Report on a 1998 National Survey of Law Enforcement and Prosecution Initiatives Against Stalking

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Introduction

Stalking is a new crime and one to which the criminal justice system has yet to fully adapt. Although components of what constitutes stalking have long been crimes (e.g., threats, trespass), it was not until 1990 that the first state (California) made criminal the element of following or trailing that is at the core of stalking.\(^1\) Today, every state has made stalking a crime,\(^2\) and the Congress has also made interstate stalking a federal offense.\(^3\)

Overview of Findings

This report on a national survey of law enforcement and prosecution agencies in major cities and counties focused on organizational issues: specialized units, training, and written policies and procedures. The survey found that

- Specialized staff, most often domestic violence unit staff, are responsible in most agencies for handling stalking cases.

- Law enforcement recruit training in most agencies includes stalking training as part of domestic violence training; in-service stalking training is provided for detectives in most law enforcement agencies.

- Prosecutor offices in most jurisdictions provide some stalking training to their attorneys, most commonly those attorneys in the unit responsible for domestic violence prosecutions.

- Over one-third of the surveyed agencies, however, provide either no in-service stalking training or are dependant on outside funding and training providers for their staff’s stalking training.

- About half of both law enforcement and prosecutor agencies have written policies and procedures for handling stalking cases. In most jurisdictions, these policies are part of the written policies and procedures for domestic violence.

- Only a small number of agencies treat stalking as a crime distinct from domestic violence. There is a near absence of specialized staff, training, and written

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1 California Penal Code § 646.9.
policies and procedures for handling cases involving stalking by strangers to or casual acquaintances of the victim.

**Stalking Laws**

The crime of stalking is a total creature of statute. Among the most important common law antecedents of stalking are civil law assault and terroristic threats. Both typically involve immediate threats, however. Stalking, in contrast, involves a threat that does not necessarily imply immediate danger. As a creature of statute, therefore, it is critical to understand what behavior constitutes stalking. The key statutory elements of stalking include:

- Following or trailing the person being stalked
- Continuing behavior (more than 1 incident)
- Threat to personal safety of the person being stalked, either express or implicit
- Intent to either threaten the person being stalked or to commit acts that a reasonable person would find threatening
- Knowledge that the stalking behavior would result in a fear of death or bodily injury.

However serious stalking may be to the victim, states differ in the seriousness they attach to the proscribed penalties for a stalking conviction. Only 16 states make every incident of stalking a felony offense. Another 16 states make only aggravated stalking a felony offense. Of the remaining 18 states, only 4 do not provide felony penalties for repeat stalking convictions.

The penal code level has important implications for law enforcement and prosecution responses to stalking complaints. For example, where stalking is a misdemeanor, the police may not be able to arrest a suspect without a court-issued arrest warrant. In most states, police may arrest a suspect where they have probable cause to believe the suspect committed a crime only if the crime involved is a felony. Although an exception is made in most states for misdemeanor domestic violence offenses, stalking may or may not be associated with a domestic situation. Similarly, in states where prosecution responsibilities are split between a municipal or county prosecutor who handles misdemeanor cases and the district attorney or state prosecutor who handles felony cases, the level of police charging determines which office handles the case and may, therefore, determine the maximum sentence possible.
Stalking Law Issues

The newness of the stalking crime may also have implications for law enforcement and prosecution responses to stalking. These include:

- Failure to recognize that the crime of stalking has been committed
- Failure to understand the serious effects of stalking on the victim’s well-being.

Either failure may lead to a further failure to act. Law enforcement may fail to arrest or to seek an arrest warrant. Prosecution may either fail to prosecute stalking cases or may file lesser charges such as trespass. Courts may impose lesser penalties in the mistaken belief that stalking is not a serious crime, especially where prosecutors fail to object.

A second problem lies in the failure of the anti-stalking laws themselves. The adoption of stalking crime laws within the short period of eight years by all 50 state legislatures can mean that inadequate attention was paid to the full scope of supporting laws or even to the definition of stalking embodied in the statutes. The frequent failure of the legislatures to provide for adequate police arrest authority has already been referred to. Other related legislative needs include provision for pretrial release conditions that provide greater penalties for repeat stalking while released on bail. Nor have all state legislatures adequately defined stalking, which may mean difficulties in “proving” criminal stalking occurred and may even subject the law to constitutional challenge.4

Finally, it should be noted that criminal penalties accrue when an offender violates a court order of protection by continuing to stalk a victim. Such court orders include both temporary and permanent orders against domestic violence, of which stalking may be a part, and against stalking. All states provide for protective orders against domestic violence, and 26 states provide for anti-stalking or harassment orders.

