAPTER V
STRATEGIES FOR IMPLEMENTING STALKING STATUTES AND PROTOCOLS: MANAGING STALKING CASES IN THE CRIMINAL JUSTICE SYSTEM

- States should consider developing a multidisciplinary approach targeted to early intervention in suspected stalkings. Such an approach should involve the enforcement community, the judicial system, correctional and social services agencies, victims' services and advocacy groups, and community organizations.

- Criminal justice officials should be provided training in the characteristics of stalkers and their behaviors. In cases in which two or more criminal justice disciplines have shared and compatible training needs, states should consider developing interdisciplinary training resources.

- Police officials should receive training in four principal areas: the provisions and evidentiary requirements of stalking laws; identifying and monitoring stalking incidents; assessing the potential dangerousness of suspected stalkers; and assisting stalking victims. Training for police officials should be incorporated into police recruit and roll call and 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 substance abuse monitoring and treatment, and mental health counseling recommendations into restraining orders where the existence of these conditions can be documented.

- States should consider reviewing their protective order statutes' notification procedures to ensure that they provide adequate notification protocol to all parties of the existence and specific terms of an order.

- States should consider enacting legislation that would allow their courts to enforce a protective order issued by another jurisdiction in cases in which one of their courts is informed by a victim that he has obtained a protective order in a foreign jurisdiction and that it has been violated in the non-issuing jurisdiction.

- Law enforcement agency administrators should establish formal department policies and procedures for dealing with stalking cases.

- States should consider enacting legislation and establishing procedures that would encourage the judiciary's use of criminal history record information when making decisions about pretrial release conditions, sentencing, and the issuance of protective orders in stalking cases. Similarly, states should consider developing procedures to ensure that judicial authorities making decisions about pretrial release and civil protection orders in stalking cases have timely access to information about civil protection orders applied for or issued in any court in the state.

- States should examine their privacy and freedom of information statutes to determine whether amendments are needed to prevent information contained in public records from being used for illegal purposes.

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- 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.

CHAPTER VI
A NATIONAL RESEARCH AGENDA ON STALKING

- Research should be undertaken on stalkers' behavioral histories to respond to the following questions:
  - What information is currently available about stalkers and their behavioral histories?
  - Is stalking a new behavior? Have allegations of stalking behavior increased over the past three 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 the current handling of stalking cases to answer the following questions:
  - How many persons are being arrested 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 non-stalking 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 non-stalking statutes?
  - What sentences did stalkers receive in cases adjudicated under stalking statutes?
  - What sentences did stalkers receive in cases adjudicated under non-stalking statutes?
  - How many stalkers currently 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?

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- 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.

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CHAPTER I

INTRODUCTION

As a criminal justice problem, "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 comedian David Letterman. Since California enacted the first anti-stalking legislation in 1990, 47 additional states have passed similar legislation.

In 1993, the Congress directed the U. S. Department of Justice's National Institute of Justice (NIJ) to develop a model anti-stalking code to encourage states to adopt anti-stalking measures and to provide them with direction in formulating such laws.[1] Specifically, the act mandated that:

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

The NIJ entered into a cooperative agreement with the National Criminal Justice Association (NCJA) to manage the model code development project.

Chapter I of this volume contains an explanation of the project's background and methodology, discusses the uses and limitations of the project and the principles that guided development of the code, and provides a profile of existing stalking statutes; Chapter II includes the model anti-stalking code for the states and related analysis and commentary; Chapter III addresses sentencing issues related to stalking; Chapter IV addresses bail issues related to stalking; Chapter V provides strategies for implementing stalking statutes and protocols; and Chapter VI presents recommendations for further research on stalking.

Methodology

The project was carried out by the NCJA under the direction and oversight of an NIJ project director. The NCJA subcontracted with the National Conference of State Legislatures (NCSL), the American Bar Association (ABA), and the Police Executive Research Forum (PERF) to perform certain project tasks. The NCJA also was assisted in its work by a project resource group composed of individuals from the NCSL; the ABA; the PERF; the

[1] U. S. Departments of Commerce, Justice, and State, and the Judiciary and Related Agencies Appropriations Act for Fiscal Year 1993, Pub. L. 102-395, § 109(b).

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National Governors' Association (NGA); the National Association of Attorneys General (NAAG); the National District Attorneys' Association (NDAA); the National Center for State Courts (NCSC); the National Organization for Victim Assistance (NOVA); the Los Angeles Police Department (LAPD); the National Victim Center (NVC); the American Civil Liberties Union (ACLU); Mobil Corporation; the U. S. Department of Justice's Office for Victims of Crime; and the U. S. Department of the Treasury's U. S. Secret Service.

The NCSL, in conjunction with NCJA staff, studied the stalking statutes already in force or pending in the states to determine the elements that should be included in the model. The elements and special provisions of the stalking laws in 48 states and the District of Columbia were analyzed.

In addition, the NCSL researched the privacy issues involved in a state's release of personal information contained in motor vehicle registrations and voting records to potential stalkers. The NCSL analyzed domestic abuse laws, mental health commitment statutes, legislation regarding protective and contempt orders, and the availability of civil actions by victims against defendants to determine their usefulness in stalking cases.

In order to obtain information on states' experience in using stalking statutes, NCJA staff carried out an examination of relevant case law. However, because the stalking statutes are so new, there has not been enough time for the cases to proceed through the appellate process. Consequently, the NCJA did not locate any reported appellate cases to review. NCJA staff concentrated instead on cases at the trial level in which constitutional challenges had been made and trial judges had issued written decisions. In addition, NCJA staff analyzed U. S. Supreme Court cases addressing constitutional challenges to statutes on the grounds of vagueness or overbreadth. To obtain more information on stalking laws' applications in various states, NCJA staff conducted telephone interviews with prosecutors and defense attorneys who had worked on stalking cases. The NCJA made inquiries regarding the overall effectiveness of the state stalking statutes, the number of stalking convictions and acquittals, and the types of sentences convicted stalking defendants typically receive.

The PERF served as the stalking code development project's principal researcher on data and other information concerning law enforcement agencies' management of stalking cases. It distributed copies of a survey to police departments in this country and to police agencies in Australia, Canada, Great Britain, and New Zealand. Two separate surveys were conducted in the United States to identify the scope and nature of the stalking problem, examine the range of police responses, and explore the provisions of the state anti-stalking laws that police have found effective in protecting the victims of stalking and reducing the incidence of stalking.

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The first survey was administered to departments in 31 states that had stalking laws in place; the second survey was administered to the 19 states without stalking laws. The results were then field tested on members of the LAPD's stalking unit and PERF staff members with police experience before being incorporated into the final draft of the survey.

The PERF surveyed the entire PERF general membership, which consists of 248 chiefs from the largest local, county, and state police agencies, as well as chiefs from the largest cities in the 10 states with no PERF members. Seventy percent of target group responded to the survey. The PERF also solicited information about stalking incidents from criminal justice agencies and police agencies in several foreign countries. A list of survey respondents is included in Appendix A.

The ABA's work focused on analyzing the bail provisions of each state to determine under what conditions it might be appropriate to deny bail to stalking defendants, or if conditions for release on bail could be imposed. In order to determine whether criminal history data could be of more use in the decision-making process in stalking cases, the ABA researched how accessible such data are to police and courts. The ABA also analyzed existing regional, statewide, county, and municipal systems that track case dispositions, including issuances of protective orders.

The NVC and the NOVA worked on stalking victims' issues. The NVC provided guidance on victims' rights and the supporting rationale for victims' rights provisions. The NOVA provided information on provisions requiring that notice be given to victims and law enforcement regarding the release of alleged and convicted stalkers either pretrial or post-conviction.

Members of the resource group met on a monthly basis. The meetings provided a forum for each organization to discuss the issue from its own perspective and to make recommendations.

The model code language was formulated, and the rationale developed, through discussion between resource group members at three meetings. No formal votes were taken during the course of these meetings. Rather, language and supporting commentary presented in this report reflect the consensus of the majority of resource group members. On a number of occasions, the group was unable to reach a consensus. In these cases, various options are discussed in the commentary so that states may determine whether inclusion or exclusion of the provision or element is necessary. Moreover, each resource group member was invited to provide in writing any dissenting views, with the

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commitment from project staff that these views would be included in the final report. No such dissenting views were submitted.

In addition to the model code language and commentary, the resource group developed a set of recommendations for stalking intervention strategies; interdisciplinary responses in handling stalking incidents; the formulation and use of protective orders in stalking cases; and possible amendments to other types of legislation, which may help in the management of stalking cases. The resource group also provided recommendations on further research that needs to be conducted regarding stalking.

Principles that Guided Statutory Development

In developing the model anti-stalking legislation, resource group members and project staff and contractors were guided by several key principles and considerations that, in the end, helped frame and provided the context for code language and recommendations.

The project resource group and project staff and contractors recognized that each state will have different concerns in dealing with the problem of stalking, as well as its own unique political process and tolerances. The resource group and project staff and contractors also recognized that the problem of stalking cannot be handled by the criminal justice system alone.

Most important, however, the resource group and project contractors and staff sought to create a model code whose elements, if enacted, would survive constitutional challenges and be enforceable.

Finally, the resource group explored the appropriate roles and responsibilities of the states and the federal government in addressing the crime of stalking. In particular, the resource group considered whether the Congress should be called upon to enact a federal anti-stalking statute.

In developing the model code, the resource group and project contractors and staff attempted to address the legal and practical issues related to stalking generally. The model code is intended to provide guidance on these issues, while at the same time leave sufficient room for states to make necessary adjustments based on their own statutory structures and political climates. It is hoped that each state will be able to use this general information in addressing its own unique circumstances.

The resource group and project contractors and staff also were aware in developing the model code that an effective response to the crime of stalking is unlikely to be found in the criminal justice system alone.

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Recommendations were, therefore, developed for creating a multidisciplinary approach that would integrate strategies for protecting victims; apprehending and prosecuting offenders; managing convicted stalkers; providing services for stalking victims; and if appropriate, providing evaluation and treatment for stalking defendants.

The resource group's and project contractors' and staff's overriding concern was to create a model code that would survive constitutional challenges. Therefore, considerable time was spent addressing concerns such as freedom of expression, proportionality in sentencing, double jeopardy, and the right to bail provided under some state constitutions.

Constitutional Issues

Two particularly difficult issues arise when drafting stalking legislation. The first is ensuring that the legislation does not infringe on an individual's right, under the First Amendment of the U. S. Constitution, to freedom of expression. Citizens of states are entitled to the benefits and protections of the First Amendment through the Fourteenth Amendment's due process clause. The second issue is ensuring that the legislation does not infringe upon an individual's right, under the Fifth Amendment of the U. S. Constitution, to due process.

Freedom of Expression

Stalking may involve conduct intended to be an expression of the stalker's feelings toward the victim. Anti-stalking legislation, therefore, may criminalize what would otherwise be constitutionally protected speech and conduct[2] based upon the fact that the conduct places another person in fear. The U. S. Supreme Court has ruled that in order to ensure that individuals' freedom of expression is guaranteed, a statute cannot be overly broad or vague. There is considerable overlap between these tests and the courts have not always clearly distinguished them.

Anti-stalking statutes may be subject to challenges under both the overbreadth and vagueness doctrines. Several courts have addressed similar challenges to existing harassment statutes. It should be noted, however, that as punishments increase, the constitutional challenges become more serious.

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[2] *See generally* L. TRIBE, AMERICAN CONSTITUTIONAL LAW 825-832 (1988)(The U. S. Supreme Court has ruled that in many cases the First Amendment protects expressive conduct as well as pure speech. Conduct and conduct mixed with speech are entitled to less protection under the U. S. Constitution than pure speech. Therefore, it is more difficult to challenge statutes regulating conduct and conduct mixed with speech on the basis of overbreadth.)

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A statute is overly broad if, in addition to proscribing activities that are not constitutionally protected, it also sweeps within its coverage speech or conduct protected by the First Amendment. There are two rationales for invalidating overly broad laws. If a statute is overly broad, individuals may be intimidated and, therefore, be reluctant to exercise their right to engage in constitutionally protected speech. Courts refer to such statutes as having a "chilling effect" on speech. Secondly, there is a greater danger of selective enforcement if a statute is overly broad. Although any statute may be selectively enforced as a result of discretion by law enforcement officials, the danger of abuse is greater if the statute is not narrowly constructed.

Statutes may also be challenged under the First Amendment on vagueness grounds. A statute is vague if it fails to provide explicit standards for enforcement. As with overly broad statutes, if a statute is vague, individuals may be intimidated and, therefore, reluctant to exercise their right to free speech.[3] In addition, the vagueness test, unlike the overbreadth test, has application outside of merely ensuring that freedom of expression rights are not violated. The vagueness test may also be used to challenge statutes that violate individuals' due process rights under the Fifth Amendment.

Due Process

Under the Fifth Amendment of the U. S. Constitution, individuals may not be deprived of their rights without "due process." Under the due process requirement, individuals are entitled to fair notice of the types of conduct prohibited. Thus, statutes that do not necessarily restrict First Amendment freedoms, but nonetheless are written ambiguously, may be invalidated through the use of a vagueness challenge. "[V]agueness occurs when a legislature states its proscriptions in terms so indefinite that the line between innocent and condemned conduct becomes a matter of guesswork. This indefiniteness runs afoul of due process concepts which require that persons be given fair notice of what to avoid..."[4] Accordingly, application of an ambiguously written anti-stalking statute to a person who may not have been aware that his conduct was prohibited under the statute may result in a successful vagueness challenge and a dismissal of charges against a dangerous individual.

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[3] Grayned v. City of Rockford, 408 U. S. 104 (1972).

[4] Tribe, *supra* at 1033.

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Freedom of Movement

The right to freedom of movement, though not specifically mentioned in the U. S. Constitution, has been recognized.[5] Most, if not all, state anti-stalking statutes seek to restrict a stalker's movements by disallowing following or presence in the vicinity of the victim. The right to movement, however, may be restricted by a statute that is narrowly constructed to protect citizens from malicious or willful conduct. In other words, a state must have a compelling reason to restrict the right of an individual to travel. A court will balance the state's right to protect its citizens with the stalker's right to travel and will determine if the statute is impermissibly restrictive.[6]

Other Possible Challenges

Project staff also considered the issue of the proportionality of the sentence compared to the crime committed. The level of punishment imposed upon stalkers must be proportionate to the injury suffered by the victim. This balancing is required under the Eighth Amendment to the U. S. Constitution, which prohibits the infliction of "cruel and unusual punishments" and by the general principles of American jurisprudence. Sentencing issues are discussed in Chapter III.

Double jeopardy is another issue with which states may have to grapple in enforcing anti-stalking legislation. The Fifth Amendment of the U. S. Constitution prevents a person from "twice being put in jeopardy of life or limb" for the same offense. Many stalkers, in addition to engaging in criminal stalking behavior, have been found in criminal contempt for violating a civil protection order requiring them to stay away from their victim. Included in Chapter V is an analysis of recent U. S. Supreme Court decisions under which it appears that a criminal prosecution for stalking based upon the same incident for which the defendant was prosecuted for criminal contempt would not violate the Double Jeopardy Clause.

Some state constitutions have right-to-bail provisions under which bail only may be denied for persons charged with capital offenses or offenses that could result in life imprisonment. Defendants charged with lesser offenses in such states only may be detained before trial if they do not meet conditions for release, for example, bail. Project staff reviewed states' bail statutes. The issue is discussed in Chapter IV.

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[5] Attorney General of New York v. Soto-Lopez, 476 U. S. 898, 901 (1986).

[6] Silvija Strikis, Note, *Stopping Stalking*, 81 GEORGETOWN L. J. (1993).

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State and Federal Roles in Addressing Stalking

The model code development project's purpose was to produce guidance for states in formulating and implementing anti-stalking codes. The resource group, project contractors, and project staff neither were charged with nor undertook to develop a model federal anti-stalking code.

However, in preliminary discussions concerning the scope and focus of the model code development effort, project resource group members briefly addressed the merits of enactment of a federal anti-stalking statute. Resource group members reviewed copies of legislation pending in the Congress to make stalking of federal employees a federal offense and were informed that several members of the Congress were considering introducing broader legislation to create a federal stalking offense. Resource group members expressed concern and serious reservations about the current trend in this country of "federalizing" any high-profile or topical crime issue in this country.

The resource group concluded that states and local governments are best situated to formulate and enforce laws that proscribe stalking behavior. It was the consensus of the resource group members that the Congress should not enact a federal anti-stalking law.

Profile of Existing State Stalking Statutes

Forty-eight states have enacted stalking laws since 1990, when California passed the first state law to create the crime of stalking. California expanded and increased penalties under its stalking law in 1992. The legislation was drafted in the wake of five unrelated murders of women who had been stalked, including young television actress Rebecca Schaeffer, who was killed at her home by a fan. Twenty-nine other states followed suit two years later.[7] Eighteen additional states and the District of Columbia passed stalking legislation in 1993.[8]

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[7] The following states passed stalking laws in 1992: Alabama, 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.

[8] 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.

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Arizona and Maine remain the only states without stalking laws. Arizona uses its harassment statute, and Maine uses its terrorizing statute to deal with stalking behavior. Maine added provisions related to stalking cases to its protective order statute in 1993.

A number of states that passed laws in 1992 introduced legislation in 1993 to amend or expand stalking provisions. Seven of those states--Colorado, Nebraska, Oklahoma, Rhode Island, South Dakota, Tennessee, Washington, and West Virginia--passed amendments. California, Iowa, and South Carolina are still considering stalking-related amendments. A complete list of statutory citations of state stalking statutes is provided in Chart One.

Stalking Defined

While alike in their purposes, state stalking statutes differ in their definitions and their elements. States typically define stalking as willful, malicious, and repeated following and harassing of another person. Three states proscribe "lying in wait." Many stalking statutes prohibit non-consensual communication. Seven states include "surveillance" in the description of stalking behavior. Many states require a pattern of conduct. Provisions often require that the victim have a reasonable fear for his safety, or a fear of death or bodily injury. Texas requires that, in order for a defendant to be charged, some of the stalking behavior must occur after the victim has reported the conduct to law enforcement. A description of prohibited act provisions of state stalking statutes is provided in Chart Two.

