

## **Stalking Victims Can Seek Justice in Civil Court**

*By Jennifer St. Clair*

Most victims know that protective orders and criminal prosecutions are the first line of defense against stalkers. Yet victims have an additional option for bringing stalkers to justice: they can file civil lawsuits against stalkers and third parties who contribute to the crime. Through civil lawsuits, victims may gain financial compensation and the means to hold stalkers liable for their crimes.

Civil suits differ significantly from criminal proceedings. While the criminal justice system seeks to determine an offender's guilt or innocence and often to imprison defendants for their offenses, civil courts determine whether an offender or third party is *liable* for the injuries sustained as the result of the crime. The standards of proof are different in civil and criminal court. To win a judgment in civil court requires only a "preponderance" of evidence, but in criminal court, the defendant must be judged guilty "beyond a reasonable doubt"—a much higher standard. Defendants found civilly liable may be ordered to pay monetary damages to victims. In addition to penalizing perpetrators and negligent third parties, civil judgments may also convince third-party defendants to avoid the kinds of negligence that caused them to be sued.

Victims can file civil suits whether or not criminal charges have been filed or a criminal verdict has been reached. Stalking victims may consider civil suits to help restore their lives, particularly if they feel the criminal justice system has failed to produce justice for them. For example, if stalking has caused a victim to lose her job, move to another state, and pursue extensive counseling and self-defense training just to feel safe enough to leave her home, she is not likely to feel satisfied even if the stalker is convicted in criminal court. A sentence of two weeks in jail and a fine of \$200 for damage the stalker caused to the victim's old car will not seem sufficient to her. Yet if the civil court awards significant damages to the victim, she has resources to compensate her for some of the expenses the stalker has caused. The judgment also notifies the stalker that his or her actions will be costly.

### **One Family's Civil Suit**

On October 15, 1999, New Hampshire resident Liam Youens, shot and killed Amy Lynn Boyer, a young woman he had been stalking for several years. Youens had been obsessed with Boyer since high school and had created a Web site featuring information about Boyer and a detailed description of how he was stalking her and planning to kill her. Youens hired an on-line service called Docusearch, Inc., to obtain personal information, including Boyer's Social Security number and place of employment. A Docusearch subcontractor acquired her employment information through a fraudulent "pretext call," on which she pretended to be affiliated with Boyer's insurance company. Docusearch sold that information to Youens. Youens then located Boyer's workplace, murdered her as she left work, and killed himself.

Boyer's parents filed a civil lawsuit against Docusearch for wrongful death, invasion of privacy through intrusion upon seclusion,<sup>1</sup> invasion of privacy through commercial appropriation of private information, violation of the federal Fair Credit Reporting Act, and violation of the New Hampshire Consumer Protection Act, alleging negligence, invasion of privacy, and violation of the state consumer protection act.

In a landmark decision, the New Hampshire Supreme Court concluded that Docusearch could be held responsible under several different legal theories.<sup>2</sup> The court held that if a private investigator's disclosure of information creates a foreseeable risk of criminal misconduct against the person whose information was disclosed, the investigator owes a duty to exercise reasonable care to avoid subjecting the person to an unreasonable risk of harm. The court also stated that a person whose Social Security number is obtained from a credit reporting agency without the person's permission may have a cause of action for intrusion upon seclusion for damages caused by a private investigator's sale of the number. Finally, the court concluded that Docusearch could be held liable because an investigator who obtains a person's work address by means of pretextual phone calling and then sells the information (Docusearch did both) may be responsible for damages under the state consumer protection act.

The Boyer case was a significant victory for victims. After the court ruled that Docusearch could be held liable for having sold the victim's personal information, the company entered into a financial settlement with Boyer's family. The suit set a precedent that third parties may be held liable for injuries that would not have been suffered but for their negligence. (The court also affirmed that individuals have a reasonable expectation of privacy of their Social Security numbers.) The judgment against Docusearch served as a warning to other third parties—particularly those that sell information helpful to stalkers—that victims can sue them and receive financial damages.

