

## USLegal Guide to Stalking



### INTRODUCTION

Stalking can be generally defined as a physical proximity, nonconsensual communication, or verbal, written or implied threats or a combination thereof, that would cause a reasonable person to fear.

States categorize the crime of stalking as either general intent crimes or specific intent crimes. A stalker commits a general intent crime when the stalker intends the actions in which he engages, but the intent to bring about the consequences (fear in the victim) do not need to be proven. On the other hand, when stalking is a specific intent crime, the stalker must intend to cause the result of his actions to commit the crime of stalking. Specific intent stalking statutes may be more difficult to prosecute.

Stalking is a crime under the laws of all 50 states, the District of Columbia, the U.S. Territories, and the federal government. Less than 1/3 of states classify stalking as a felony upon first offense. More than 1/2 of states classify stalking as a felony upon second offense or subsequent offense or when the crime involves aggravating factors.

### CIVIL VERSUS CRIMINAL OFFENSES

Stalking is a crime that is often difficult to prosecute. The nature of stalking allegations are sometimes not easily able to be proven beyond a reasonable doubt, the standard of proof in criminal prosecutions. Harmless reasons are often given to explain the defendant's conduct. For that reason, stalking is sometimes more easily pursued as a civil action rather than a criminal prosecution. A civil case requires a lower standard of proof based on a preponderance of the evidence (more likely than not). A civil stalking statute may be more effective than criminal prosecution in lowering the number of stalking incidents.

Civil actions provide a means of recourse in addition to the criminal justice system. Other available remedies, such as restraining orders, may not effectively abate stalking conduct, leaving victims with no alternative but to wait for a stalker to act in a more severe and dangerous manner. Civil statutes allow stalking victims to recover for monetary losses incurred as a result of a stalker's conduct. These losses may include the cost of implementing security measures to combat a stalker's threats, losing a job as a result of a stalker's conduct, or attending counseling sessions to handle the emotional strain of a stalker's harassment.

Civil stalking claims may be brought in some states, such as California, Kentucky, Michigan, Nebraska, Oregon, Rhode Island, South Dakota, Texas, Virginia, and Wyoming. Under these statutes, a stalking victim may recover civil damages from a stalker regardless of whether the stalker has been charged or convicted under the criminal law.

Recoverable damages include expenses incurred by the victim as a result of a stalker's conduct, as well as punitive damages. Some states also allow stalking victims to recover attorney fees and court costs.

#### PROTECTIVE ORDERS

Protective orders are typically used in domestic disputes to ban one party from contact with another or from interfering with an order of the court with respect to child visitation or custody rights. They are also frequently used in cases of spousal abuse to keep the violent party from coming into contact with the victim. A protective order is a method to help keep a victim of family abuse safe or stalking from further acts of violence or stalking. A permanent protective order will usually only be issued after a full hearing before the appropriate court. An Order For Protection is a court order that protects a victim from domestic abuse. Any family or household member may ask the court for an Order For Protection. Specific procedures vary by court, so local court

rules need to be consulted. A protection order may address domestic abuse, direct or indirect contact with petitioner, stalking, evicting the respondent, housing for the petitioner when the respondent is the sole owner or lessee, temporary custody of minor children, financial support, or counseling.

Protective orders may sometimes be granted ex parte, that is without the presence of the party sought to be restrained, but only when there is substantial evidence that the party applying for the order is under an imminent threat of injury or when there is good evidence that an order of the court will be violated. Ex parte refers to a motion or petition by or for one party. An ex parte judicial proceeding is one where the opposing party has not received notice nor is present. This is an exception to the usual rule of court procedure and due process rights that both parties must be present at any argument before a judge. It is in contrast to the rule that an attorney may not notify a judge without previously notifying the

opposition. Ex parte hearings, petitions, or motions are usually temporary orders, such as a restraining order or temporary custody, pending a formal hearing or an emergency request for a continuance. Most jurisdictions require at least a good faith effort to notify the opposing lawyer of the time and place of any ex parte hearing.

Protective orders are often granted on a temporary basis to preserve the current state of affairs until a hearing can be held to determine a more permanent resolution. They vary in duration according to the facts in each case. Typically, they last for one year with extensions possible under certain particular circumstances. Six states allow imposition of protective orders for up to three years, and three other states limit them to just 90 days. Ohio has enacted a law that sets the duration of a protective order at five years, the longest of any state. Violations of protective orders also vary widely. Although most states impose a maximum one year

sentence and a \$1,000 fine, eight states require mandatory jail time for violating a protective order.