Threat Required

The two chief elements of most stalking statutes are threatening behavior and criminal intent of the defendant. Fourteen states require that the perpetrator make a threat against the victim. Three states--Colorado, Illinois, and New Mexico--require that the perpetrator make a threat and then engage in additional conduct in furtherance of the threat. Thirty-three states and the District of Columbia include in the definition of stalking actions that would cause a reasonable person to feel threatened, even if there has been no verbal threat by the perpetrator. Thirteen states require that the defendant has the intent and/or the apparent ability to carry out the threat. Some states include threats against immediate family members to be presented as evidence of stalking. Missouri and Nevada require a

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Chart One - Stalking Law Code Citations		
ALABAMA	(1992)	Ala. Code 13a-6-90 to 13a-6-94
ALASKA	(1993)	Alaska Stat 11.41 260-270
ARKANSAS	(1993)	Ark. Stat. Ann. 5-71-229(a),(b)&(c), 5-13-301, 5-71-208 & 209
CALIFORNIA	(1990)	Cal. Penal Code 646.9
COLORADO	(1992)	Colo. Rev. Stat. 18-9-111
CONNECTICUT	(1992)	Conn. Gen. Stat. 53a-181(c)&(d)
DELAWARE	(1992)	Del. Code Ann. 1312(a)
FLORIDA	(1992)	Fla. Stat. 784.048
GEORGIA	(1993)	Ga. Code Ann. 165-90, 165-91
HAWAII	(1992)	Haw. Rev. Stat. 711
IDAHO	(1992)	Idaho Code 18-7905
ILLINOIS	(1992)	Ill. Rev. Stat. 12-7.3, 12-7.4, 110-6.3,& 3-14-5
INDIANA	(1993)	Indiana 35-33-1-1 - 35-46-1
IOWA	(1992)	Iowa Code 708.11
KANSAS	(1992)	Kan. Stat. Ann. 95 & 96
KENTUCKY	(1992)	Ky. Rev. Stat. Ann. 508
LOUISIANA	(1992)	La. Rev. Stat. Ann. 14:40.2
MARYLAND	(1993)	Chapt. 205 and 206 Laws of Maryland 1993
MASSACHUSETTS	(1992)	Mass. Gen. L. ch. 265, Sect. 43
MICHIGAN	(1992)	Mich. Comp. Laws 750.411(h)&(i), 600.2950(a), 600.2954, 764.15(b), 771.2 & 771.2(a)
MINNESOTA	(1993)	Minn. Stat. 609.746
MISSISSIPPI	(1992)	Miss. Code Ann. 97-3-107
MISSOURI	(1993)	Mo. Rev. Stat. 455.010-455.085
MONTANA	(1993)	Mont. Code Ann. 45-5-220
NEBRASKA	(1992)	Neb. Rev. Stat. 42-903,924 & 28-101
NEVADA	(1993)	Nev. Rev. Stat. 200
NEW HAMPSHIRE	(1993)	N.H. Rev. Stat. Ann. 173:1-7
NEW JERSEY	(1992)	N.J. Rev. Stat. 209
NEW MEXICO	(1993)	N.M. Stat. Ann. Ch. 86, 1-5
NEW YORK	(1992)	N.Y. Penal Law 120.13 & 14

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Chart One - Stalking Law Code Citations		
NORTH CAROLINA	(1992)	N.C. Gen. Stat. 14-277.3
NORTH DAKOTA	(1993)	N.D. Cent. Code 12.1-17 and 14-07.1
OHIO	(1992)	Ohio Rev. Code Ann. 737.11, 1901.18 & 19, 2919.25, 251, 26 & 27, 2935.03, 2937.23, 2945.42, 3113.31, 4749.99, 5119.01, 5123.04(amended), 2903.211-215, and 2911.211
OKLAHOMA	(1992)	Okla. Stat. tit.21, sect. 1173
OREGON	(1993)	Or. Rev. Stat. 133.310
PENNSYLVANIA	(1993)	Pa. Cons. Stat. 18: 2709
RHODE ISLAND	(1992)	R.I. Gen. Laws 11-59-1
SOUTH CAROLINA	(1992)	S.C. Code Ann. 16-3-1070
SOUTH DAKOTA	(1992)	S.D. Codified Laws Ann. 22-19a-1 thru 22-19a-6 (1993 Revisions) 22-19a-1 to 22-19a-6
TENNESSEE	(1992)	Tenn. Code Ann. 39-12
TEXAS	(1993)	Tex. Penal Code Ann. 42.07, Tex. Code Crim. Proc. Ann. 17.46, 42.12, 42.8, Tex. Gov't Code 501.006
UTAH	(1992)	Utah Code Ann. 76-5-106.5
VERMONT	(1993)	Vt. Stat. Ann. tit. 13, 1061-1063
VIRGINIA	(1992)	Va. Code Ann. 18.2-60.3
WASHINGTON	(1992)	Wash. Rev. Code 9a.46.020, 9a46.020, 9a46.030, 9a46.060, 9a46.100, 9.61.230, 9.94a.155, 10.77.205, 71.05.425(amended), and 9a.46 (1993 Revisions) 13.40.215
WEST VIRGINIA	(1992)	W.Va. Code 61-2-9a (1993 Revisions) 61-2-9a to 61-2-9k
WISCONSIN	(1992)	Wis. Stat. 947.013, 29.05, 778.25(amended), 813.125(5m), 947.013(1), and 947.013(1r and 1t).
WYOMING	(1992)	Wyo. Stat. 1-1-126, 6-2-506, and 7-3-506 to 511
DISTRICT OF COLUMBIA	(1993)	D.C. Code Ann. 22-504

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Chart Two - Proscribed Acts

This diagram charts the specific acts that are mentioned in the stalking statute as prohibited conduct.

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.

Some states proscribe some of the acts below in other statutes, eg. 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.

"No specific acts" - no proscribed conduct is enumerated in the statute

Chart Two - Proscribed Acts

(Some states proscribe some of the acts below in other statutes, eg. 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.)

State	Presence	Approaching	Pursuing or Following	Surveil.	Lying in Wait	Intimidating	Non-Consensual Comm.	Harassing 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.	Trespass	Possess or Show Weapon	Disregard Warning	Confine/ Restrain	Vandal.	Bodily Harm
Alabama			X					X				X		
Alaska	X	X	X				X		X	1st Deg				
Arizona[9]			X			X	X				X			

[9] The information is for Arizona's harassment statute.

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Chart Two - Proscribed Acts

(Some states proscribe some of the acts below in other statutes, eg. 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.)

State	Presence	Approaching	Pursuing or Following	Surveil.	Lying in Wait	Intimidating	Non-Consensual Comm.	Harassing 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.	Trespass	Possess or Show Weapon	Disregard Warning	Confine/ Restrain	Vandal.	Bodily Harm
Arkansas			X	X			X	X		1st Deg				X
California			X					X						
Colorado			X				X							X
Connecticut			X		X									
Delaware			X					X						
Florida			X					X						
Georgia			X	X		X	X		X					
Hawaii			X	X			X				X			
Idaho			X					X						
Illinois			X	X								Agg		Agg
Indiana							X	X	X					
Iowa			X				X	X						
Kansas			X					X						

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Chart Two - Proscribed Acts

(Some states proscribe some of the acts below in other statutes, eg. 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.)

State	Presence	Approaching	Pursuing or Following	Surveil.	Lying in Wait	Intimidating	Non-Consensual Comm.	Harassing 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.	Trespass	Possess or Show Weapon	Disregard Warning	Confine/ Restrain	Vandal.	Bodily Harm
Kentucky										1st Deg				
Louisiana			X					X						
Maine[10]	No Specific Acts - no proscribed conduct is enumerated in the statute													
Maryland		X	X											
Massachusetts			X					X						
Michigan	X	X	X				X	X	X		X			
Minnesota			X	X			X		X					
Mississippi			X					X						
Missouri			X					X						
Montana			X			X	X	X						
Nebraska			X				X	X				X		

[10] The information is for Maine's terrorizing statute.

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Chart Two - Proscribed Acts

(Some states proscribe some of the acts below in other statutes, eg. 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.)

State	Presence	Approaching	Pursuing or Following	Surveil.	Lying in Wait	Intimidating	Non-Consensual Comm.	Harassing 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.	Trespass	Possess or Show Weapon	Disregard Warning	Confine/ Restrain	Vandal.	Bodily Harm
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[11]			x				x			x				x
North Carolina	x		x								x			
North Dakota						x	x	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	x	
Pennsylvania			x											
Rhode Island			x					x						

[11] The information is for New York's menacing statute

Petitioner Uber Ex-1040, 0033

Chart Two - Proscribed Acts

(Some states proscribe some of the acts below in other statutes, eg. 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.)

State	Presence	Approaching	Pursuing or Following	Surveil.	Lying in Wait	Intimidating	Non-Consensual Comm.	Harassing 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.	Trespass	Possess or Show Weapon	Disregard Warning	Confine/ Restrain	Vandal.	Bodily Harm
South Carolina			X					X						
South Dakota			X					X						
Tennessee			X											
Texas			X				X				X			
Utah			X					X						
Vermont			X		X		X	X					X	
Virginia								X						
Washington			X											
West Virginia			X		X			X						
Wisconsin	No Specific Acts - no proscribed conduct is enumerated in the statute													
Wyoming			X	X			X							
District of Columbia			X				X	X						

Petitioner Uber Ex-1040, 0034

threat in order to prove aggravated stalking, but not stalking. Hawaii, Texas, and Utah also prohibit threats and the intent to damage property in addition to prohibiting threats and the intent to cause personal injury. A description of threat provisions of state stalking statutes is provide in Chart Three.

Intent and/or Effect

Most states require that the defendant has the criminal intent to cause fear in the victim. The course of conduct must be "willful," "purposeful," "intentional," or "knowing." Missouri and New Jersey only require that the defendant intend to cause alarm or annoyance. Thirteen states do not require that the defendant have the intent to cause fear, provided that he intends to do the act that results in fear. In these states, if the victim is reasonably frightened by the alleged perpetrator's conduct, an element of the crime has been met. A description of intent provisions of state stalking statutes is provided in Chart Four.

Course of Conduct

State stalking laws almost always require that the alleged stalker engage in a "course of conduct." The crime is not an isolated incident, but rather a series of acts taken together. Typically, a "course of conduct" is defined 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 over what period of time the conduct must occur in order to constitute stalking. Illinois refers to "acts done on at least two occasions...." Michigan requires a "series of two or more separate, noncontinuous acts." Oklahoma's 1993 revised law calls for "two or more separate acts," and laws in Colorado, North Carolina, and Virginia say "on more than one occasion."

Sentencing

Many states have both misdemeanor and felony classifications of stalking. States have determined penalties for stalking based upon their unique sentencing systems. Typically, a stalker convicted of a misdemeanor may receive a jail sentence of up to one year. Felony penalties from three to five years are typical, but some states allow 10- and 20-year sentences.

Petitioner Uber Ex-1040, 0035

Chart Three - Threat Requirements			
Legend: Aggrav - aggravated stalking AA - only require apparent ability State	Threat or Conduct Statutes that prohibit actions that would cause a reasonable person to feel threatened. The perpetrator may make an explicit threat, but it is not required to satisfy an element of the crime.	Intent and Apparent Ability Statutes that require the intent and apparent ability to carry out the threat in addition to the making of a threat.	Threat and Conduct Statutes that require a threat and conduct to satisfy the elements of the crime of stalking.
Alabama		X	X
Alaska	X		
Arizona[12]	X		
Arkansas			X
California		X	X
Colorado			X[13]
Connecticut	X		
Delaware	X		
Florida	X		Aggrav
Georgia	X		
Hawaii	X		
Idaho			X
Illinois			X[14]
Indiana			X
Iowa		AA	X
Kansas	X		
Kentucky	X		
Louisiana		AA	X
Maine[15]	X	X	

[12] Information is for Arizona's harassment statute.

[13] Threat followed by additional conduct in furtherance of the threat is required.

[14] Threat followed by additional conduct in furtherance of the threat is required.

[15] Information is for Maine's terrorizing statute. An explicit threat is required.

Petitioner Uber Ex-1040, 0036

Chart Three - Threat Requirements			
Legend: Aggrav - aggravated stalking AA - only require apparent ability State	Threat or Conduct Statutes that prohibit actions that would cause a reasonable person to feel threatened. The perpetrator may make an explicit threat, but it is not required to satisfy an element of the crime.	Intent and Apparent Ability Statutes that require the intent and apparent ability to carry out the threat in addition to the making of a threat.	Threat and Conduct Statutes that require a threat and conduct to satisfy the elements of the crime of stalking.
Maryland	X		
Massachusetts			X
Michigan	X		Aggrav
Minnesota	X		
Mississippi	X		
Missouri	X		Aggrav
Montana	X		
Nebraska			X[16]
Nevada	X		Aggrav
New Hampshire	X		
New Jersey	X	X	
New Mexico		X	X[17]
New York[18]	X		
North Carolina	X[19]		
North Dakota	X		
Ohio[20]	X		
Oklahoma		X	X
Oregon	X		

[16] The stalking must occur in violation of a court order.

[17] Threat followed by additional conduct in furtherance of threat is required.

[18] Information is for New York's menacing and harassment statute.

[19] A reasonable warning or request to desist by or on behalf of the other person is required.

[20] Crime is called menacing by stalking.

Petitioner Uber Ex-1040, 0037

Chart Three - Threat Requirements			
Legend: Aggrav - aggravated stalking AA - only require apparent ability State	Threat or Conduct Statutes that prohibit actions that would cause a reasonable person to feel threatened. The perpetrator may make an explicit threat, but it is not required to satisfy an element of the crime.	Intent and Apparent Ability Statutes that require the intent and apparent ability to carry out the threat in addition to the making of a threat.	Threat and Conduct Statutes that require a threat and conduct to satisfy the elements of the crime of stalking.
Pennsylvania	X		
Rhode Island		X	X
South Carolina		X	X
South Dakota	X		X
Tennessee	X	AA	
Texas	X[21]		
Utah			X
Vermont	X		
Virginia	X		
Washington	X		
West Virginia		AA	X
Wisconsin		X	X
Wyoming	X		
District of Columbia	X		

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

Petitioner Uber Ex-1040, 0038

Chart Four - Intent Requirements			
State	Intent to and Actually Causes Reasonable Fear These statutes require that the defendant intend to cause reasonable fear. The "actually causes" language is in some statutes, but for this chart, it is assumed that if charges are brought, reasonable fear has resulted from the defendant's actions.	Intent to and Actually Causes Alarm/Annoyance This is a lesser standard than fear, and although some statutes have it in their stalking statutes, most reserve this language for their harassment statutes.	Actually Causes Reasonable Fear These statutes do not require 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.
Alabama	X		
Alaska	X		
Arizona[22]		X	
Arkansas	X		
California	X		
Colorado			X
Connecticut	X		
Delaware	X		
Florida	3D DEG FELONY		1ST DEG MIS
Georgia	X		
Hawaii			X
Idaho	X		
Illinois	X		
Indiana	X		
Iowa	X		
Kansas	X[23]		X
Kentucky	X		
Louisiana	X		
Maine			
Maryland	X		
Massachusetts	X		

[22] Information is for Arizona's harassment statute.

[23] The defendant must act "willfully and maliciously."

Petitioner Uber Ex-1040, 0039

Chart Four - Intent Requirements			
State	Intent to and Actually Causes Reasonable Fear These statutes require that the defendant intend to cause reasonable fear. The "actually causes" language is in some statutes, but for this chart, it is assumed that if charges are brought, reasonable fear has resulted from the defendant's actions.	Intent to and Actually Causes Alarm/Annoyance This is a lesser standard than fear, and although some statutes have it in their stalking statutes, most reserve this language for their harassment statutes.	Actually Causes Reasonable Fear These statutes do not require 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.
Michigan			X
Minnesota			X
Mississippi	X		
Missouri	AGGRAVATED	X	
Montana			X[24]
Nebraska	X		
Nevada	AGGRAVATED		X
New Hampshire			X
New Jersey		X	
New Mexico	X		
New York[25]	X		
North Carolina	X		
North Dakota			X[26]
Ohio	X		
Oklahoma	X[27]		
Oregon	X		
Pennsylvania	X		
Rhode Island	X		

[24] The defendant must act "intentionally and knowingly."

[25] Information is for New York's menacing statute.

[26] The defendant must engage in an "intentional course of conduct."

[27] The defendant must act "willfully and maliciously."

Petitioner Uber Ex-1040, 0040

Chart Four - Intent Requirements			
State	Intent to and Actually Causes Reasonable Fear These statutes require that the defendant intend to cause reasonable fear. The "actually causes" language is in some statutes, but for this chart, it is assumed that if charges are brought, reasonable fear has resulted from the defendant's actions.	Intent to and Actually Causes Alarm/Annoyance This is a lesser standard than fear, and although some statutes have it in their stalking statutes, most reserve this language for their harassment statutes.	Actually Causes Reasonable Fear These statutes do not require 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.
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
District of Columbia			X

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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 16 years of age, 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 has previously been convicted of another felony. A description of sentencing provisions of state stalking statutes is provided in Chart Five.

Bail

Eleven states with stalking laws include bail or pretrial release provisions for stalking defendants in their stalking laws or in a 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 out of a stalking offense.

Under the Illinois stalking statute, bail may be denied after a hearing if the state proves that the defendant would pose a threat to the stalking victim.[28] 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. 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 on bail, probation, or parole for another offense or if the accused has been previously convicted of a felony offense. In those states, a felony classification of stalking may allow a court to determine that the defendant is ineligible for bail.

[28] 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.

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Chart Five - Sentencing Provisions

KEY

VO: Violate court order - includes protection orders, probation, conditions of release, etc.
2d: Second stalking offense
3d: Third stalking offense and each subsequent offense
PF: Prior Felony
W: Weapon
16: Victim under 16 years of age
Twice: Stalking occurs on more than one occasion
AG: Aggravated
CT: Credible Threat
T: Threat
CC: Criminal complaint pending
BH: Bodily Harm to victim

State	Penalty	Enhancement	Evaluation/ Counseling
Alabama	1-10 years	VO: 2-20 years	
Alaska	Up to 1 year	VO: Up to 5 years 16: Up to 5 years W: Up to 5 years PF: Up to 5 years	X[29]
Arizona[30]	4-6 months		
Arkansas	3-10 years	VO: 5-20 years W: 5-20 years 2d[31]: 5-20 years	
California	Up to 1 year, $1000	PF[32]: up to 3 years, $10,000	
Colorado	Up to 6 months, $750	VO: Up to 24 months, $5000	
Connecticut	1 year	VO: 1-5 years 2d: 1-5 years 16: 1-5 years	

[29] Court may require counseling as a condition of pretrial release.

