

Analyzing Stalking Laws

Stalking is generally defined as a course of conduct directed at a specific person that would cause a reasonable person fear. The *crime* of stalking is defined differently, however, in all 50 states, the District of Columbia, and on tribal and federal lands.* When analyzing your stalking statute, please consider the following elements and issues:

Course of Conduct

A course of conduct is typically defined as one or more intentional acts that *evidence a continuity of purpose*.

- Is your state's law "course of conduct" language inclusive of all behaviors that stalkers employ, such as using surveillance technology (e.g., GPS-equipped cell phones) or enlisting third parties (e.g., family and friends) to stalk on their behalf?
- How many acts are required to satisfy the course of conduct element? Would a single, threatening posting on a social networking Web site satisfy the element?

Intent Requirement

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. In states categorizing stalking as a general intent crime, the prosecution does not have to prove that the stalker intended the *consequences* of his actions. Conversely, when stalking is a specific intent crime, the stalker must intend to cause the *result* of his actions (typically the victim's fear) to commit the crime of stalking. Specific intent stalking statutes may be more difficult to prosecute.

- Is your state stalking statute a *general intent* or *specific intent* crime?

Standard of Fear

Some states require that the defendant's behavior cause the victim *actual* fear (which usually requires the victim to testify as to her feelings or change in lifestyle due to the stalking). Some states only require that the behavior would cause a *reasonable* person to feel fear. Some states require *both* actual fear on the part of the victim and proof that a reasonable person would also feel fear.

- What standard of fear does your stalking statute require?

* Copies of all state criminal statutes (as well as the federal statute and some tribal codes) can be found at www.ncvc.org/src.

Fear Element—Level of Fear

States vary widely on what amount of fear the victim (and/or a reasonable person) must experience to make the offender's behavior criminal. Some states require that the victim feel terrorized, frightened, intimidated, or threatened, or fear that the stalker intends to injure the person, another person, or property of the person or of another person. Other states require that the victim fear serious bodily injury or death. A number of states only require that the victim have a fear for safety or suffer other emotional distress.

- What level of fear does your stalking statute require?

Threat

Many states require that the offender pose a credible threat to the victim. Some states even require proof that the offender is capable of carrying out his threats. Implicit threats (those that may only be understood by the victim) are often hard to prove in stalking cases, especially those involving former intimate partners.

- Does your statute require proof of an explicit threat?

Target of Stalker's Acts

Most state stalking laws require the victim to fear that she, or an immediate family member, is in danger. However, some states extend the covered targets to include others, such as a current social companion or someone with whom the victim has or has had a continued relationship, or the victim's professional counselor or attorney.

- Does your statute cover behaviors directed at people other than the victim?

Crime Classification

Fourteen states may classify stalking as a felony upon first offense. Thirty-five states classify stalking as a felony upon the second offense and/or when the crime involves aggravating factors. Aggravating factors may include: possession of a deadly weapon, violation of a court order or condition of probation/parole, a victim who is under 16 years of age, or the same victim as prior occasions. In one state, Maryland, stalking is always a misdemeanor.

- How is the crime of stalking classified in your state?

For more information on stalking or for more help analyzing your stalking statutes, please contact:

**Stalking Resource Center
National Center for Victims of Crime
2000 M Street, NW, Suite 480
Washington, DC 20036
Phone: (202) 467-8700 Fax: (202) 467-8701
src@ncvc.org
www.ncvc.org/src**