The distance required to be maintained is governed by the language of each specific order, which may include places of work, school, etc. Temporary restraining orders typically expire on the hearing date, but local law should be consulted for specific requirements. Often the restrained person will ask for a mutual stay-away order. A no contact order is a prohibition of direct or indirect physical, verbal, and/or written contact with another individual or group. Such orders are most commonly associated with family or household violence, stalking or sex offenses. No contact orders are primarily governed by state laws, which vary by state.

Direct contact includes phone calls, letters, going within sight of the protected person, his/her residence, place of employment, or school. Non-physical contact includes, but is not limited to, telephone

calls, mail, e-mail, fax and written notes. Indirect contact includes messages through a third person at the direction of the respondent.

Virtually all states require transmission of protective orders to local law enforcement agencies. Twelve states require transmission within 48 hours. A few states have set up state-wide registries or information systems that keep track of protective orders that are presently in effect. Utilization of technology, such as the internet, and wide area networks, permit easy access to statewide registries. In Iowa, for example, it is required to get certified copies of protective orders into the hands of law enforcement agencies within six hours of issuance.

#### CYBERSTALKING

The Internet is commonly used by individuals to harass, annoy, and stalk others. Annoying e-mails are generally reported and handled in the same manner as annoying telephone calls. An individual can be subjected to criminal liability for placing or

posting information on the Internet that causes a credible threat to a victim.

The first U.S. cyberstalking law went into effect in 1999 in California. Other states include prohibitions against cyberstalking in their harassment or stalking legislation. In Florida, banned cyberstalking in October 2003.

Alabama, Arizona, Connecticut, Hawaii, Illinois, New Hampshire, and New York have passed statutes against harassing electronic, computer or e-mail communications in their harassment legislation.

Alaska, Florida, Oklahoma, Wyoming, and California, have incorporated electronically communicated statements as conduct constituting stalking in their anti-stalking laws.

Texas enacted the Stalking by Electronic Communications Act, 2001.

Missouri revised its state harassment statutes to include stalking and

harassment by telephone and electronic communications (as well as cyber-bullying) after the Megan Meier suicide case of 2006.

A few states have both stalking and harassment statutes that criminalize threatening and unwanted electronic communications.

Other states have laws other than harassment or anti-stalking statutes that prohibit misuse of computer communications and e-mail, while statutes in other areas have language that is broad and could be interpreted to include cyberstalking behaviors

Cyberstalking is also covered under recent U.S. federal law. For example, the Violence Against Women Act, passed in 2000, made cyberstalking a part of the federal interstate stalking statute.

Under 18 U.S.C. 875(c), it is a federal crime, punishable by up to five years in prison and a fine of up to \$250,000, to transmit any communication in interstate or foreign commerce containing a

threat to injure the person of another. Section 875(c) applies to any communication actually transmitted in interstate or foreign commerce - thus it includes threats transmitted in interstate or foreign commerce via the telephone, e-mail, beepers, or the Internet.

18 U.S.C. 875 applies only to communications of actual threats. Thus, it would not apply in a situation where a cyberstalker engaged in a pattern of conduct intended to harass or annoy another (absent some threat). Also, it is not clear that it would apply to situations where a person harasses or terrorizes another by posting messages on a bulletin board or in a chat room encouraging others to harass or annoy another person.

Certain forms of cyberstalking also may be prosecuted under 47 U.S.C. 223. One provision of this statute makes it a federal crime, punishable by up to two years in prison, to use a telephone or telecommunications device to annoy, abuse, harass, or threaten any person at the called

number. The statute also requires that the perpetrator not reveal his or her name. See 47 U.S.C. 223(a)(1)(C). Although this statute is broader than 18 U.S.C. 875 -- in that it covers both threats and harassment -- Section 223 applies only to direct communications between the perpetrator and the victim. Thus, it would not apply to a cyberstalking situation where a person harasses or terrorizes another person by posting messages on a bulletin board or in a chat room encouraging others to harass or annoy another person. Moreover, Section 223 is only a misdemeanor, punishable by not more than two years in prison.

The Interstate Stalking Act, signed into law by President Clinton in 1996, makes it a crime for any person to travel across state lines with the intent to injure or harass another person and, in the course thereof, places that person or a member of that person's family in a reasonable fear of death or serious bodily injury. See 18 U.S.C. 2261A. Because of the requirement that the

stalker physically travel  
across state lines makes  
it isn't often used in  
cyberstalking cases.

**RESOURCES:**

[http://www.abanet.org/domviol/pdfs/stalkingHarassment\\_cpo\\_chart.pdf](http://www.abanet.org/domviol/pdfs/stalkingHarassment_cpo_chart.pdf)

<http://www.ncvc.org/src/Main.aspx>

<http://www.vaw.umn.edu/categories/3>