[30] Information is for Arizona's harassment statute.

[31] Repeat offense within 10 years or under another state's statutory provisions

[32] Subsequent felony within seven years against same victim

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State	Penalty	Enhancement	Evaluation/ Counseling
Delaware	Up to 3 years	VO: 6 months, $1000 2d[33]: 1 year, $1000	
Florida	Mis: Up to 1 year Fel: Up to 5 years, $5000[34]	VO: Up to 5 years, $5000	
Georgia	Up to 12 months	2d: 1-5 years VO: 1-5 years, $10,000	X[35]
Hawaii	Up to 30 days, $1000	Twice: Up to 1 year, $2000	X[36]
Idaho	Up to 1 year, $1000	VO: 1 year, $1,000 2d[37]: Up to 5 years, $10,000	
Illinois	Up to 3 years, $10,000	AG: Up to 5 years, $10,000 2d[38]: Up to 7 years, $10,000	X[39]
Indiana	Up to 180 days, $1000	T: Up to 1 year, $5000 VO: Up to 1 year, $5000 CC: Up to 1 year, $5000 W: 1-1/2 years w/ not more than 1-1/2 years added for agg. circumstances, and not more than 1 year subtracted for mitigating circumstances, $10,000 2d: Same as W.	
Iowa	Up to 1 year, $100	VO: Up to 1 year, $1000 2d: Up to 2 years, $5000 3d or more: Up to 5 years	
Kansas	Up to 6 months	VO: 1-5 years 2d[40]: Up to 1 year	

[33] Subsequent conviction within seven years

[34] If the stalker has the intent to cause fear, the crime of stalking is a felony offense.

[35] Court may order a mental health evaluation and counseling as a condition of probation.

[36] Court may order counseling.

[37] Second or subsequent conviction within seven years

[38] Applies to second conviction for aggravated stalking

[39] An order of counseling is one of the remedies which may be included in an order of protection.

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State	Penalty	Enhancement	Evaluation/ Counseling
Kentucky	Up to 1 year	VO: 1-5 years 2d[41]: 1-5 years W: 1-5 years CC[42]: 1-5 years PF[43]: 1-5 years	
Louisiana	Up to 6 months, $1000	VO: 30 days to 1 year, $5000 2d[44]: 90 days to 2 years,$5000	
Maine[45]	Less than 1 year, $2,000		
Maryland	Up to 5 years, $5,000	Allows concurrent convictions of multiple offenses	
Massachusetts	Up to 5 years, $1000	VO: 1-5 years 2d: 2-10 years	
Michigan	Up to 1 year, $1,000	T: Up to 5 years, $10,000 VO: Up to 5 years, $10,000 2d: Up to 5 years, $10,000 PF: Up to 5 years, $10,000	X[46]
Minnesota	Up to 1 year, $3,000	T[47]: 1 year probation with jail time or imprisonment up to 5 years	X[48]
Mississippi	Up to 6 months, $1000	VO: Up to 1 year, $1,000 2d[49]: Up to 2 years, $2,000	

[40] Subsequent conviction within seven years, same victim.

[41] Second offense within five years

[42] 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.

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

[44] Same victim

[45] Information is for Maine's terrorizing statute.

[46] Mental evaluation and counseling may be imposed as a condition of probation.

[47] Terroristic threats

[48] 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.

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State	Penalty	Enhancement	Evaluation/ Counseling
Missouri	6 months to 1 year	T: Up to 10 years 2d: Up to 10 years[50]	
Montana	Up to 1 year, $1,000	VO: Up to 5 years, $10,000 2d: Up to 5 years, $10,000	
Nebraska	Up to 1 year, $1,000 (VO only)	2d[51]: Up to 5 years, $10,000	
Nevada	6 months, $1,000	VO: 1 year, $2000 2d: 1 year, $2000 CT: 1 to 6 years, $5,000	
New Hampshire	Up to 1 year, $2,000	2d: 2.5 to 7 years, $4,000	
New Jersey	Up to 18 months	2d: 3 to 5 years VO: 3 to 5 years	
New Mexico	6 months to 1 year	2d[52]: At least 72 hrs 3d: 18 months, $5,000	
New York	Up to 90 days, $500[53] or up to 1 year, $1,000[54]	2d[55]: Up to 4 years, $5,000	
North Carolina	Up to 6 months, $1,000	VO: Up to 2 years, $2,000 2d[56]: 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[57]: Up to 5 years, $5,000	

[49] Second or subsequent conviction within seven years

[50] Second or subsequent offense within five years

[51] Subsequent offense within seven years against same victim

[52] Without suspension, deferral, or other advisement

[53] For physical "menacing," placing victim in fear

[54] Repeated harassment or following (traditional stalking) or displaying a firearm to place in fear

[55] Within 10 years, only for stalking or displaying weapon

[56] Within five years

[57] In North Dakota or another state involving same victim

Petitioner Uber Ex-1040, 0046

State	Penalty	Enhancement	Evaluation/ Counseling
Ohio	Up to 6 months, $1,000	2d[58]: Up to 5 years, $2,500 SF[59]: Up to 5 years, $2,500	X[60]
Oklahoma	Up to 1 year, $1,000	VO: Up to 5 years, $2,500 2d[61]: Up to 5 years, $2,500 PF[62]: Up to 5 years, $2,500 3d[63]: Up to 10 years, $2,500 to $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[64]: Up to 7 years PF[65]: 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[66]: Up to 5 years, $10,000	
South Carolina	Up to 1 year, $1,000	VO: Up to 2 years, $1,000 2d[67]: Up to 3 years, $2,000	
South Dakota	1 year, $1,000	VO: 2 years, $2,000 2d[68]: Up to 5 years, $5,000	
Tennessee	Up to 1 year, $2,500	VO: 1 to 6 years, $3,000 2d[69]: 1 to 6 years, $3,000	

[58] Same victim

[59] Same victim

[60] Court may order an evaluation.

[61] Second offense within 10 years

[62] Within 10 years

[63] Includes one previous conviction for stalking with violation of a protective order

[64] Second or subsequent offense

[65] Previous crime of violence against the same victim

[66] Same victim within seven years

[67] Within seven years, same victim

[68] Second or subsequent conviction within seven years

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State	Penalty	Enhancement	Evaluation/ Counseling
Texas	Up to 1 year, $3,000	2d[70]: 2 to 10 years, or 1 year community correctional facility, $10,000	
Utah	Up to 6 months		
Vermont	Up to 2 years, $5000	VO: Up to 5 years, $25,000 2d: Up to 5 years, $25,000 PF[71]: 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[72]: Up to 1 year, $1,000 3d[73]: 1 to 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 PF: Up to 5 years, $10,000	
West Virginia[74]	Up to 6 months, $1,000	VO: Not less than 90 days or more than 1 year, $2,000 to $5,000 2d[75]: Not less than 90 days or more than 1 year, $2,000 to $5,000 3d[76]: 1 to 5 years penitentiary, $3,000-$10,000 2d & VO: 6 months to 1 year, $2,000 to $5,000	X[77]

[69] Second or subsequent conviction within seven years

[70] Repeat offense toward same person

[71] Same victim

[72] Second offense within five years

[73] Third offense within five years

[74] Court has discretion to impose home confinement with electronic monitoring as alternative sentence.

[75] Second offense within five years

[76] Third or subsequent conviction within five years

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

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State	Penalty	Enhancement	Evaluation/ Counseling
Wisconsin	Up to 9 months, $10,000	VO[78]: Up to 9 months, $10,000 2d[79]: Up to 2 years, $10,000	
Wyoming	Up to 6 months, $750	VO: Up to 10 years PF[80]: Up to 10 years BH: Up to 10 years, including same punishment.	
District of Columbia[81]	Up to 1 year, $500	VO: 1 year, $500, and 1 year bond 2d[82]: Up to 1.5 years, $750 3d: Up to 3 years, $1,500	

[78] Violation of order offense needs no credible threat

[79] Second offense within seven years, same victim

[80] Prior conviction within five years

[81] Temporary statute effective until December 1993. Permanent statute is pending.

[82] Second offense within two years

Petitioner Uber Ex-1040, 0049

Special Provisions

- Warrantless arrests of stalking suspects are permitted in several states, provided there is probable cause. Many states allow a warrantless arrest if there has been a violation of a protective order. It is implicit in the statutes that have such a provision that the officer need not see the violation. Pennsylvania's law makes such a provision explicit.
- Montana, New Hampshire, and North Dakota presume that the defendant has acted with intent if the defendant has been warned that the victim does not wish to be contacted.
- New Hampshire makes protective orders issued by other states enforceable in its state if the order is in effect in the issuing state.
- Some states require training for law enforcement, prosecutors, and the judiciary as part of the implementation of their stalking laws.
- 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 the monitoring.
- Montana provides that a person convicted of stalking may be sentenced to pay all medical, counseling, and other costs incurred by or on behalf of the victim as a result of the offense.
- Minnesota, Montana, and Wisconsin allow the victim to keep his or her address confidential under certain circumstances.
- Wyoming's law requires law enforcement to provide emergency assistance to victims, including making recommendations regarding available services. The statute makes law enforcement immune from civil liability for failure to provide these services.
- Some states require that the victim be notified if the defendant is released before trial, and some also require that the victim be notified when the defendant is released after being convicted. Georgia, Minnesota, Montana, Texas, and Washington have specific victim notification provisions in their stalking statutes.

Civil Remedies

Stalking laws seem to have provided a stronger link between civil protection orders and criminal law. Some states have amended their domestic abuse and/or protective order statutes to provide for the issuance of protective

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orders in cases of stalking, or have included in the stalking laws provisions that seek to strengthen the enforcement of civil protection orders.

In Oregon, the stalking law specifies that a civil action may be brought against the stalker to recover damages incurred as a result of the stalking behavior.

Mental Evaluation and Civil Commitment

No state's stalking law deals specifically with civil commitment, although several states do provide guidance to a court regarding mental health evaluations, treatment, or counseling. In some states, the court may order an evaluation or counseling before trial, or it may order counseling as a condition of probation, or as part of a sentence. Minnesota and West Virginia require courts to order evaluation and counseling for stalking defendants. The current laws that suggest mental health treatment for convicted stalkers let the medical community decide what type of treatment should be pursued.

State statutes regarding civil commitment of mentally disordered persons do not refer to perpetrators of domestic violence, although the traditional criterion to determine whether commitment is necessary is whether the individual presents a danger to himself or others. Sex offenses are the only specific violent crimes for which states have enacted or are proposing civil commitment measures. There has been a recent movement in some states to broaden the criteria for commitment to include whether a person is able to care for himself and whether the individual has a substance abuse problem.

Other Related Laws

Criminal trespass, terroristic threat, and harassment laws generally were available to law enforcement agencies to deal with stalking behavior prior to the enactment of stalking laws. 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 that could constitute trespass, harassment, or stalking are similar.

Some state laws creating the crime of stalking pair the crime with other related laws to suggest gradations of behavior. The states that pair stalking with harassment or trespass are Colorado, Indiana, Minnesota, Nevada, New Mexico, New York, Ohio, Pennsylvania, Texas, Washington, and Wisconsin.

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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 the conveyance of false reports about the victim. Some harassment laws incorporate threats or violations of restraining orders.

Terrorizing or terroristic threats statutes are in place in 19 states. Terrorizing typically consists of threatening to commit a crime of violence or unlawfully causing the evacuation of a building or facility. Terroristic threat statutes generally describe the crime 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.

Police Management of Stalking Incidents

Regardless of whether they operate in a state with or without anti-stalking laws, most police agencies respond similarly to the problem of stalking, and departments in states with anti-stalking laws depend on alternative responses as much as states without such laws, according to the respondents' answers to questions posed in the PERF's two surveys of U. S. police agencies' management of and experience with stalking.

However, in states with stalking laws, police have found that charging offenders with multiple offenses makes it more likely that a stalker will refrain from further actions.

The surveys were undertaken by the PERF for the NCJA as part of the model anti-stalking code development project in states with and without stalking laws to learn how their departments address stalking problems. A similar survey was conducted of the central criminal justice offices in four foreign countries.[83]

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[83] As part of its research, the PERF solicited information from 95 individuals in 50 international police agencies. The sample size was limited, however, to Australia, Canada, Great Britain, and New Zealand. Three of the four countries responded. The response size does not provide a comprehensive international perspective on stalking, and Australia, Canada, and Great Britain do not recognize uniformly stalking as a major problem and thus do no track incidents or investigate complaints. Of those agencies responding, approximately half characterized stalking as a serious problem. Even agencies in a single country seemed to be divided on the subject. In Canada, for example, police departments in Quebec, Edmonton, and Ottawa did not characterize stalking as a major problem, but officials in Victoria, Vancouver, and Metro Toronto police departments responded in the opposite. While 77 percent of responding jurisdictions in Australia and Great Britain reported investigating stalking-type incidents, none considered stalking a major problem. High-profile cases were rare in the responding countries, and most agencies consider stalking primarily a domestic violence problem. Typical victims are women of any age escaping abusive relationships with dominant males,

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Of those police agencies who responded to the PERF surveys, 57 percent indicated that stalking is not a problem in their jurisdiction, although 94 percent reported having stalking incidents. Sixty-two percent of agencies operating in states without stalking laws felt stalking was a problem, and 91 percent reported having stalking incidents.

Fifty-one percent of PERF survey respondents in states with stalking laws that reported stalking was not a problem had high-profile stalking cases, but the data does not suggest a link between media attention and police perceptions of stalking problems.

Most police agencies -- with or without stalking laws -- handle stalking incidents similarly, according to information provided by survey respondents. Forty-seven percent of respondents said that stalking complaints in their jurisdictions are investigated by detectives or investigators, and 23 percent indicated that patrol officers conduct the investigations. Nearly all the rest of the respondents said that stalking is investigated by a combination of patrol officers and detectives. Domestic violence and crimes against persons units are rarely involved.

Once a report has been filed, 82 percent of agencies in states with anti-stalking laws and 60 percent of agencies without such laws reported that they do a follow-up investigation. In follow-up investigations, 74 percent of agencies in states with laws and 93 percent of agencies in states without laws reported that they keep track of subsequent calls to the victim's address.

Fifty-three percent of police agencies that enforce anti-stalking laws and 86 percent of agencies that are without anti-stalking laws do not provide formal training on stalking to their officers. Those that provide training usually do so as part of the recruit training curriculum, in-service training, roll call, or through special training programs.

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they reported. One official thought that many victims are too embarrassed to contact police, or believe that the system is unable to offer adequate protections. Stalkers' methods did not seem to vary from those used by American stalkers, and the course of events seemed to escalate from unwanted contacts to following and face-to-face threats. As in the United States, many of the actions reported by respondents are not illegal in and of themselves, so police must rely on alternative laws, such as trespassing laws, to address stalking problems. According to police, none of these alternatives are particularly well-suited to stalking actions, nor do they allow police to intervene unless they witness a major crime or the victim is injured. Some of the laws and tactics used in Canada are obstructing justice, trespassing at night, uttering threats to cause death or bodily harm, intimidation, a court-ordered peace bond, and pre-conditioned release. Most of these laws are hard to prove, with the burden of proof on the victim, according to the respondents.

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Intervention options available to police with or without stalking laws are many and varied. Survey respondents answers indicate that departments in states with anti-stalking laws depend on alternative responses as much as states without such laws. For example, in states with such laws, 81 percent charge offenders with trespassing, while 74 percent of agencies without such laws charge offenders with trespassing. Seventy-four percent of agencies enforcing stalking laws charge offenders with assault while 60 percent of states without laws charge offenders with assault.

In states with stalking laws, police have found that charging offenders with multiple offenses enhances the chances that a stalker will be stopped.

Eighty-six percent of respondents with anti-stalking laws in place felt that the intervention options available to them were adequate; only 43 percent of agencies without stalking laws felt their intervention options were adequate.

The 13 percent with stalking laws who said their intervention options were inadequate said that specific actions should be defined as stalking to avoid confusion with other charges. Other respondents said their stalking laws were too vague, overly broad, or too difficult to prove and prosecute. Still others thought that an anti-stalking law that did not require a third-party witness or police presence at the time of the crime would be helpful.

Respondents with anti-stalking law suggested three innovative anti-stalking tactics:

- Courts should require the accused stalker to undergo a mandatory psychological evaluation;
- Police should have uniform patrol officers monitor stalking situations after a complaint has been made;
- Courts should require stalkers to wear electronic bracelets that enable police to monitor their movements remotely.

Most stalking victims are former lovers, former spouses, and spouses; however, stalking victims are sometimes coworkers, strangers, neighbors, celebrities, and political activists, according to survey responses.

Survey respondents pointed out that some potential victims, including stalking victims' children and acquaintances are not covered under the provisions of some states' anti-stalking laws. Likewise, some categories of potential stalkers, such as juveniles and former spouses with visitation rights, are not covered by some anti-stalking laws.

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The most frequently used methods of harassment are following, making harassing statements and threats by phone, sending unwanted letters, vandalism, verbal and physical threats, showing up at the victim's work place, innocuous phone calls, and assaults. Other forms may include sending unwanted gifts, leaving dead animals, making false accusations, and leaving notes on victims' cars.

Methods of harassment that should be covered by anti-stalking laws, according to survey responses are: repeatedly watching and waiting; actions that are harassing and annoying even when no credible threats have been made; stalking not done in the presence of a third-party witness; and repeatedly showing up at the victim's work place.

Uses and Limitations of Model Anti-Stalking Code

The commentary accompanying the model code reflects the position of resource group members and project contractors and staff that stalking is not solely a law enforcement problem, but also may require the involvement of a variety of other disciplines, including mental health professionals, social workers, and community workers. Consequently, anti-stalking legislation alone will not solve the problem. Protocols and procedures for handling stalking cases through a multidisciplinary approach need to be established. Chapter V includes recommendations for establishing cooperation among the various disciplines that might be involved in stalking cases.

The model anti-stalking code and its related analysis, commentary, and recommendations are intended to provide guidance to state legislators, policymakers, and law enforcement officials in dealing with the problem of stalking. In developing the model code, the resource group and project contractors and staff did not expect that any jurisdiction would adopt the code without making appropriate adjustments to accommodate political interests, fiscal constraints, and other conditions and tolerances of that particular jurisdiction. Instead, it is hoped that the information provided will prove useful to states in examining their existing codes and in addressing problems that have arisen in both drafting anti-stalking legislation and implementing anti-stalking codes.