### **Considering Civil Action**

The Boyer case illustrates the power of a civil judgment to hold parties accountable for their role in stalking. In this case, a third party (Docusearch) was held liable. And if the circumstances had been different—for example if Liam Youens had not committed suicide after he killed Amy—the family might also have chosen to pursue a civil lawsuit against Youens, the perpetrator. The success of this case offers victims a proven means to fight back against stalkers and negligent third parties.

When filing a civil suit, attorneys must establish a cause of action, or legal basis, for suing the stalker. A few states have civil stalking statutes, which give victims a cause of action to sue stalkers for behavior that the criminal statutes define as stalking. Attorneys may also choose to sue stalkers and third parties under common law, whether or not a state has a civil stalking statute. The causes of action (under common law) that may be used in stalking cases include intentional infliction of emotional distress, invasion of privacy, trespass, or assault. [See Box B, Causes of Action under Common Law, page XX].

## Civil Stalking Statutes

Every state has now enacted some form of criminal stalking law, and several also have civil stalking statutes that enable victims to sue stalkers for monetary damages. (See the Stalking Resource Center Web site, [www.nvc.org/src](http://www.nvc.org/src), for the complete texts of all current state civil stalking statutes.) In states with civil stalking statutes, stalking victims do not necessarily have to proceed under any of the particular causes of action outlined in Box B (e.g., assault or trespass) but rather can simply claim stalking as the basis for the lawsuit.

Civil stalking statutes differ in several ways. Some statutes specifically define the prohibited conduct (stalking).<sup>3</sup> Others simply declare that a victim has a civil cause of action for conduct that violates that state's criminal stalking law.<sup>4</sup> In these cases, victims sue under the same statute that would be used to criminally prosecute the offender. Yet in civil court, the burden of proof is not as demanding as it is in criminal court (i.e., to establish liability, the plaintiff must show a *preponderance of evidence* rather than proof *beyond a reasonable doubt*, as required in criminal cases). Offenders held liable must pay financial damages but do not face jail time or fines, as they would in a criminal case.

A third category of statute (often called "malicious harassment" statutes) does not specifically reference stalking but creates a civil cause of action for specific behaviors, such as harassment. These statutes cover stalking behaviors such as defacing or destroying a victim's property.<sup>5</sup> Victims of malicious harassment may recover damages for emotional distress and also collect attorney fees and punitive damages.

## Conclusion

Civil lawsuits offer a powerful (and underutilized) option for stalking victims seeking justice. Such lawsuits give victims their day in court, a chance to tell their stories, and a way to collect damages from perpetrators and third parties who contribute to the crime. Using either (or both) common law causes of action and state civil stalking laws, attorneys can bring successful suits on behalf of stalking victims.

Victims who file civil suits need to find an attorney to help them navigate the civil process. The National Crime Victim Bar Association can provide referrals to experienced, knowledgeable civil attorneys in victims' local areas. For a referral, please contact the National Center for Victims of Crime's helpline at 1-800-FYI-CALL.

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<sup>1</sup> "Intrusion upon seclusion occurs when one intentionally intrudes, physically or otherwise, upon the private matters of another, if the intrusion would be highly offensive to a reasonable person." Rebecca R. Sick, "Employers: Know Your Workplace Privacy Responsibilities," (2004), in *Business Law with Brian Lundgren*, [www.businessnorth.com/businesslaw.asp?RID=804](http://www.businessnorth.com/businesslaw.asp?RID=804) [accessed November 24, 2004].

<sup>2</sup> *Rensburg v. Docusearch, Inc.*, 816 A.2d 1001 (2003).

<sup>3</sup> e.g., **Cal. Civ. Code** § 1708.7 (West 2000), **Or. Rev. Stat.** § 30.866 (1999), **Wyo. Stat.** § 1-1-126 (2000).

<sup>4</sup> See **Wyo. Stat.** § 1-1-126 (2000); **Mich. Comp. Laws Ann.** § 600.2954 (West 1999); **Neb. Rev. Stat.** § 28-113 (2000); **Vir. Stat.** § 8.01-42.3.

<sup>5</sup> **S.D. Codified Laws Ann.** § 22-19B (2000); **Wash. Rev. Dace Ann.** § 9A.36.083 (West 2000); **Tenn. Code Ann** § 39-17-308 (1999); 2000 Ky. Acts 400.