

## **Model Civil Stalking Statute**

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### **Civil action for stalking.**

A. A victim has a civil cause of action against an individual who engaged in conduct that is prohibited under § [criminal stalking code], whether or not the individual has been charged or convicted for the alleged violation, for the compensatory damages incurred by the victim as a result of that conduct, in addition to the costs for bringing the action. If compensatory damages are awarded, a victim may also be awarded punitive damages.

B. As used in this section:

"Compensatory damages" includes damages for all of the defendant's acts prohibited by § [criminal stalking code]

"Victim" means a person who, because of the conduct of the defendant that is prohibited under § [criminal stalking code], was placed in reasonable fear for his own personal safety or for the safety of a minor child of whom the person is a parent or legal guardian.

C. No action shall be commenced under this section more than [personal injury statute of limitations in that state] years after the most recent conduct prohibited under § [criminal stalking code].

### **A Statutory Civil Cause of Action for Stalking**

Stalking is a crime that is often difficult to prosecute. The nature of stalking allegations are sometimes not easily substantiated to meet the prosecution's burden of proving the case beyond a reasonable doubt. Prosecutors often struggle to convince the judge or jury of the potential dangerousness of a stalker's behavior, and prove that it is the context in which individual, often innocuous and non-criminal, acts occur is what makes stalking a crime. Evidentiary issues also make criminal cases more difficult because physical or corroborating evidence of a stalking may not be readily available. As a result, judges and jurors are often unable to determine whether a stalker's conduct was, in fact, an act of stalking or simply an unintentional encounter with the complainant. For that reason, stalking is sometimes more easily pursued as a civil action rather than a criminal prosecution. A civil stalking statute would provide a crucial legal option for stalking victims when the criminal justice system is not responsive or is unsuccessful in obtaining a conviction, and may be more effective than criminal prosecution in lowering the number of stalking incidents.

Even upon a successful prosecution, 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 provide stalking victims with a cause of action 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.

However the cumulative trauma of stalking is far greater than the sum of its common law tort elements. For that reason, a statutory civil cause of action for stalking should be enacted. California<sup>1</sup>, Kentucky<sup>2</sup>

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<sup>1</sup> Cal. Civ. Code § 1708.7.

Michigan<sup>3</sup>, Nebraska<sup>4</sup>, Oregon<sup>5</sup>, Rhode Island<sup>6</sup>, South Dakota<sup>7</sup>, Texas<sup>8</sup>, Virginia<sup>9</sup> and Wyoming<sup>10</sup> have enacted civil stalking statutes which expressly provide for a civil action based on stalking. 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. Oregon, Wyoming, Michigan, Kentucky, Nebraska Rhode Island and Virginia (and probably California, which does not limit potentially recoverable damages), further provide that stalking victims may recover attorney fees and court costs.

The legislature should follow the lead of these states by enacting a statute that imposes civil liability for a pattern of conduct intended to follow, alarm or harass the victim and causing the victim to fear for her own safety of the safety of an immediate family member, with out regard to any criminal prosecution that may or may not occur as a result of the conduct. The statute should provide for the recovery of compensatory damages, punitive damages, reasonable attorneys fees and costs as do the majority of the statutes passed in these states.

A statute creating civil liability for stalking may provide for far more civil remedies than just monetary damages. In one particular case, the key to the settlement (in addition to \$300,000) was the agreement by the parties to a lifetime restraining order. Such a restraining order was a remedy a court does not have the authority to impose, but if the parties agreed to the provision, it would be enforced by the court as part of the settlement.

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<sup>2</sup> KRS CHPT. 411.220 (2000)

<sup>3</sup> MICH. COMP. LAWS ANN. § 600.2954 (West 1999).

<sup>4</sup> R.R.S. NEB. § 28-113 (2000).

<sup>5</sup> Or. Rev. Stat. § 30.866(1-8)

<sup>6</sup> R.I. Gen. Laws § 9-1-2.1 (2001)

<sup>7</sup> S.D. Codified Laws Ann. § 22-19B-3

<sup>8</sup> TEX. CIV. PRAC. & REM. CODE ANN. §§ 85.001-.006 (West 2000).

<sup>9</sup> Va. Code § 8.01-42.3 (2001)

<sup>10</sup> WYO. STAT. § 6-2-506 (2000).