Since there was little reported stalking case law at the time the model code was developed, project staff had little information on how courts might address the constitutional and other legal issues related to stalking. Project staff, therefore, had to rely on case law developed under various other types of statutes, such as harassment and terroristic threat statutes. Many of the issues raised under stalking statutes are, however, unique and analogies to similar statutes may not be appropriate.

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Bail and sentencing provisions applicable to stalking cases will have to be developed based on each state's own unique bail and sentencing schemes. The model code, therefore, does not include specific recommendations regarding appropriate bail and sentencing provisions for stalking cases. Instead, Chapters III and IV provide a general discussion of issues related to bail and sentencing in stalking cases, which can be used by states in reviewing their existing bail and sentencing schemes to determine what special provisions applicable to stalking need to be added.

Similarly, Chapter V includes a discussion of the importance of victim notification procedures in stalking cases. Because each state has developed its own protocol for dealing with notification of victims and other victims' rights issues, specific recommendations are not included but commentary addressing the issues peculiar to stalking victims is provided.

States also may want to analyze their privacy and freedom of information statutes to determine whether these statutes adequately protect personal information contained in public records and to ensure that potential stalkers cannot use such records to obtain information about their victims. Chapter V provides an overview of the types of provisions various states have enacted to ensure that their motor vehicle and voter registration records are not used for illegal purposes.

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CHAPTER II

A MODEL ANTI-STALKING CODE FOR THE STATES

The model anti-stalking 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 Anti-Stalking 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 six months regularly resided in the household.

Section 2. Any person who:

(a) purposefully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear bodily injury to himself or herself or a member of his or her immediate family or to fear the death of himself or herself or a member of his or her immediate family; 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

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(c) whose acts induce fear in the specific person of bodily injury to himself or herself or a member of his or her immediate family or induce fear in the specific person of the death of himself or herself or a member of his or her immediate family;

is guilty of stalking.

Analysis and Commentary on Code Language

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 six months regularly resided in the household.

Commentary

Prohibited Acts

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

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

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Credible Threat

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

"Immediate Family"

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

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

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

Section 2. Any person who:

(a) purposefully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear bodily injury to himself or herself or a member of his or her immediate family or to fear the death of himself or herself or a member of his or her immediate family; 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

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(c) whose acts induce fear in the specific person of bodily injury to himself or herself or a member of his or her immediate family or induce fear in the specific person of the death of himself or herself or a member of his or her immediate family;

is guilty of stalking.

Commentary

Classification as a Felony

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

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

Classification as a felony would assist in the development of the public's understanding of stalking as a unique crime,[84] as well as permit the imposition of penalties that would punish appropriately the defendant and provide protection for the victim.

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[84] This idea is further explained in a soon-to-be-published comment in *Georgetown Law Journal*: "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." Strikis, *supra*.

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Of utmost importance is a state's decision to require the criminal justice system and related disciplines to take stalking incidents seriously.[85] A state's decision on how to classify stalking and how to establish its continuum of charges is of less importance.

"Conduct Directed at a Specific Person"

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

Fear of Sexual Assault

The model code language does not apply if the victim fears sexual assault but does not fear bodily injury. It is likely that victims who fear that a defendant may sexually assault them most likely also fear that the defendant would physically injure them if they resisted. Furthermore, since the human immunodeficiency virus (HIV), which causes acquired immunodeficiency syndrome (AIDS), could be contracted through a sexual assault, a victim is more likely to fear bodily injury or death, as well as psychological injury. Nevertheless, due to the nature of stalking offenses, states may want to consider expanding the language of their felony stalking statutes to include explicitly behavior that would cause a reasonable person to fear sexual assault in addition to behavior that would cause a reasonable person to fear bodily injury or death.

Intent Element

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

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[85] *Id.*

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

Fear Element

Since stalking statutes criminalize what otherwise would be legitimate behavior based upon the fact that the behavior induces fear, the level of fear induced in a stalking victim is a crucial element of the stalking offense. The model code, which treats stalking as a felony, requires a high level of fear -- fear of bodily injury or death. Acts that induce annoyance or emotional distress would be punishable under statutes such as harassment or trespassing, that 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.

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CHAPTER III

SENTENCING CONVICTED STALKERS

States' stalking sentencing policies should seek to achieve an effective balance between punishment and public safety objectives. These policies should seek to protect the stalking victim; allow law enforcement officials to intervene when appropriate; provide appropriate sanctions for the convicted stalker; and ensure treatment services for a stalker who can be helped by medical or psychiatric intervention.

States should consider making stalking a felony offense, and states' sentencing policies for stalking offenses should reflect their existing felony sentencing schemes.

Classification of Stalking Offenses

Stalking offenders have unique characteristics that must be taken into account by criminal justice officials in making sentencing decisions. Stalkers may be obsessive, unpredictable, and potentially violent. They often commit a series of increasingly serious acts, which may become suddenly violent, and result in the victim's injury or death. States, therefore, should consider establishing a continuum of charges that could be used by law enforcement officials to intervene at various stages.

States should consider placing a stalking felony offense within their overall sentencing schemes to address serious, obsessional behavior that causes a victim to fear bodily injury or death. States should consider establishing sentencing schemes that permit incarceration as an option in all stalking convictions.

If a state decides to treat stalking as a felony, that jurisdiction should assess where stalking is to rank on the state's continuum of increasingly severe penalties for felonies. If stalking is not treated as a felony, a state may wish to consider incorporating a system of aggravating factors into its stalking sentencing policy so that a particular stalking incident can be elevated from a misdemeanor to a felony if those aggravating factors are present.

Protecting Stalking Victims

States' stalking sentencing policies must provide protections for the victim. Policies governing the release of convicted stalkers on probation or parole should take into account that some stalkers may be more dangerous once they are released from prison, and that stalking behavior often escalates into violence as time passes and the stalker's

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obsession with the victim grows. Appropriate and reasonable mechanisms for managing the stalker should be incorporated into states' sentencing schemes to reduce the potential threat to the victim. The mechanisms, however, must be practical and not exceed the fiscal and other resource limitations of a particular state's criminal justice system.

Enhanced Penalties

Even in states that already treat stalking as a felony under existing sentencing schemes, aggravating circumstances may be grounds for an enhanced penalty.

Examples of aggravating circumstances for which many state sentencing schemes provide enhanced penalties include violations of a protective order; cases in which the victim is a minor; and cases in which a weapon has been used during the commission of the crime. States may want to consider the same penalty enhancements for stalking convictions that they generally apply for such aggravating circumstances. States should consider making severe enhancements available in instances in which the defendant has committed a previous felony or stalking offense against the same victim within a certain number of years. In such instances, states should consider requiring mandatory prison sentences.

States also may want to consider penalty enhancements if a defendant has been convicted of a prior stalking offense against a different victim. The possibility of an enhanced penalty in some cases may deter the stalker from future stalking.

As an alternative to penalty enhancements, states may wish to consider creating a separate crime--for example, aggravated stalking--to deal with convicted stalkers who have committed previous felonies or stalking offenses.

Conditions of Release

In making probation and parole decisions affecting stalkers, criminal justice officials should consider any risks the stalker's release may pose to the victim. States' stalking sentencing schemes therefore should incorporate release options and conditions that increase in restrictiveness commensurate with the risk the stalker poses to the victim.

If a state decides to release convicted stalkers on probation or parole, no-contact orders should be considered as conditions of release. Under such orders, a defendant would be prohibited, for a stated period of time, from

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contacting the victim or coming within a certain distance of the victim's home, work place, or school. If a defendant violated a no-contact order, his release could be revoked.

States also may want to consider monitoring convicted stalkers released on probation or parole through electronic monitoring or house arrest. Several jurisdictions, including San Diego, Calif., are testing the effectiveness of requiring convicted stalkers to wear an electronic arm band. If the defendant approaches the victim's residence, a sensor within the house contacts the technology's vendor, who automatically contacts the police. Proponents of the electronic monitoring device note that there is no subjectivity involved in the program; if the sensor goes off, the stalker has violated the conditions of his probation.

Critics of the arm band technology point out that the sensor is not portable; therefore the victim is only protected while the victim is at home. Furthermore, in some jurisdictions testing the technology, participation in the program is voluntary. Critics note that defendants who are willing to participate in such a program are most likely to be the same defendants who would be most apt to stop stalking once they have been caught.

Restitution

States may wish to consider requiring stalking defendants, as part of their sentences, to pay restitution to their victims. Defendants could be required to pay restitution for the costs incurred by victims who relocated or changed their telephone numbers in an effort to protect themselves from suspected stalkers. Defendants also could be required to pay restitution to victims for any costs incurred as a result of damage done to the victims' property.

Alternatively, states may want to consider permitting stalking victims to recover damages from convicted defendants through civil causes of action.

Evaluation and Treatment

Many stalkers appear to suffer from psychiatric or psychological disorders. In such cases, it is unlikely that simply punishing the convicted stalker will solve the problem. In fact, a convicted stalker with a mental disorder may be more dangerous once released from serving a sentence because the illness was left untreated during incarceration and because he may be embittered and seek retribution for being kept from the victim. Therefore, states should consider requiring evaluation and offering counseling as part of any sentence imposed upon a convicted stalker. States should consider further requiring counseling as a condition of release for convicted stalkers placed on

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probation or parole. If a probationer or parolee fails to comply with the counseling conditions, the release could be revoked.

Convicted stalkers could be required to pay for any evaluation or counseling imposed as part of their sentences. Convicted stalkers also could be required retroactively to pay for any evaluation or counseling ordered by a court prior to conviction.

Mental Illness, Stalking, and the Insanity Defense

The mental capacity of individuals who engage in stalking is a substantially uncertain and largely unexplored area of psychology and psychiatry. (See recommendations for research on stalking behavior, Chapter VI.) Nevertheless, the mental capacity of alleged or convicted stalkers is certain to be a major factor.

Historically, criminal justice officials and mental health professionals have shared an uneasy coexistence with respect to the disposition and handling of offenders who may be mentally ill. These conflicts have centered upon what constitutes evidence of mental incapacity and to what extent an accused offender's mental incapacity should be considered a factor in judging his culpability for criminal behavior.

Since 1982, when John Hinckley was found not guilty by reason of insanity of attempting to assassinate then President Ronald Reagan, the insanity defense has received considerable attention. Many criticized the test used in the Hinckley trial as too lenient.[86] Some states, as well as the U. S. Congress[87], have subsequently enacted legislation to limit the availability of the defense.[88]

An individual found not guilty by reason of insanity usually will be committed to a mental hospital for an assessment of his present psychological condition. If he is determined to be mentally ill at the time of the assessment, he will be confined until the mental health authorities recommend to the court that he is no longer mentally ill.

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[86] The test used in the Hinckley trial was the test recommended in § 4.01(1) of the Model Penal Code. Under this test, a defendant is not responsible for his criminal conduct if "at the time of such conduct as a result of mental illness of defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of the law."

[87] 18 U.S.C. § 17.

[88] These states and the federal government presently limit the availability of the defense to those who are unable to appreciate the wrongfulness of their conduct.

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The U. S. Supreme Court has held that the due process clause of the U. S. Constitution is not violated when an individual found not guilty by reason of insanity is confined to a mental health institution until he has regained his sanity or no longer presents a danger to himself or society, even if this amounts to a period longer than the individual would have been incarcerated had he been convicted.[89] The Court emphasized, however, in a later case that the individual "may be held as long as he is both mentally ill and dangerous, but no longer."[90] In that case, Foucha v. Louisiana, the Court struck down a Louisiana law that allowed the continued confinement of individuals found not guilty by reason of insanity even after they are no longer considered insane. In Foucha, the defendant had been found not guilty by reason of insanity but had since recovered. Doctors testified that there had been no evidence of mental illness since his admission to a mental hospital after the verdict. The U. S. Supreme Court ruled that "the basis for holding Foucha in a psychiatric facility as an insanity acquittee has disappeared, and the state is no longer entitled to hold him on that basis."[91]

Some states have enacted legislation allowing a defendant to be found "guilty but mentally ill." Under such a verdict, a defendant receives the same sentence he would receive had he been found guilty. The defendant usually serves his term in prison, where he receives mental health evaluations and any necessary treatment. Proponents of the "guilty but mentally ill" option sought to curtail the use of the insanity defense, reduce the number of insanity acquittals, and protect society by confining mentally disturbed and dangerous defendants who otherwise might be acquitted and released. The "guilty by mentally ill" option has been criticized by both scholars and practitioners.[92] One of the criticisms has been that this option adds little to the law because in every state prison administrators can either assign prisoners to psychiatric wards within the prison or transfer them to mental hospitals.

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[89] Jones v. U. S., 463 U. S. 354, 369 (1983).

[90] Foucha v. Louisiana, 112 S. Ct. 1780 (1992). In a concurring opinion, Justice Sandra Day O'Connor wrote that it may be permissible to hold an individual who has been found not guilty by reason of insanity "who has regained sanity if ... the nature and duration of detention were tailored to reflect pressing public safety concerns related to the acquittee's continuing dangerousness." Id. at 1789. She also emphasized that the decision placed "no new restriction on the states' freedom to determine where and to what extent mental illness should excuse criminal behavior." Id. at 1790.

[91] Id. at 1784.

[92] Ingo Keilitz, *Researching and Reforming the Insanity Defense*, 39 RUTGERS L. REV. 289 (1987).

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CHAPTER IV

PRETRIAL RELEASE: SUPERVISING ACCUSED STALKERS

The arrest of a stalking suspect may offer immediate relief to the stalking victim. However, such relief is almost always short-lived. The accused is generally released prior to trial and, upon release, may present as much of a threat as before the arrest. In fact, in some instances, the arrest actually may escalate the danger to the victim by increasing the urgency of the stalking activity from the stalker's perspective.

Judicial decisions on whether and on what terms pretrial release should be granted in individual cases are informed by constitutional and statutory provisions governing pretrial release. Such provisions apply to a broad range of crimes and may not address sufficiently issues peculiar to stalking. States may, therefore, wish to review these provisions to determine whether they provide sufficient protection for stalking victims and their family members during the period between arrest and adjudication.

Pretrial Detention

Presumption of innocence is a basic tenet of American jurisprudence and, accordingly, the right to pretrial release is guarded carefully in state constitutions and statutes. Regardless of the charge, pretrial detention is precluded unless the proof is evident or the presumption great that the defendant committed the offense charged. Thirty states allow for the denial of pretrial release only for persons charged with capital offenses or offenses that could result in life imprisonment.[93] In 21 of these states, the limitations are constitutional. In several, even a defendant charged with a capital offense cannot be detained before trial unless there is a specific judicial finding that no release conditions can assure appearance or ensure public safety.

The other 20 states extend restrictions on the opportunity for pretrial release to people charged with offenses other than capital and life imprisonment crimes; however, with few exceptions, release is precluded only if the offense charged is a violent and/or felony offense and if the accused was on bail, probation, or parole for a violent or felony offense at the time of arrest or had previously been convicted of a related felony or violent crime. About half of

[93] Individuals charged with lesser offenses in such states may be detained pretrial if they do not meet conditions of release, for example, bail; however, at least theoretically they have the opportunity to be released.

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these states also require a judicial finding of dangerousness or likelihood of nonappearance that no conditions of release can abate. Only Illinois has a specific statutory provision designating stalking as a non-bailable offense.[94]

While stalking often may portend violence, states are unlikely to make detention exceptions for stalking that they have been unwilling to make for other crimes generally considered more serious. Moreover, they are unlikely to make exceptions for stalking when it is accompanied by violence. States with more restrictive pretrial release policies already have decided that charges of violent offenses other than capital and life imprisonment offenses do not warrant exceptions. Most other states can use existing exceptions for violent offenses.

Pretrial Release Conditions

Even if states are unlikely to make stalking a non-bailable offense, they should consider developing appropriate conditions of release for stalking defendants. The bail laws of most states and the District of Columbia explicitly declare one or more of the purposes for release conditions. In each of these states at least one purpose is to ensure the defendant's appearance. In addition, about one half explicitly provide that conditions may be imposed to protect the public or certain members of the public. At least one that does not include public safety among the purposes of release conditions exhorts the judicial authority to take into account public safety when determining conditions necessary to secure appearance. Several also authorize release conditions to ensure the integrity of the judicial system.

Authorizing judicial authorities to impose reasonable conditions of release to reduce the likelihood of danger to the public does not deny defendants their fundamental right to release. Accordingly, states that currently do not allow conditions of release for such purposes should consider doing so.

Virtually all states authorize the pretrial release of people accused of bailable crimes based on their promise to appear when required. Individuals who promise to appear when required are "released on their own recognizance" (ROR). Over half of the states mandate ROR under certain circumstances. For example, 16 require ROR if there is a likelihood of appearance; eight require ROR if there is a likelihood of appearance and the defendant presents no danger; and three require ROR if there is a likelihood of appearance, no danger, and no likely impairment of judicial integrity.

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[94] See footnote 28.

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States should consider eliminating ROR for stalking cases. While money bail may not be necessary, states should consider, at a minimum, 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. This requirement poses no undue hardship on the defendant; in fact, it may impose considerably less hardship than money bail. Furthermore, it is essential to the victim's security and peace of mind.

Most states' pretrial release laws already enumerate factors for the court to consider in setting release conditions for individuals arrested for bailable offenses in general. Examples of factors states might want to consider include the nature and circumstances of the charge; the background of the accused, including family and community ties, employment, education, and financial resources; the character and mental condition of the accused; the accused's willingness to seek counseling, if appropriate; the probability of the accused's future appearance at court proceedings; the accused's previous criminal record and current status with respect to bail, probation, and parole; the likelihood of the accused endangering the alleged victim, members of the alleged victim's immediate family, or other named individuals; the existence of or application for orders of protection from the accused by the alleged victim or another individual; evidence of the alleged victim's attempts to terminate a relationship with the accused, including but not limited to initiation of separation or divorce proceedings; the accused's use or possession of firearms or other weapons; the accused's use of controlled substances; the likelihood that the accused will violate conditions of release; evidence of past threats by the accused, including but not limited to threats to the alleged victim, members of the alleged victim's family, or witnesses in court proceedings; the extent and nature of available pretrial supervision; and such other considerations that may be relevant to protection of the alleged victim and members of the alleged victim's immediate family. A description of states' provisions regarding factors to be considered in pretrial release decisions is provided in Chart Six.

Pretrial release laws generally enumerate specific conditions of release that the judicial authority may impose on the accused. States should consider authorizing the imposition of specific conditions of pretrial release in stalking cases. Examples of possible conditions of release include subjecting the accused to the custody of a person or organization agreeing to provide adequate supervision; restrictions on movements of the accused, including house arrest with or without electronic monitoring; prohibition on the possession of weapons; prohibition on use and possession of drugs and alcohol; prohibition on contact or other communication with the victim, members of the victim's family, or other named individuals, either directly or through an intermediary; drug treatment and testing;

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Chart Six - Considerations in Determining Release Conditions

A = Seriousness of charge
B = Weight of evidence/probability of conviction
C = Nature/circumstances of charge
D = Defendant's background
E = Previous criminal record (1) general; (2) all; (3) convictions only
F = Probability of appearance
G = Policy against unnecessary detention
H = Family ties
I = Employment/financial resources
J = Character/mental condition
K = Record of appearance at court
L = Threats to victims/witnesses
M = Ties to/length of residence in community
N = Persons who will vouch for individual
O = Likelihood of posing danger
P = Likelihood of victim/witness intimidation
Q = Use/possession of firearms
R = Use of controlled substances
S = Current status re other offenses
T = "Any other facts deemed relevant"
U = Source of bail funds
V = Persons assisting him in attending court/making conditions
W = Likelihood of violations on release

Chart Six - Considerations in Determining Release Conditions

State	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W
AL	x	x	x	x		x				x			x										
AK	x	x	x	x		x				x	x		x										
AZ	x	x				x	x		x				x										
AR	x	x	x	x	x	x				x			x							x			
CA						x																	
CO	x					x							x										
CT	x	x	x	x		x						x		x*	x	x	x						
DE*	x	x	x	x		x		x	x			x		x				x					
DC						x																	
FL						x						x											

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Chart Six - Considerations in Determining Release Conditions																							
State	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W
GA						x					x												
HI		x				x	x		x			x	x	x	x	x		x	x				
ID						x																	x
IL	x	x	x		x	x	x	x	x				x	x	x	x	x	x					
IN	x	x	x	x	x	x						x	x							x			
IA	x	x	x	x		x				x			x	x									
KS	x	x	x	x		x				x			x				x*				x		
KY	x	x	x	x		x				x			x										
LA						x							x										
ME*	x	x	x	x		x	x	x	x	x		x	x		x	x		x				x	
MD	x	x	x	x		x							x							x			
MA						x					x												
MI						x																	
MN	x	x	x	x		x				x			x										
MS						x																	
MO	x	x	x	x		x			x	x			x										
MT	x	x	x	x		x	x	x	x	x		x	x	x	x				x				
NE	x	x	x	x		x				x			x										
NV						x					x	x*	x										
NH						x							x	x									
NJ						x					x		x										

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Chart Six - Considerations in Determining Release Conditions																							
State	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W
NM	x	x	x	x		x	x	x	x	x		x	x	x	x	x	x	x	x				
NY						x																	
NC	x	x	x	x		x					x												
ND	x	x	x	x		x				x			x										
OH	x	x	x	x		x					x		x										
OK						x																	
OR	x	x	x	x		x				x		x	x								x		x
PA						x																	x
RI*						x														x			
SC	x	x	x	x		x				x			x										
SD	x	x	x	x		x				x	x		x										
TN	x	x	x	x		x							x							x			
TX*						x					x						x				x		
UT						x					x												
VA	x	x	x	x		x		x		x			x										x
VT*	x	x	x	x		x				x*	x		x	x*									
WA	x	x	x	x	x	x				x		x	x	x								x	
WV						x					x	x											
WI	x	x	x	x		x							x	x									
WY	x	x	x	x		x				x			x										
TOTAL	31	31	29	28	4	51	6	6	8	20	12	12	33	11	6	5	5	5	2	5	3	2	4

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Chart Six - Considerations in Determining Release Conditions

*Notes:

CT: A, O, W to be considered in felony cases only; also to be considered in felony cases, history of violence and previous convictions while on bond for similar offenses.
FL: Also street value of drugs
IL: Also age, physical condition of person assaulted
ME: Also defendant's past conduct
MD: T, relevant to appearance; also recommendation of agency conducting pretrial release investigation; d.a., information of defense counsel
MS: O, in victims rights statute
NC: Also, alcohol use
TN: T, relevant to appearance
VT: Also, number of offenses charged
VA: E, H, I, K, M, T, considerations only when deciding whether to release on own recognizance or unsecured bond; T, relevant to appearance
WA: Also, record of committing offenses while on pretrial release

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mental health testing and treatment; specified curfew; prohibition on intentionally following the victim; prohibition on going to or near the residence, place of employment, or business of the victim or a member of the victim's immediate family; prohibition on going to or near a school, day-care facility, or similar facility where a dependent child of the victim is in attendance; and such other conditions that may be necessary to ensure the protection of the victim and the victim's immediate family.

At least 34 states include in their list of conditions a "catch-all" phrase relating to ensuring appearance, such as "and any other conditions necessary to ensure appearance." Eleven states, including the 10 that identify public safety as a purpose of release conditions, list among the conditions that may be ordered conditions necessary to ensure public safety. One additional state -- South Dakota, where assuring appearance is the sole stated purpose of release conditions -- provides that "[i]n determining which conditions of release will reasonably assure appearance, a committing magistrate or court shall, on the basis of available information, take into account ... the risk that [the defendant] will flee or pose a danger to any person or to the community." A description of states' provisions regarding pretrial release conditions is provided in Chart Seven.

Bail Hearings

Because of the dangers stalkers pose, it is important that the judicial authority be aware of the circumstances of individual cases before releasing alleged stalkers. Conditions of release can best be tailored to the needs of the accused and the victim alike at a formal hearing at which both are present and heard. While release determinations should take place in as timely a fashion as possible, slight delays to enable victim participation are appropriate. If it is impractical for the victim to participate or if the victim chooses not to participate, relevant information about any specific dangers to the victim and efforts by the victim to stop the alleged stalking should be conveyed to the court by the police, pretrial service agency personnel, or other appropriate officials.

Victim Notification

Few pretrial release or bail statutes, as opposed to a number of victims' rights statutes, require victims to be notified of the pretrial release of their alleged perpetrators. An exception is Montana's bail statute: "... Whenever a person accused of a violation of [stalking] is admitted to bail, the court shall, as soon as possible under the circumstances, make one and if necessary more reasonable attempts, by means that include but are not limited to

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Chart Seven - Special Conditions of Release

A = Subject to custody of person/organization agreeing to supervise
B = Restrictions on travel
C = Restrictions on associates
D = Restrictions on place of abode
E = Restrictions on movements
F = Money security
G = Prohibition on possessing weapons
H = Prohibition of drugs/alcohol
I = Reporting requirements
J = Custody at specified time (e.g. night/weekend)
K = Special conditions in domestic violence cases
L = "No contact" with victim
M = "Other conditions necessary" to ensure appearance
N = "Other conditions necessary" to ensure safety
O = Maintain/seek employment
P = Maintain/seek education
Q = Drug treatment/testing
R = Mental health treatment
S = Specified curfew
T = Probation/official supervision
U = Confinement to residence
V = Other conditions necessary to ensure judicial integrity
W = Other conditions court may impose
X = No victim/witness intimidation/harassment

Chart Seven - Special Conditions of Release

State	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X
AL	x	x	x	x		x				x			x											
AK	x	x	x	x		x				x	x		x											
AZ	x	x				x	x		x				x											
AR	x	x	x	x	x	x				x			x							x				
CA						x																		
CO	x					x							x											
CT	x	x	x	x		x						x		x*	x	x	x							
DE*	x	x	x	x		x		x	x			x	xx	x				x						
DC						x																		
FL						x						x												
GA						x					x													

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Chart Seven - Special Conditions of Release																								
State	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X
HI		x				x	x		x			x	x	x	x	x		x	x					
ID						x																	x	
IL	x	x	x		x	x	x	x	x				x	x	x	x	x	x						
IN	x	x	x	x	x	x						x	x							x				
IA	x	x	x	x		x				x			x	x										
KS	x	x	x	x		x				x			x				x*				x			
KY	x	x	x	x		x				x			x											
LA						x							x											
ME*	x	x	x	x		x	x	x	x	x		x	x		x	x		x				x		
MD	x	x	x	x		x							x							x				
MA						x					x													
MI						x																		
MN*	x	x	x	x		x				x			x											
MS						x																		
MO	x	x	x	x		x			x	x			x											
MT	x	x	x	x		x	x	x	x	x		x	x	x	x				x					
NE	x	x	x	x		x				x			x											
NV						x					x	x*	x											
NH						x							x	x										
NJ						x					x		x											
NM	x	x	x	x		x	x	x	x	x		x	x	x	x	x	x	x	x					

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Chart Seven - Special Conditions of Release																								
State	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X
NY						x																		
NC	x	x	x	x		x					x													
ND	x	x	x	x		x				x			x											
OH	x	x	x	x		x					x		x											
OK						x																		
OR	x	x	x	x		x				x		x	x								x		x	
PA						x																	x	x
RI*						x														x				
SC	x	x	x	x		x				x			x											
SD	x	x	x	x		x				x	x		x											
TN	x	x	x	x		x							x							x				
TX*						x					x						x				x			
UT						x					x													
VA	x	x	x	x		x		x		x			x										x	
VT*	x	x	x	x		x				x*	x		x	x*										x
WA	x	x	x	x	x	x				x		x	x	x								x		
WV						x					x	x												
WI	x	x	x	x		x							x	x										x
WY	x	x	x	x		x				x			x											
TOTAL	31	31	29	28	4	51	6	6	8	20	12	12	34	11	6	5	5	5	3	5	3	2	4	3

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Chart Seven - Special Conditions of Release

*Notes:

CT: N, in felony cases only
DE: Also, support of family; no contact with children (in child sex abuse cases)
KS: Q, only for those charged with felony
ME: Also, reporting to accused's attorney; providing court name, etc. of person who will know whereabouts of accused at all times, etc.
MN: Also, electronic monitoring.
NV: L, in harassment cases only
RI: Also, intensive supervision, community confinement
TX: Also, electronic monitoring. For defendants charged with stalking, COR may include prohibiting direct or indirect communication with victim, going near school, place of business or victim or near school, day-care facility, etc. of victim's child.
VT: N, physically restrictive conditions to be imposed only in extraordinary circumstances

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certified mail, to notify the alleged victim or, if the alleged victim is a minor, the alleged victim's parent or guardian of the accused's release." Under Georgia law, the law enforcement agency, prosecutor, or court directly involved with the victim at the outset of a criminal prosecution for stalking must notify the victim that the victim may provide a telephone number to be used by the custodian of the accused to inform the victim of the defendant's release from custody.

Stalking victims have an obvious concern about the release of their alleged stalkers as well as in any release conditions relevant to their own safety. Such awareness enables victims to plan their own lives accordingly. It also enhances their ability to report violations and, as a consequence, improves the likelihood of compliance. Therefore, states should consider including provisions in their pretrial release or bail laws requiring authorities to make reasonable efforts to provide victims with copies of relevant pretrial release orders together with information about how and to whom to report alleged violations and the sanctions for violations. Notification can be made contingent upon the victim providing a current address or telephone number or upon the victim's request for such notice if there is a means whereby the victim is informed of such requirements.

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CHAPTER V

STRATEGIES FOR IMPLEMENTING STALKING STATUTES AND PROTOCOLS: MANAGING STALKING CASES IN THE CRIMINAL JUSTICE SYSTEM

A strategy for dealing with stalking should recognize and take into account the existence of a significant variety of stalkers and stalking behaviors. An anti-stalking strategy should be sufficiently flexible to permit police, prosecutors, judges, social services professionals, and other criminal justice officials to customize intervention approaches to individual stalkers' behavior, mental status, and public safety risk. An anti-stalking strategy that is based upon the assumption that all stalking behavior is similar is likely to prove faulty.

Moreover, an effective response to the crime of stalking is unlikely to be found in the criminal justice system alone. States should consider developing multidisciplinary approaches that are targeted to early intervention in suspected stalkings.

A multidisciplinary approach would integrate strategies for protecting and providing services for stalking victims; apprehending and prosecuting alleged stalkers; and managing and providing treatment for convicted stalkers. Such an approach also would recognize the potential difficulties of bringing diverse agencies together for a shared purpose and would incorporate strategies to overcome barriers to interdisciplinary cooperation.

A Case for a Multidisciplinary Approach to Stalking

Stalking is a complex social problem. The uncertain motives and intentions of the suspected stalker and his obsessive and unpredictable behavior place his victim at great risk of bodily injury or death, as well as psychological trauma.

A principal objective of an anti-stalking strategy is to intervene in a suspected stalking before the stalking victim is injured or killed. States' criminal codes provide for intervention of the criminal justice system when a citizen's actions violate the law. However, criminal justice officials are limited in their authority to intervene in the legal actions of a citizen even if it is feared or suspected that the citizen plans to commit a crime.

Police officials, prosecutors, and judges may believe that early intervention in a suspected stalking case is warranted because of perceived risks to the victim. However, these officials' ability to make a compelling argument

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for official intervention in the suspected stalker's activities will hinge on whether they can show evidence that he poses a real danger to his victim--that he intends and has the capacity to harm his victim.

Ironically, states' enactment of legislation that treats stalking as a felony offense may place even greater limitations on criminal justice officials' ability to intervene in suspected stalkings. If stalking is treated as a felony, stalking statutes only will apply to the most egregious conduct. Therefore, officials may not be able to act, based on the stalking statute, until a suspected stalker's behavior actually causes a victim to fear death or bodily injury.

A multidisciplinary approach may provide a means of overcoming these limitations on and barriers to criminal justice officials' early intervention into stalking. A multidisciplinary approach may expand opportunities and options to intervene early in suspected stalking cases to prevent the stalking victim's injury or death. Under a multidisciplinary approach to stalking, the police may be able to work through social services providers to recruit the help of the suspected stalkers' family, friends, or associates in securing appropriate treatment for the stalker. A community legal services organization might be tapped to provide the stalking victim with help in securing a civil protection order. A victims' services organization might provide counseling or other services to help the victim cope with the anxiety and trauma of being stalked.

Moreover, a multidisciplinary approach may promote a public awareness and understanding of stalking and a corresponding appreciation among legislators and policymakers of the need to complement enforcement and prosecutorial strategies for apprehending and convicting stalkers with early intervention in suspected stalkings; with appropriate correctional and treatment options for managing convicted stalkers; and with a system of services for stalking victims.

A multidisciplinary strategy also should incorporate strategies to overcome organizational, fiscal, and other barriers to interdisciplinary cooperation. Creating a multidisciplinary response to stalking will involve forging a partnership among agencies and organizations that have varying and sometimes incompatible missions and that may compete with each other regularly for scarce public resources.

A social service provider sees signs of mental illness in a suspected stalker's behavior and advises a regimen of outpatient treatment and community supervision. A police officer seeks to arrest and detain an individual who has frightened and harassed a victim to minimize the risk of the injury or death. Each shares a mutual concern for the stalking victim.

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But each will have to overcome professional biases and practical and philosophical differences to arrive at a common ground for cooperation. Therefore, agencies should be encouraged to build upon their mutual concern for the stalking victim to establish a foundation for a multidisciplinary approach to stalking.

Developing Multidisciplinary Strategies

A multidisciplinary approach should involve the enforcement community, the judicial system, correctional and social services agencies, victims' services and advocacy groups, and community organizations. Such an approach should incorporate protections and services for the stalking victim; strategies for intervening early in the suspected stalker's behavior; appropriate sanctions for the convicted stalker; and treatment services for stalkers who can be helped by medical or psychiatric intervention.

In developing a multidisciplinary approach, officials may wish to consider the following policy questions:

- Structuring a Multidisciplinary Approach: What systems and disciplines should be involved in handling stalking incidents, suspected stalkers, and stalking victims? What administrative structures and management tools would promote and facilitate cooperation on formulating and implementing anti-stalking strategies? What non-governmental, community organizations should be involved in multidisciplinary approaches to stalking?
- Information Needs: What information do these disciplines need about suspected stalkers and their behavioral histories? About stalking incidents? About stalking victims?
- Interdisciplinary Communication: What information about stalkers' behavior needs to be communicated to all systems and disciplines involved in handling stalking incidents, suspected stalkers, and victims? How is information about stalkers and their behavioral histories communicated to all systems and disciplines involved in handling stalking incidents, suspected stalkers, and victims?
- Informing Victims: What information about suspected stalkers and their behavioral histories should be communicated to the victim? How should information about stalkers and their behavioral histories be used to protect stalking victims? Who should communicate information about suspected stalkers and their behavioral histories to victims?

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The U. S. Secret Service's Mental Health Liaison Program

The U. S. Department of the Treasury's U. S. Secret Service in its assigned role of providing personal protection for the president and other selected U. S. and foreign officials, possesses the unique responsibility among law enforcement organizations in this country of making and acting on predictions of violence.[95] To provide its personnel the capacity to make such predictions, the Secret Service since 1986 has operated an interdisciplinary mental health consultation program that provides Secret Service agents help from experienced forensic mental health professionals in evaluating the dangerousness of people who threaten to harm or may pose a threat to the president or other public officials.

The Secret Service's Mental Health Liaison Program is the outgrowth of a 1984 study by the National Academy of Science's Institute of Medicine that noted a high incidence of mental illness among individuals who come to the Secret Service's attention as a result of their threats against public officials.[96] The Institute observed that Secret Service agents might benefit from the help of forensic mental health professionals in making assessments of suspects and suggested that the Secret Service explore opportunities for establishing working relationships between mental health professionals and field agents.

A key feature of the Secret Service's Mental Health Liaison Program is the opportunity created for mental health providers and law enforcement officials to exchange information on their respective disciplines' required protocols and responsibilities. Secret Service agents are educated by mental health professionals in relevant medical and psychiatric concepts and practices, and mental health providers become acquainted with laws, policies, and police procedures that govern Secret Service agents' interaction with crime suspects.

Currently mental health consultation services are available in each of the Secret Service's field offices. In addition to cooperating on individual cases, Secret Service officials and forensic mental health consultants also have been involved in making joint presentations to law enforcement and mental health agencies and professional

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[95] The U. S. Secret Service is charged under 18 U.S.C. §3056 with providing personal protection for the president and his family, the vice president and his family, former presidents, their spouses, and their children under aged 16; visiting heads of state; major presidential and vice presidential candidates in election years; and certain other designated persons. Under 18 U.S.C. §871, making a threat against the president is a federal offense punishable by a maximum sentence of five years in federal prison and a $1,000 fine.

[96] NATIONAL ACADEMY of SCIENCE, Institute of Medicine, *Research and Training for the Secret Service: Behavioral Science and Mental Health Perspectives* (1984).

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organizations on mental health liaison activities. Under funding from the NIJ, the Secret Service has worked with forensic mental health professionals to conduct research involving the examination of the behavioral histories of people who have assassinated, attacked, or pursued with the intent and apparent means of attacking a U. S. president, high-level public official, or other prominent or publicly recognized persons such as film stars and television personalities.

Managing Stalking Cases in the Criminal Justice System

The principal responsibility for managing stalking cases falls within the purviews of the various functions and agencies of the criminal justice system.

Police officers, prosecutors, defense counsel, judges, and corrections professionals, including probation and parole authorities, will play varying roles in managing suspected stalkers and stalking cases as they proceed through the criminal justice system. To perform their respective roles effectively, these officials need the necessary legal and management tools, funds, and training.

Training for Criminal Justice Personnel

Criminal justice officials should be provided training in the characteristics of stalkers and their behaviors. These officials should be trained to recognize and assess the suspected stalker's potential for violence and the danger that he may pose to his victim.

Criminal justice personnel should be provided training in:

- the dynamics of stalking behaviors and violence;
- the provisions of stalking laws;
- stalking intervention strategies, particularly strategies for intervening early in suspected stalkings;
- managing stalking cases, including making field assessments of the dangerousness of suspected stalkers, providing protection for stalking victims, and gathering evidence in suspected stalking cases;
- preventative and self protective measures for stalking victims, including varying routes of travel, residence security and perimeter lighting, emergency plans of action for evading or fleeing a suspected stalker and contacting police in a stalking incident.

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Where two or more criminal justice disciplines have shared and compatible training needs, states should consider developing interdisciplinary training resources. Interdisciplinary training may provide an opportunity to reduce costs of training while at the same time improving the quality of the training itself. Moreover, interdisciplinary training might help establish a foundation for better relationships and improved cooperation among different criminal justice disciplines. For example, police and prosecutors might be trained together in the provisions of a particular jurisdiction's anti-stalking law. Prosecutors might gain insight into the difficulties police encounter in handling stalking cases and police might acquire a fuller appreciation of the evidentiary requirements in stalking cases.

Training for Police

In many cases, early intervention by police officials may hold the key to protecting the stalking victim from bodily injury or death. The police are likely to receive a stalking victim's first formal complaint concerning an alleged stalker's activities and, therefore, may have the first or only opportunity to intervene in the suspected stalker's behavior before that behavior becomes violent.

However, most police organizations do not possess the necessary knowledge or resources to help them evaluate a suspected stalker's behavior or determine whether he poses a real danger to his victim and has the capacity to follow through on his threats and, consequently, may be unable to make a compelling case to intervene in the suspected stalker's activities. Most police officials are well trained in investigating crimes. By contrast, police officers generally are not charged with nor are they routinely asked to assess an individual's potential for violence and to intervene in that individual's behavior based upon that prediction. In basic training, police recruits are taught to recognize and properly gather and secure physical evidence to prove that a crime has occurred and to help identify the perpetrator of that crime. Police officials are neither trained nor provided the necessary resources to gather and evaluate non-criminal justice, behavioral, social, or psychological information about an individual for use in assessing that individual's potential for violence.

Police officials need guidance and training concerning stalking in four principal areas: the provisions and evidentiary requirements of stalking laws; identifying and monitoring stalking incidents; assessing the potential dangerousness of suspected stalkers; and assisting stalking victims.

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Stalking is a recent phenomena among recognized crime issues in this country. Where states have enacted stalking laws, they have done so in the past three years and many of these laws have yet to be tested in a court of law. At present, few police officials in this country are receiving training in stalking laws or managing stalking cases. This deficiency should be remedied by incorporating instruction on stalking into police recruit and roll call and in-service specialized training curricula. The definitions of stalking vary greatly from one state code to another. Likewise, police officers', prosecutors', judges', and other criminal justice officials' understanding of stalking and the provisions of stalking statutes varies among officials, even officials working in the same agency or jurisdiction.

Formulating and Using Protective Orders in Stalking Cases

Characteristic of stalking is the element of escalation that raises what initially may be bothersome and annoying, but legal, behavior to the level of obsessive, dangerous, violent, and even fatal acts. Stalking victims, therefore, need to be provided with appropriate means to protect themselves against potential violence before it occurs.

Protective orders can serve as the first formal intervention in the stalker's behavior. The protective order puts the suspected stalker on notice that his behavior is unwanted and that any further 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 a defendant into custody immediately if he violates the order.

There are two factors, however, that may limit the applicability to 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 a protective order. Furthermore, recent studies suggest a need for reexamination of and improvements to the enforcement of civil protection orders.

Eligibility for Protective Order

Most states have statutes authorizing civil orders of protection in domestic abuse cases. States should consider reviewing their protective order statutes to determine whether, under present provisions, protective orders would be available to all stalking victims.

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All protective order statutes limit in some way eligibility for protective orders, but states vary in the limits they place upon applicants. States offering the broadest eligibility permit individuals who currently live with, or who once lived with another individual; individuals who have a child in common; and the minor child or one or both parties to apply for protective orders. Other states place stricter limitations on who is eligible to apply for a protective order. Some states, for example, require that the applicant is married or has been married to the person against whom the protective order is sought while other states require that the applicant for the protective order live in the same residence as the person against whom the protective order is sought.

In order to provide a means of early intervention in stalking cases, states may want to consider amending their statutes to provide all stalking victims, regardless of their relationship--past or present--to the defendant, with the opportunity to obtain protective orders.

Elements of a Stalking Protective Order

All protective order statutes provide procedures for temporary orders to be issued on an emergency basis and without the defendant being present. States may wish to consider adopting legislation and complementary procedures that allow protective orders to be issued on an emergency basis after court hours. Once an emergency or temporary order has been issued, a hearing on the issuance of a permanent order is scheduled.

Protective orders typically prohibit a defendant from communicating with the victim and from entering the residence, property, school, or place of employment of the victim. Protective orders also may require a defendant to stay away from any place frequented by the victim that is specified in the order.

Mental illness and substance abuse are considered to be major factors in the behavior of a suspected stalker in some cases. Judges should consider incorporating substance abuse monitoring and treatment, and mental health counseling recommendations into restraining orders where the existence of these conditions can be documented.

Enforcement of Protective Orders

In order for protective orders to be enforced effectively, all concerned parties, including the victim, the defendant, the court system, and probation and parole officers, need to be aware of their existence and their specific terms. States should, therefore, consider reviewing their protective order statutes' notification procedures to ensure that they provide adequate notification protocol to all parties of the existence and specific terms of an order. For

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example, states should consider implementing a procedure to ensure that a defendant receives a copy of a protective order issued against him and an explanation of the possible consequences in the case of a violation.

In most states, law enforcement officials have authority to make warrantless arrests if they have probable cause to believe that a defendant has violated a protective order. In many states, violating a protective order is a misdemeanor. In many jurisdictions, charges for civil or criminal contempt can be brought as an alternative or in addition to misdemeanor charges.

States may wish to consider enacting legislation that would allow their courts to enforce a protective order issued by another jurisdiction in cases in which one of their courts is informed by a victim that he has obtained a protective order in a foreign jurisdiction and that it has been violated in the non-issuing jurisdiction. Such a provision would be helpful particularly to victims who relocate as a result of stalking but who are followed to the new location by their suspected stalkers.

According to the U. S. Department of Justice, National Institute of Justice (NIJ) report on civil protection orders:

> Enforcement is the Achilles' heel of the civil protection order process, because an order without enforcement at best offers scant protection and at worst increases the victim's danger by creating a false sense of security .... For enforcement to work, the courts need to monitor compliance, victims must report violations, and, most of all, police, prosecutors, and judges should respond sternly to violations that are reported. These conditions were not met in most of the jurisdictions examined for this report.[97]

This conclusion was affirmed recently in a study conducted by The Urban Institute and funded by the State Justice Institute.[98] The study examined a sample of cases in which temporary restraining orders were issued in Denver or Boulder, Colo., from January through September 1991. According to the study,

> Women were dissatisfied with the police response to violations. Although the police were rated highly by the women when they responded to the original incident that led to the temporary order, their rating plummeted when they responded to violation calls. Many women expected -- but did not obtain -- the man's arrest. Law enforcement and courts should reexamine the appropriateness of police response to violations and institute training and monitoring of enforcement of orders.[99]

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[97] Peter Finn and Sarah Colson, U. S. DEPARTMENT of JUSTICE, *Civil Protection Orders: Legislation, Current Court Practice, and Enforcement* (1990).

[98] Adele Harrell et al., THE URBAN INSTITUTE, *Court Processing and the Effects of Restraining Orders for Domestic Violence Victims* (1993).

[99] Id., at 79.

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The Urban Institute study also indicated that women rarely returned to court to seek a violation hearing. The study noted that courts had little control over several of the women's reasons for not returning, including fear of retaliation by the man; a sense that returning to court would not help the situation; and the cessation of abuse without court intervention. However, the study also noted that "one reason that some women did not go back to court was that they did not realize that they could return to court. That is something courts could do something about by judges making it clearer during the temporary and permanent hearings that women can return to court to report violations."[100]

These studies indicate a need to reexamine and improve the enforcement of civil protection orders. Specifically, victims need to be better informed of their rights once they have obtained a protection order and of the process by which violations should be reported. Similarly, defendants need to be better informed of what constitutes a violation of a specific protective order.[101]

Police also need to be better informed of how to respond to violations of protective orders. Prosecutors and courts need a better understanding of the sanctions available for prosecutions of violations of protective orders.

Double Jeopardy Implications of Protective Orders

Although civil protection orders may provide a means for early intervention in stalking cases, questions have been raised as to whether their usefulness is limited by the Double Jeopardy Clause of the U. S. Constitution, which prohibits the government from trying a defendant twice for the same offense. In June 1993, the U. S. Supreme Court, in U. S. v. Dixon, ruled that law enforcement officials can enforce protective orders through criminal contempt proceedings in addition to bringing subsequent criminal charges based upon the same conduct. From the Dixon decision, it appears that a criminal contempt prosecution of a defendant who violates a protective order will not bar a subsequent stalking prosecution in which the incident involving the violation of the protective order constitutes one of the incidents of stalking behavior. It is, however, likely that issues in this area will continue to arise.

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[100] Id.

[101] According to the study by The Urban Institute, "[m]any men seem to think that contacting their partners to 'work things out' did not violate no-contact orders." Id., at 80.

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The Dixon case involved two appeals from the District of Columbia Court of Appeals that had been combined. In one of the cases, Michael Foster was sentenced to jail after having been found in criminal contempt for violating two civil protection orders prohibiting him from threatening or physically abusing his estranged wife or her mother.

Foster later was indicted on charges of simple assault, threatening, and assault with intent to kill, which stemmed from the same incidents for which he was found in criminal contempt. The trial court ruled that the prohibition on double jeopardy did not require dismissal of the subsequent indictment. The appeals court ruled that the indictment was barred by the Double Jeopardy Clause. The appeals court relied on a 1990 U.S. Supreme Court decision, Grady v. Corbin, in which the Court ruled that a subsequent prosecution would be barred under double jeopardy if, in order to establish an essential element of the crime, the government would have to prove conduct that constituted an offense for which the defendant had already been prosecuted.

Justice Antonin Scalia, writing the majority opinion in Dixon, overruled the Grady decision, stating that it did not stand on firm constitutional ground. 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 contained in the other. If the charged offenses contain different elements, the offenses are not barred by double jeopardy. If all the elements of the crime already have been litigated in the first proceeding, the Double Jeopardy Clause applies and the second prosecution is barred.

The high Court held that the simple assault charge against Foster was barred by the Double Jeopardy Clause, but that the charges for threatening and assault with intent to kill were not barred. The charge of simple assault was barred because the elements necessary to prove a violation of the protective order were the same elements necessary to prove the crime of simple assault.

By contrast, the charge of assault with intent to kill was not barred, according to the majority's opinion. In order to find Foster in contempt, the prosecutor had to prove that Foster had knowledge of the protective order, an element that was not a necessary element for a conviction of assault with intent to kill. In order to prove the defendant committed assault with intent to kill, the government would be required to prove specific intent to kill. Specific intent to kill, however, would not need to be proved to find the defendant in contempt.

The criminal charges against Foster for threatening also were not barred. Foster was charged under a statute that forbade anyone to "threaten to ... kidnap any person or injure the person of another or physically damage [his

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property]." Therefore, for a conviction under the threatening statute, the state would be required to prove specifically that Foster had threatened to kidnap or injure the victim, or damage her property. Such a specific threat was not required to find Foster in contempt for violating the court order prohibiting him from threatening his estranged wife and her mother. Similarly, while it was necessary to prove that Foster had knowledge of the protective order to find him in contempt, in order to convict the defendant under the threatening statute there was no need for the state to prove that the threatening had occurred in violation of a court order.

In four separate opinions, various justices agreed in part and disagreed in part with Scalia's analysis. Four justices wrote that none of the subsequent prosecutions would be barred under double jeopardy, while three justices wrote that all of the subsequent prosecutions would be, constitutionally barred.

By violating a protective order, a defendant also may be committing an act, which if combined with other conduct may constitute 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 be required to prove the element of repeated behavior.

On the contrary, in order to find a defendant in criminal contempt for violating a protective order, the state needs to prove that the defendant knew about the protective order and that he 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 has been found in criminal contempt.

Policymakers, legislators, and law enforcement officials should be aware that the law in this area has been somewhat unsettled recently, as evidenced by the reversal of the Grady test, which was established only in 1990. Since it is likely that issues will continue to arise in this area, the states should keep abreast of developing case law and be prepared to make necessary statutory and procedural adjustments.

Internal Policies and Procedures

Law enforcement agency administrators should establish formal department policies and procedures for dealing with stalking cases. Department personnel should be trained in stalking policies and procedures and required to follow them rigorously. Police agencies should develop formal internal procedures for handling stalking cases. Law enforcement officials need to analyze critically how stalking cases are handled in their departments. Often, the

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procedures for handling stalking cases are informal. Most departments do not have the resources to establish separate units for investigating stalking cases. However, officials that in the course of their police work will be exposed to stalking cases should follow departmentally established procedures in handling stalking cases.

Protecting and Assisting Stalking Victims

Stalking victims are likely to suffer intense psychological anxiety. For this reason, provisions requiring that a victim be notified of a defendant's release from custody and of any release conditions are particularly important in stalking cases. Such provisions may serve to lessen a victim's anxiety. In addition, if a victim is aware of a defendant's release conditions and if the victim knows how to report a violation, a released defendant who continues to stalk a victim may be taken back into custody before he has a chance to cause more serious injury to the victim.

Virtually every state has general victims' rights statutes, as well as statutory provisions governing victims' compensation and procedures for obtaining a protective order. Most states also have an agency whose responsibilities extend beyond the processing of compensation claims or victim assistance grants to include encouraging greater local responsiveness to victim needs through interdisciplinary planning and training. States should consider reviewing their statutory and regulatory victim notification provisions, as well as the protocols of their victims' agencies. States may need to consider amending these provisions and protocols to meet the unique needs of stalking victims.

It is unlikely that law enforcement officials will be able to intervene immediately when a victim makes an initial stalking complaint. States, therefore, may wish to consider establishing procedures by which law enforcement officials could provide automatically information on obtaining a protective order to such victims. Protective orders can serve as a means of preliminary intervention. This information could be included on the back of the copy of the incident report given to a victim. Additionally, states should consider adopting measures that would ensure that victims who obtain a protective order are aware of its terms and of the proper procedures for reporting violations.

Stalking victims are obviously concerned about the release of their alleged stalkers as well as in any release conditions relevant to their own safety. Such awareness enables victims to plan their lives accordingly. It also enhances their ability to report violations and, as a consequence, improves the likelihood of compliance. Therefore, states should consider enacting victim notification provisions requiring authorities to make reasonable efforts to provide victims with copies of relevant release orders, together with information about how and to whom to report

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alleged violations and the sanctions for violations. Notification can be made contingent upon the victim providing a current address or telephone number or upon the victim's request for such notice, if there is a means whereby the victim may be informed of such requirements.

Police often are the first people that victims encounter after stalking incidents. With the proper training, officers can become important resources in helping victims deal with stalking. Police can inform victims of available options for seeking protection from the suspected stalking through the legal system; provide victims with the names and telephone numbers of advocacy groups, temporary shelters, and other resources to help them cope with the stalking incident; provide them with preventative and personal safety advice; and inform them of what they can do to help the police build a case against the suspected stalker.

Building Systems to Record, Retrieve, and Control Access to Stalking-related Information

By its nature, stalking involves repetitive acts. Consequently, evidence that an individual has engaged in stalking or related acts in the past is relevant to decisions about pretrial release conditions, sentencing, and the issuance of protective orders in stalking cases. States, therefore, should consider enacting legislation and establishing procedures that would encourage the judiciary's use of criminal history record information when making such decisions. 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.

In addition, potential stalkers may be able to gain access to personal information about their victims from public records, such as motor vehicle records and voter registration records. States may wish to 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. In examining these statutes, states will need to balance the public's right to access government records with an individual's right to privacy and the state's duty to protect its citizens. An additional concern of states in examining these statutes will be the potential revenues states can earn by charging for lists of motor vehicle and voter registration records.

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Criminal History Records

All states require criminal justice agencies to report arrest and disposition data for all serious offenses to a central criminal record repository. All states also authorize criminal justice agencies to obtain criminal history record information from the central repository for law enforcement purposes. In virtually all instances, accessible information includes current arrest information, conviction information, and non-conviction information, including information about cases without recorded dispositions or with dispositions favorable to the accused.

Federal regulations[102] governing criminal history record systems supported in whole or in part by federal funding require operational procedures to ensure that criminal history record information is complete and accurate. To be complete, arrest records must contain any disposition occurring in the state within 90 days after the disposition has occurred. Accuracy requires that data be collected, entered, stored, and audited to minimize the possibility of inaccurate information and also that notices of corrections be sent to all criminal justice agencies that have received inaccurate information.

Since repetition is an essential element of stalking, access to criminal history information about stalking or related crimes can be especially valuable in making decisions affecting alleged or convicted stalkers. Theoretically, such information is available to judicial authorities making decisions about bail, sentencing, and protection orders in all cases. There are, however, several limitations. To the extent that criminal history information in the state repository is limited to felonies, criminal history information about certain relevant misdemeanor offenses, such as harassment and domestic violence, may not be available. Moreover, information about civil protection orders, civil contempt citations for violations of such orders, and most juvenile records will not be included as these are not "criminal" matters.

Decisions about civil protection orders and bail must be made quickly. Therefore, if criminal history record information is not readily available, its use may be precluded in the decision-making process. Immediate, on-line access to criminal history record information varies considerably among courts. Those without such access are dependent on others to provide the information in a timely manner. For bail determinations, the police, prosecutor, or pretrial release agency often do ensure that the information is available to the court. However, courts are unlikely

[102] 28 C.F.R § 20.

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to receive such assistance when making decisions about protection orders, since the process is a civil one initiated by private individuals and, as such, does not involve law enforcement.

Finally, other statutes may limit the use of criminal history record information. For example, bail laws in at least 30 states explicitly authorize courts to consider criminal history record information in determining pretrial release conditions; however, half of these statutes only specifically mention conviction records, at least arguably precluding consideration of arrest and other non-conviction records. Consequently, even a "string" of arrests for related offenses would not constitute a "criminal history" that the court could take into account unless the arrests are accompanied by convictions.

Massachusetts has attempted to improve court and law enforcement access to relevant background information about a defendant by tracking protective orders in a statewide computerized registry of domestic violence offenders. The state Office of the Probation Commissioner receives a copy of every application for a protective order. The office searches both the registry of domestic violence offenders and the state's criminal history records for relevant information. Any information is made available to the court to assist it in making a decision about whether a protection order should be issued and, if so, what conditions should be included. A copy of each protection order is sent to the state Office of the Probation Commissioner and the data is immediately entered into the computerized registry. The registry documents approximately 200 protective orders each day.

Motor Vehicle Records

Twenty-nine states[103] place no restrictions on the availability of registered drivers' home addresses. The 21 remaining states and the District of Columbia impose various restrictions on public access. However, only two of these states -- California and Virginia -- completely prohibit individual access to individual drivers' records.

In 1989, the California legislature passed a law classifying any home address in any record of the Department of Motor Vehicles (DMV) as confidential.[104] The law prevents "the disclosure of any citizen's home address to any person, except a court, law enforcement agency or other governmental agency." In 1990, the law was amended to

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[103] The following states place no restrictions on the availability of registered drivers' home addresses: Alabama, Connecticut, Florida, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Wisconsin, and Wyoming.

[104] CA Vehicle Code §1808, et seq.

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permit attorneys to access residential addresses if the information is "necessary to effectively represent [their] client[s]." The law does not apply to insurance companies, but it denies access to direct marketers and other commercial users.

Only insurance companies, school boards, law enforcement, courts, and valid employers have access to the records in Virginia.[105] According to the Virginia DMV, before a driver's record will be released to a prospective employer, the employer must submit identification and be subject to verification. The Virginia Department of Information and Technology (DIT) provides motor vehicle reports, which include drivers' addresses, through an on-line access computer network. The DIT cannot release motor vehicle reports without authorization from the DMV. The DMV does not allow individual access to motor vehicle reports.

In 1992, the Oklahoma Department of Public Safety decided to restrict the release of certain information included in drivers' registration records.[106] Disclosure of residential addresses on record abstracts is prohibited. Abstracts are the only documents available to requestors who cannot show proof of an accident or another valid reason for which the information is needed. Individuals who show a valid purpose for their request can gain access to the complete record, including the driver's address.

Since 1992, a Colorado registered driver can request that his home address be kept confidential if the individual has reason to believe that he or a member of his immediate family who resides in the same household will be subject to harassment or will otherwise be in danger if the information is disclosed.[107]

An applicant for a driver's license in Minnesota may request that his residential address be classified as private data.[108] The agency must grant the classification upon receipt of a signed statement by the individual that the classification is required for the safety of the applicant or his immediate family. The statement also must provide a valid, existing address where the applicant may receive service of process.

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[105] VA. Code Ann. §46-2-212 (1993).

[106] OK Stat. tit. 47 § 6-117 (1992).

[107] CO Rev. Stat. § 42-1-206 (1993).

[108] Minn. Stat. Ann. § 171.12 (1993).

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Connecticut judges, magistrates, and municipal and state police may furnish a business address when registering for a driver's license, which will be available for public inspection.[109] Oregon has a similar provision for police officers and certain public employees.[110]

In Alaska, a private individual seeking to obtain a copy of another individual's driving record must have a signed release from the driver or a subpoena. Alaska provides both a residential and a mailing address on the driving record.[111]

If an individual in Georgia requests the driving record of another person, a request form must be signed by the driver and notarized.[112] Similar authorization requirements are found in Arkansas,[113] Hawaii,[114] Montana,[115] North Carolina,[116] Pennsylvania,[117] and Washington.[118]

The District of Columbia releases a driver's record, which includes a residential address, only with the permission of the driver or in response to a request from a law enforcement or other governmental agency.[119]

In North Dakota, the commissioner of transportation is required to send a copy of the record abstract to the driver whose record was requested.[120] The abstract must be accompanied by a statement identifying the requestor, the person or company for whom the request was made, and the intended recipient of the record. The abstract also

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[109] Conn. Gen. Stat. Ann. §14-10 (1993).

[110] OR Rev. Stat. §802.250 (1991).

[111] Alaska Stat. §28.15.151 (1992).

[112] GA Code Ann. § 40-5-2 (1993).

[113] Ark Code Ann. §27-16-403, §27-50-906 (1992).

[114] Haw. Rev. Stat. §286-172 (1991).

[115] Mont. Code Ann. §61-11-105 (1991).

[116] N.C. Gen. Stat. §20-26 (1992).

[117] PA Cons. Stat. §6114(b) (1993).

[118] Wash. Rev. Code §46.52.130 (1991).

[119] 5 USC §552 (1993).

[120] N.D. Cent. Code §39-16-03 (1991).

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must provide the reason for the request. Illinois has a similar provision.[121] At the secretary of state's discretion, the affected driver may be notified of a request to purchase his driver's record. There is a 10-day waiting period prior to release of the information for all requestors, except law enforcement officials. Neither North Dakota nor Illinois allows a driver to remove his address from the record prior to disclosure.

In Wisconsin, any person can request driver record data, and no restrictions are imposed upon the use or resale of records.[122] However, effective April 1, 1993, individuals can "opt-out." The Transportation Department will withhold an individual's home address from his record when a driving record series containing 10 or more names is requested. The provision is not available if less than 10 records are requested.

Registered drivers in Delaware[123] and Oregon[124] may request that their names be excluded from any lists compiled and sold or otherwise supplied for direct mail advertising purposes.

Driver records that contain the home address are public information in Nevada.[125] Requestors must explain the nature of the inquiry and the reason they need the information. The requestor must use the information solely for the intended purposes, or be subject to criminal liability. The request form states in part: "I hereby declare under penalty of perjury that the information received will not be used for an illegal purpose or unwarranted invasion of a particular person's privacy, nor will I release or sell any information received through this application to any other party for use by such party." Louisiana[126] and West Virginia[127] have similar provisions.

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[121] 625 ILCS 512-123 (1993).

[122] Wis. Stat. Ann. §343.24 (1991-1992).

[123] Del. Code Ann. tit. 21 §305 (1992).

[124] OR. Rev. Stat. §192.420.

[125] Nev. Rev. Stat. Ann. §239.010 (1991).

[126] LA. Rev. Stat. Ann. §32-409 (West 1993).

[127] W. VA. Code §17A-2-14 (1993).

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Voter Registration Information

In most states and the District of Columbia an individual's residential address on his voter registration is public record and open to public inspection. The information is available at the county recorder's office and through the state agency responsible for maintaining voter registries.

Alabama shelters residential addresses contained in voter registration records from public disclosure. State voter registration applications, which include the voter's home address, are protected from public inspection.[128] The statute provides that registration applications "shall not become public records ... nor shall the board or its deputies disclose the information ... except with the consent of the person who filed."

In Hawaii, individuals may not have access to voter registration information, except for electoral or governmental purposes.[129]

North Carolina's law provides that no registrar of voters shall furnish lists of registered voters or permit the registration records of his precinct to be copied.[130] However, the chairman of each political party in the county is entitled, upon written request, to one free list of all registered voters in his county.

Some states place restrictions on the sale or transfer of records. Arizona makes it a misdemeanor for any official responsible for compiling or maintaining voter registration records to sell or transfer such information.[131] However, Arizona does not preclude public inspection.

California provides only a limited number of exemptions from disclosure under its voter registration law, unlike its motor vehicle record law.[132] Since 1992, California has allowed judges, district attorneys, public defenders, and police officers to restrict public access to the information on their voter registration cards. These individuals can request confidentiality of their home addresses at the time of registration.

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[128] Ala. Code § 17-4-122 (1987).

[129] Haw. Rev. Stat. §11-14.6 (1992).

[130] N.C. Gen. Stat. §163-66 (1991).

[131] Ariz. Rev. Stat. Ann. §16-168.

[132] Cal. Elec. Code § 615 (West 1993).

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Colorado's law, which allows residents to restrict public access to their home address through the DMV if they can show cause for the protection, applies to voter registration records as well.[133]

[133] CO Rev. Stat. § 42-1-206, Pub. Law 91-508, Title VI.

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CHAPTER VI

A NATIONAL RESEARCH AGENDA ON STALKING

Public policymakers have been hampered in their efforts to develop stalking laws and protocols by a lack of information, especially information that could help them identify timely, practicable, constitutional approaches to stalking and stalking intervention. In particular, officials need information that will help them assess a suspected stalker's potential for violence and to find ways to control an alleged stalker's behavior before that behavior becomes violent.

Research should be undertaken to develop information that would be specifically relevant to legislators, law enforcement officials, prosecutors, social service officials, and mental health practitioners. However, such research should be interdisciplinary in concept and approach. More information is needed on the dynamics of stalking, the characteristics of stalkers and their behaviors, the prevalence and dimensions of stalking, and the criminal justice system's current methods of handling suspected stalkers and their victims.

Short-term research should be geared toward addressing legislators' and public policymakers' needs as they develop stalking laws and policies. Long-term research should be undertaken to explore the pathology of stalking and to produce information that will help criminal justice and social service officials develop stalking intervention strategies. Stalking research may commence with an examination of the component behaviors of stalking.

The Status of Research on Stalking

Public and media interest in stalking is a relatively recent phenomena prompted by several highly publicized stalking incidents. Over the past three years, nearly every state, many local jurisdictions, and the federal government have considered and enacted anti-stalking legislation.

Until recently, however, this focus on stalking has not included a national research agenda. The U. S. Secret Service has conducted research on incidents involving threats against the president and other U. S. officials. This research involved the analysis of case files, criminal histories, and other information on persons who threatened, stalked, approached, or attacked public officials.

The LAPD's Threat Management Unit has examined stalkers' demographic characteristics and behavioral histories. The LAPD is the only municipal police agency in the country that operates an anti-stalking threat unit.

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The LAPD's Threat Management Unit also has explored the effectiveness of techniques for intervening in stalking behavior.

Although the Secret Service's and the LAPD's research provides important insights into stalking behavior, these organizations' works are limited in scope and focus. The Secret Service's research in particular is specifically targeted to public officials that are accorded special federal protections. The LAPD Threat Management Unit's study was based on information drawn from case files of 102 stalking incidents selected by the unit. The results of this research therefore cannot be generalized to most stalking cases.

For the most part, legislators and criminal justice officials have relied upon a decade of experience in dealing with domestic violence and crime victims to inform their attempts to formulate legislative and enforcement strategies for stalking. This country's experience with domestic violence has produced indisputable evidence of the risks of ignoring the potential for violence in these cases or failing to intervene as early as possible to change the victimizer's behavior toward his victim. Criminal justice and social service officials' experience in addressing the needs of domestic violence and other crime victims likewise has pointed up the devastating psychological as well as physical effects of the victimizer's behavior on the victim. Certainly, this experience is relevant to the crime of stalking and offers poignant insights that may help inform public policymakers' efforts to develop intervention strategies for suspected stalkers.

In general terms, stalking involves one person's obsessive behavior toward another person. The stalker's actions may be motivated by an intense affection for or an extreme dislike of the victim. Stalking behavior may be overtly irrational or violent or be centered upon benign acts that in another context might be welcomed or considered flattering by the receiving party. Over time, the stalker's behavior may have life threatening consequences for the victim.

The stalker may have no known or apparent relationship to or association with the victim. A stalker's behavior at first may be annoying to and unwanted by the victim but appear harmless and non-threatening to both the victim and law enforcement officials. Without notice or apparent reason, that behavior may turn violent rapidly.

Law enforcement officials may not be presented with visible evidence of the stalker's malevolence toward the victim as often occurs in domestic violence cases. These officials may be required to make subjective judgments of the veracity of the victim's claim of stalking and the reasonableness of the victim's fear of the alleged stalker.

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Stalkers and Their Behaviors

Stalking encompasses a broad range of motives and behaviors -- from erotomanic stalking of a celebrity, to obsessional following of a work colleague, to jealous harassment and attack of a partner in an estranged domestic relationship.

Stalking behavior may vary from case to case or even from incident to incident in a single case. One stalker may be angry with his victim for some real or perceived injury and pursue his victim through threatening letters and telephone calls. Another stalker may be enamored of his victim and make his interest known by sending flowers and gifts. The behavior of a third stalker toward his victim initially may be benign and motivated by affection but may become violent when the stalker perceives that his overtures have been rejected.

The stalker's motive and intent, his mental state, and the nature of his behavior toward his victim likewise will affect how the stalker responds to intervention by the police. One stalker may be deterred from further harassing his victim by a restraining order. Another stalker may consider the restraining order an affront and escalate his stalking behavior.

A strategy for dealing with stalking should recognize and take into account the existence of a significant variety of stalkers and stalking behaviors. An anti-stalking strategy should be sufficiently flexible to permit police, prosecutors, judges, social services, and other officials to customize intervention approaches to individual stalkers' behavior, mental status, public safety risk, and any other pertinent factors. An anti-stalking strategy that is based upon the assumption that all stalking behavior is similar is likely to prove faulty.

Legislators and criminal justice officials, therefore, need substantive, multidimensional information about stalkers and stalking behavior to guide them in developing tools to evaluate the behavior of individual stalkers and predict their potential for violence. Information on stalkers and their behaviors also is central to formulating strategies to intervene in stalkers' behavior before that behavior results in the victim's injury or death.

A logical place to start in formulating information about stalkers and stalking patterns is the stalker case file. In general, two types of information could be developed about stalkers and their behaviors by studying stalkers' case files:

- a demographic profile of the stalkers;
- a behavioral history of the stalkers.

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Stalkers' Demographics

A demographic profile of stalkers would include a stalker's race, sex, age, physical description, education, and marital and employment status.

Demographic information describes the stalker and therefore may be of interest to legislators, policymakers, and practitioners. However, it is unlikely to prove useful in developing tools to evaluate and predict behavior and formulate intervention strategies because it does not provide any insight into stalkers' behaviors.

Stalkers' Behavioral Histories

Public policymakers and criminal justice officials need information that will help them gain insights into the pathology of stalking and the dynamics of stalking behaviors. These officials need to understand the motives and behaviors of stalkers--what triggers their behavior and what might be done to halt that behavior.

The stalker's behavioral history would include criminal history, especially convictions for crimes involving harassment and/or violence; evidence of substance abuse; and other indicators of the stalker's anti-social, harassing, or threatening behavior.

Behavioral history is possibly the most potentially relevant of the two categories of information on stalkers' characteristics. Information on stalkers' behavioral histories can provide important insights into how and why the stalker has selected the target; the level of risk the stalker's behavior may pose for the victim; and the probability that the stalker's behavior will become violent and life-threatening for the victim.

Behavioral history information also may point up recognizable patterns and provide a comparative basis for making a qualitative assessment of an active stalker's behaviors. If analysis shows that the active stalker is pursuing a course of actions that in a previous case culminated in the victim's injury, enforcement officials may have a legal basis for intervening in the stalker's behavior. Officials also may use this information to advise stalking victims of any risks they may face from the stalker and direct them to sources of legal or protective services.

Research should be undertaken to respond to the following questions:

- What information currently is available about stalkers and their behavioral histories?
- Is stalking a new behavior? Have allegations of stalking behavior increased over the past three years? How prevalent was stalking 20 years ago?
- Do stalkers as a group exhibit any common characteristics or patterns of behavior?

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- 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 any mental disorders associated with stalking behavior?

Current Handling of Stalking Cases

Policymakers also are seeking information on the prevalence of the crime of stalking and the criminal justice system's current handling of stalking cases. This information is needed by these officials to inform their development of protocols to handle stalking cases.

Research should be undertaken to answer the following questions:

- How many persons are being arrested for stalking?
- How many of these arrests for stalking were made under stalking statutes? What charges were filed in stalking cases where arrests were made under non-stalking statutes?
- How many individuals arrested for stalking were convicted?
- How many individuals arrested for stalking were convicted for stalking under stalking statutes?
- What charges were adjudicated in other cases that produced convictions for stalking?
- What sentences did stalkers receive in cases adjudicated under stalking statutes?
- What sentences did stalkers receive in cases adjudicated under non-stalking statutes?
- How many stalkers currently are under the jurisdiction of a civil or criminal court jurisdiction?
- Is information on stalkers and their behaviors being used to guide law enforcement and other criminal justice officials in handling stalking cases?

In addition to conducting research aimed at developing a database on the handling of stalking cases, research aimed at improving the effectiveness of civil protection orders also needs to be conducted. Research should be undertaken 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?

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- How well do law enforcement officials and judges understand the enforcement process for civil protection orders?

Research also should be conducted on private corporations' handling of incidents in which an employee is being stalked or an employee is using corporation resources to engage in stalking. Research should be undertaken to answer the following questions:

- Do corporations have policies or procedures in place to deal with alleged stalking incidents?
- At what point do corporations intervene in alleged stalking incidents?

In the end, stalking legislation's usefulness will be dependent upon the extent to which state public policymakers and criminal justice officials are aware of and take into account the philosophical and legal underpinnings of the model code in developing, refining, or implementing their own stalking statutes. A series of regional seminars would provide a practical vehicle for informing states' development and implementation of anti-stalking legislation. During these seminars, the model code, commentary, and recommendations could be used to help the criminal justice community explore legislative and programmatic approaches to addressing the problem of stalking. Technical assistance also should be provided to states that are experiencing difficulties with a particular issue in drafting or amending anti-stalking legislation.

Conducting Stalking Research

Research on stalkers and their behaviors should draw primarily from case files, criminal histories, and other sources of empirical, verifiable data. This data may be complemented by information gathered by researchers in interviews with stalkers; their victims; friends and associates of the stalker and the victim; police investigators; prosecutors; correctional administrators, including probation and parole personnel; and treatment and other social services providers. Research on stalkers' behaviors should not rely on stalkers' self-reports.

Studies of stalkers and stalking behavior should be carried out by unbiased researchers who have no personal knowledge of or involvement with the stalker, the victim, or the stalking incident itself.

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APPENDICES

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Petitioner Uber Ex-1040, 0112

APPENDIX A: RESPONDENTS TO PERF STUDY

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DOMESTIC RESPONDENTS TO PERF STUDY

STATE	POLICE DEPARTMENT
AK	ALASKA STATE POLICE DEPARTMENT
AK	ANCHORAGE POLICE DEPARTMENT
AK	LITTLE ROCK POLICE DEPARTMENT
AZ	GLENDALE POLICE DEPARTMENT
AZ	PHOENIX POLICE DEPARTMENT
AZ	SCOTTSDALE POLICE DEPARTMENT
AZ	TEMPE POLICE DEPARTMENT
AZ	TUCSON POLICE DEPARTMENT
CA	ALAMEDA COUNTY SHERIFF'S DEPARTMENT
CA	BERKELEY POLICE DEPARTMENT
CA	BREA POLICE DEPARTMENT
CA	CHULA VISTA POLICE DEPARTMENT
CA	CITY OF ORANGE POLICE DEPARTMENT
CA	CONCORD POLICE DEPARTMENT
CA	ESCONDIDO POLICE DEPARTMENT
CA	FREMONT POLICE DEPARTMENT
CA	OXNARD POLICE DEPARTMENT
CA	PASADENA POLICE DEPARTMENT
CA	REDONDO BEACH POLICE DEPARTMENT
CA	SACRAMENTO POLICE DEPARTMENT
CA	SAN DIEGO POLICE DEPARTMENT
CA	SANTA ANA POLICE DEPARTMENT
CA	STOCKTON POLICE DEPARTMENT
CA	TORRANCE POLICE DEPARTMENT
CA	TUSTIN POLICE DEPARTMENT

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CA UNIVERSITY OF CALIFORNIA SAN FRANCISCO POLICE DEPARTMENT

CA VACAVILLE POLICE DEPARTMENT

CA VALLEJO POLICE DEPARTMENT

CA WALNUT CREEK POLICE

CO ARVADA POLICE DEPARTMENT

CO BOULDER POLICE DEPARTMENT

CO COLORADO SPRINGS POLICE DEPARTMENT

CO DENVER POLICE DEPARTMENT

CO FORT COLLINS POLICE SERVICES

CO LAKEWOOD POLICE DEPARTMENT

CO LONGMONT POLICE DEPARTMENT

CO THORNTON POLICE DEPARTMENT

CO WESTMINSTER POLICE DEPARTMENT

CT MIDDLETOWN POLICE DEPARTMENT

DC WASHINGTON METROPOLITAN POLICE DEPARTMENT

DE NEW CASTLE COUNTY POLICE DEPARTMENT

DE WILMINGTON DEPARTMENT OF POLICE

FL BAY COUNTY SHERIFF'S OFFICE

FL BOCA RATON POLICE DEPARTMENT

FL CLEARWATER POLICE DEPARTMENT

FL FORT PIERCE POLICE DEPARTMENT

FL FORT MYERS POLICE DEPARTMENT

FL JUPITER POLICE DEPARTMENT

FL LAKE COUNTY SHERIFFS OFFICE

FL LAKE WORTH POLICE DEPARTMENT

FL METRO-DADE POLICE DEPARTMENT

FL MIAMI BEACH POLICE DEPARTMENT

FL ORLANDO POLICE DEPARTMENT

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FL	PINELLAS PARK POLICE DEPARTMENT
FL	PINELLAS COUNTY SHERIFF'S OFFICE
FL	POMPANO BEACH POLICE DEPARTMENT
FL	PORT ST. LUCIE SHERIFF'S OFFICE
FL	PORT ST. LUCIE POLICE DEPARTMENT
FL	ST. PETERSBURG POLICE DEPARTMENT
FL	TALLAHASSEE POLICE DEPARTMENT
FL	TAMPA POLICE DEPARTMENT
FL	WEST PALM BEACH POLICE DEPARTMENT
GA	AUGUSTA POLICE DEPARTMENT
GA	GWINNETT COUNTY POLICE DEPARTMENT
GA	SAVANNAH POLICE DEPARTMENT
HI	HAWAII COUNTY POLICE DEPARTMENT
HI	HONOLULU POLICE DEPARTMENT
HI	KAUAI POLICE DEPARTMENT
HI	MAUI POLICE DEPARTMENT
IA	DES MOINES POLICE DEPARTMENT
IA	SIOUX CITY POLICE DEPARTMENT
ID	BOISE POLICE DEPARTMENT
IL	AURORA POLICE DEPARTMENT
IL	CHICAGO POLICE DEPARTMENT
IL	ELGIN POLICE DEPARTMENT
IL	ILLINOIS STATE POLICE
IL	MOUNT PROSPECT POLICE DEPARTMENT
IL	NAPERVILLE POLICE DEPARTMENT
IL	PEORIA POLICE DEPARTMENT
IL	ROCKFORD POLICE DEPARTMENT
IL	SKOKIE POLICE DEPARTMENT

Petitioner Uber Ex-1040, 0117

IN	INDIANA STATE DEPARTMENT
IN	INDIANAPOLIS POLICE DEPARTMENT
KY	LOUISVILLE DIVISION OF POLICE
LA	LAFAYETTE POLICE DEPARTMENT
LA	SHREVEPORT POLICE DEPARTMENT
MA	BOSTON POLICE DEPARTMENT
MA	CAMBRIDGE POLICE DEPARTMENT
MA	FRAMINGHAM POLICE DEPARTMENT
MA	MASSACHUSETTS STATE POLICE
MD	ANNAPOLIS POLICE DEPARTMENT
MD	ANNE ARUNDEL COUNTY POLICE DEPARTMENT
MD	BALTIMORE COUNTY POLICE DEPARTMENT
MD	FREDERICK COUNTY SHERIFF'S DEPARTMENT
MD	HOWARD COUNTY POLICE DEPARTMENT
MD	PRINCE GEORGE'S COUNTY POLICE DEPARTMENT
ME	PORTLAND POLICE DEPARTMENT
MI	KALAMAZOO DEPARTMENT OF PUBLIC SAFETY
MI	SOUTHFIELD POLICE DEPARTMENT
MN	BURNSVILLE POLICE DEPARTMENT
MN	MINNEAPOLIS POLICE DEPARTMENT
MN	MINNETONKA POLICE DEPARTMENT
MN	ST. PAUL POLICE DEPARTMENT
MO	KANSAS CITY POLICE DEPARTMENT
MO	MISSOURI STATE HIGHWAY PATROL
MO	ST. LOUIS POLICE DEPARTMENT
MO	ST. CHARLES POLICE DEPARTMENT
MO	ST. LOUIS COUNTY POLICE DEPARTMENT
MS	GREENVILLE POLICE DEPARTMENT

Petitioner Uber Ex-1040, 0118

NC FAYETTEVILLE POLICE DEPARTMENT

NC GASTON COUNTY POLICE DEPARTMENT

NC GREENSBORO POLICE DEPARTMENT

NC GREENVILLE POLICE DEPARTMENT

NC HICKORY POLICE DEPARTMENT

NC MECKLENBERG COUNTY POLICE DEPARTMENT

NC RALEIGH POLICE DEPARTMENT

NC WINSTON-SALEM POLICE DEPARTMENT

NE LINCOLN POLICE DEPARTMENT

NE THE OMAHA POLICE DEPARTMENT

NH MANCHESTER POLICE DEPARTMENT

NM LAS CRUCES POLICE DEPARTMENT

NV RENO POLICE DEPARTMENT

NY CHEEKTOWAGA POLICE DEPARTMENT

NY NEW ROCHELLE POLICE DEPARTMENT

NY NEW YORK STATE POLICE

NY ROCHESTER POLICE DEPARTMENT

NY SCHENECTADY POLICE DEPARTMENT

NY TOWN OF AMHERST POLICE DEPARTMENT

NY WESTCHESTER COUNTY POLICE DEPARTMENT

NY WHITE PLAINS POLICE DEPARTMENT

NY YONKERS POLICE DEPARTMENT

OH HAMILTON POLICE DEPARTMENT

OH KETTERING POLICE DEPARTMENT

OK LAWTON POLICE DEPARTMENT

OK TULSA POLICE DEPARTMENT

OR PORTLAND POLICE BUREAU

RI CRANSTON POLICE DEPARTMENT

Petitioner Uber Ex-1040, 0119

RI	RHODE ISLAND STATE POLICE
RI	WOONSOCKET POLICE DEPARTMENT
SC	CHARLESTON POLICE DEPARTMENT
SD	SIOUX FALLS POLICE DEPARTMENT
SD	SOUTH DAKOTA HIGHWAY PATROL
TN	KNOXVILLE POLICE DEPARTMENT
TN	NASHVILLE METROPOLITAN POLICE DEPARTMENT
TX	ARLINGTON POLICE DEPARTMENT
TX	AUSTIN POLICE DEPARTMENT
TX	EL PASO POLICE DEPARTMENT
TX	FORT WORTH POLICE DEPARTMENT
TX	GARLAND POLICE DEPARTMENT
TX	LUBBOCK INDEPENDENT SCHOOL DISTRICT
TX	MIDLAND POLICE DEPARTMENT
TX	NORTH RICHLAND HILLS POLICE DEPARTMENT
TX	PLANO POLICE DEPARTMENT
VA	ALBERMERLE COUNTY POLICE DEPARTMENT
VA	ALEXANDRIA POLICE DEPARTMENT
VA	CHESAPEAKE POLICE DEPARTMENT
VA	FAIRFAX COUNTY POLICE DEPARTMENT
VA	HAMPTON POLICE DEPARTMENT
VA	LYNCHBURG POLICE DEPARTMENT
VA	NEWPORT NEWS POLICE DEPARTMENT
VA	PRINCE WILLIAM COUNTY POLICE DEPARTMENT
VA	RICHMOND POLICE DEPARTMENT
VA	ROANOKE CITY POLICE DEPARTMENT
VA	VIRGINIA BEACH POLICE DEPARTMENT
WA	BELLINGHAM POLICE DEPARTMENT

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WA	RENTON POLICE DEPARTMENT
WA	SEATTLE POLICE DEPARTMENT
WA	SPOKANE POLICE DEPARTMENT
WI	APPLETON POLICE
WI	MILWAUKEE POLICE DEPARTMENT
WI	OSHKOSH WISCONSIN POLICE DEPARTMENT
WI	RACINE POLICE DEPARTMENT
WI	UNIVERSITY OF WISCONSIN DEPARTMENT OF POLICE
WV	CHARLESTON POLICE DEPARTMENT
WV	WEST VIRGINIA DIVISION OF PUBLIC SAFETY

FOREIGN RESPONDENTS TO PERF STUDY

COUNTRY	POLICE DEPARTMENT
AUSTRALIA	SOUTH AUSTRALIA POLICE DEPARTMENT
AUSTRALIA	TASMANIA POLICE DEPARTMENT
CANADA	EDMONTON POLICE SERVICE
CANADA	GLOUCESTER POLICE SERVICE
CANADA	METROPOLITAN TORONTO POLICE
CANADA	NIAGARA REGIONAL POLICE FORCE
CANADA	ONTARIO PROVINCIAL POLICE
CANADA	OTTAWA POLICE DEPARTMENT
CANADA	QUEBEC POLICE SERVICE
CANADA	ROYAL CANADIAN MOUNTED POLICE
CANADA	VANCOUVER POLICE DEPARTMENT
CANADA	VICTORIA POLICE DEPARTMENT
CANADA	WINDSOR POLICE SERVICE
CANADA	WINNIPEG POLICE DEPARTMENT

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UNITED KINGDOM	LONDON POLICE DEPARTMENT
UNITED KINGDOM	ROYAL ULSTER CONSTABULARY
UNITED KINGDOM	WEST YORKSHIRE POLICE

Petitioner Uber Ex-1040, 0122

APPENDIX B: CITATIONS FOR STALKING CASES

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Petitioner Uber Ex-1040, 0124

CITATIONS FOR STALKING CASES

Florida v. Bossie, 1 Fla. L. Weekly Supp. 465 (18th Cir. Brevard County, 1993).

Florida v. Bowers, 1 Fla. L. Weekly Supp. 387 (7th Cir. Volusia County, 1993).

Florida v. Caraway, 1 Fla. L. Weekly Supp. 407 (Hernando County, 1993).

Florida v. Kahles, Case No. 92-022819MM10A (17th Cir. Broward County, 1993).

Florida v. Pallas, 1 Fla. L. Weekly Supp. 442 (11th Cir. Dade County, 1993).

Florida v. Slater, Case No. CRC 92-15850 (6th Cir. Pinellas County, 1993).

Florida v. Staudt, 1 Fla. L. Weekly Supp. 268 (15th Cir. Palm Beach County, 1993).

Florida v. Wallace, Case No. 93-087 (10th Cir. Hardee County, 1993).

Illinois v. Herbert, No. 93 CF 387 (19th Cir. McHenry County).

Illinois v. Incandella, No. 1-92-3767 (Ct. App., 1st Dist. 3d Division, 1992).

U. S. v. Smith, No. M-6400-93 (Superior Court, District of Columbia, 1993).

Virginia v. Camper, Case No. 93-2876 (Dist. Ct. Richmond, 1993).

Petitioner Uber Ex-1040, 0125

Petitioner Uber Ex-1040, 0126

APPENDIX C: BIBLIOGRAPHY

Petitioner Uber Ex-1040, 0127

Petitioner Uber Ex-1040, 0128

BIBLIOGRAPHY

NATIONAL ACADEMY of SCIENCE, INSTITUTE of MEDICINE, *Research and Training for the Secret Service: Behavioral Science and Mental Health Perspectives* (1984).

LAWRENCE TRIBE, AMERICAN CONSTITUTIONAL LAW 825-832 (1988).

Mary M. Cheh, *Constitutional Limits on Using Civil Remedies to Achieve Criminal Law Objectives: Understanding and Transcending the Criminal-Civil Law Distinction*, 42 HASTINGS L.J. 1325 (1991).

P. E. Dietz, D.B. Matthews, D.A. Martell, T.M. Stewart, D.R. Hrouda, and J. Warren, *Threatening and Otherwise Inappropriate Letters to Members of the United States Congress*, 36 J. FORENSIC SCI., Sept. 1991, at 1445-68 .

P.E. Dietz, D.B. Matthews, C. Van Duyne, D.A. Martell, C.D.H. Parry, T. Stewart, J. Warren, J.D. Crowder, *Threatening and Otherwise Inappropriate Letters to Hollywood Celebrities*, 36 J. FORENSIC SCI., Jan. 1991, at 185-209.

Park Elliott Dietz, M.D., M.P.H., Ph.D., *Defenses Against Dangerous People When Arrest and Commitment Fail*, 1 REVIEW OF CLINICAL PSYCHIATRY AND THE LAW, CH. 10 (Robert I. Simon, M.D., ed., 1990).

Peter Finn and Sarah Colson, U.S. DEPARTMENT OF JUSTICE, *Civil Protection Orders: Legislation, Current Court Practice, and Enforcement* (1990).

Adele Harrell et al., THE URBAN INSTITUTE, *Court Processing and the Effects of Restraining Orders for Domestic Violence Victims* (1993).

Barbara J. Hart, Esq. *State Codes on Domestic Violence: Analysis, Commentary and Recommendations*, 43 JUVENILE & FAMILY COURT J. (1992).

Petitioner Uber Ex-1040, 0129

Ingo Keilitz, *Researching and Reforming the Insanity Defense*, 39 RUTGERS L. REV. 289 (1987).

Kenneth Mann, *Punitive Civil Sanctions: The Middleground Between Criminal and Civil Law*, 101 YALE L.J. 1795 (1992).

Kenneth R. Thomas, *Anti-Stalking Statutes: Background and Constitutional Analysis,* CONGRESSIONAL RESEARCH SERVICE REPORT (1992).

Kenneth R. Thomas, *How to Stop the Stalker: State Antistalking Laws*, CRIM. L. BULL. 124 (Mar.-Apr. 1993).

Robert A. Guy, *The Nature and Constitutionality of Stalking Laws*, 46 VAND. L. REV. 991 (1993).

Silvija A. Strikis, Note, *Stopping Stalking,* 81 GEO. L.J. 1 (1993).

Note, *A Remedial Approach to Harassment*, 70 VA. L. REV. 475 (1984).

Sandra G. Boodman, *Abortion Foes Strike At Doctor's Home Lives*, THE WASHINGTON POST, April 8, 1993, at A1, A17.

Miles Corwin, *When Law Can't Protect*, LOS ANGELES TIMES, May 8, 1993, at A1, A21.

Lucinda Franks, *To Catch a Judge: How the F.B.I. Tracked Sol Wachtler*, THE NEW YORKER, December 21, 1992, at 58.

Matt Gryta, *Court Order Fails to Stem Victim's Fears: Guercio Convicted in Stalking Case, is Told to Leave Woman Alone*, THE BUFFALO NEWS, June 25, 1993.

Petitioner Uber Ex-1040, 0130

George Lardner, Jr., *The Stalking Of Kristen: The Law Made It Easy For My Daughter's Killer*, THE WASHINGTON POST, November 22, 1992, at C1, C2.

Richard J. Varn, Clark McNeal, *Are Anti-Stalking Laws Fatally Flawed?*, THE COUNCIL OF STATE GOVERNMENTS, August 1993, at 9-10.

Sarah E. Marcin, *Stalking the Stalkers: A Comment on New Statutory Initiatives* (1993) (on file with *The Catholic University Law Review*).

*U.S. G.P.O.:1993-301-177:80024

Petitioner Uber Ex-1040, 0131

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