Little is known, however, about how law enforcement and prosecution agencies have responded to these new stalking criminal laws. Yet much needs to be known for policymakers to revisit and amend the stalking penal code provisions to rectify the problems that inevitably accompany any new criminal law change.

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4 Long v. State 931 S.W.2nd 285 (Texas Court Criminal Appeal 1996).
The National Survey

To answer questions about law enforcement and prosecutor responses to the new stalking laws, the Institute for Law and Justice (ILJ) mailed a two-page questionnaire in November 1998, to 204 law enforcement agencies in the most populous U.S. cities and counties and 222 prosecutors in the same jurisdictions. Both municipal and state prosecutors were surveyed in states where stalking can be a misdemeanor offense and the former have jurisdiction to prosecute misdemeanors.

The survey asked a few simple questions about

- The organizational unit responsible for investigating or prosecuting stalking cases
- Training on stalking (new hires and in-service)
- Written policies and procedures for handling stalking cases
- Law enforcement collection of statistics on stalking cases
- Prosecution use of other criminal charges in stalking cases

The questionnaire also asked for comments about issues of concern.

The response rate for the survey was high. Of the 204 law enforcement agencies sent a survey, 169 responded (83 percent). Of the 222 surveys sent to prosecution agencies, 175 were returned (78 percent). Of these, two offices said they had no jurisdiction to prosecute stalking cases and were excluded from the analysis, leaving a prosecutor sample of 173. (For questions on training and policies, a few law enforcement and prosecutor agencies did not provide any response; thus the number of respondents noted on the charts varies slightly.

Survey Results

Staffing/Special Stalking Units

The most significant commitment that a criminal justice agency can make to handling stalking crimes is to specially assign staff to this task. This may be done in several ways, including establishing a dedicated special unit or assigning all stalking case duties to staff with

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5 The surveys were mailed to agencies in jurisdictions with populations of 250,000 or more. In 9 states where there is no city or county with that large a population, the largest county in the state was chosen.
related responsibilities, such as staff assigned to a domestic violence or sex crimes unit. Of course, there may not be a sufficient number of stalking complaints\(^6\) to justify specialized staff, so that other approaches may be advisable, such as adding stalking case duties to the responsibilities of domestic violence or other specialized unit staff.

**Law Enforcement Stalking Staff/Unit**

The vast majority of law enforcement agencies (92.3 percent) assign stalking cases to their detective division, to other specialized units (most commonly the domestic violence unit), or to both. As shown in Exhibit 1, about half (50.3 percent) report assigning stalking cases either to the investigative/detective division (63 agencies) or to the crimes against persons/violent crimes unit (20 agencies); and one assigns them to the assault unit. Another 42 percent of respondents typically assign stalking cases to their domestic violence unit. Of the 71 agencies in this group, 31 assign stalking cases only to the domestic violence unit; 37 distribute them among the domestic violence unit, detective division, and crimes against persons unit; 3 assign them to both domestic violence and sex crimes units; and in 1 agency, the sex crimes unit has sole responsibility.

Only 6 departments (3.6 percent) report they have specialized staff assigned to stalking cases, and only 1 of these has a separate stalking unit. Another department has a combined domestic violence/stalking unit, another has a domestic violence/stalking/extortion/threat unit, and 3 agencies have a stalking case specialist within the domestic violence unit.

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\(^6\) The number of stalking cases is unlikely in most jurisdictions to reflect the actual number of stalking incidents. Both victimization surveys and anecdotal reports indicate that a high percentage of stalking incidents are never reported to criminal justice agencies. See Patricia Tjaden and Nancy Thoennes, *Stalking in America: Findings From the National Violence Against Women Survey* (National Institute of Justice/Centers for Disease Control Research in Brief, April 1998). Anecdotal reports suggest that assigning stalking cases to specialized staff will, in most instances, result in increased numbers of complaints as citizens learn of the system’s new responsiveness to stalking complaints.
Finally, 7 agencies (4.1 percent) make no special investigative staff assignments for stalking cases. One of these uses a patrol follow-up unit to handle stalking cases, and another’s patrol follow-up unit assists stalking victims but has no investigative duties. Four other departments rely solely on responding patrol officers to handle stalking cases, and one agency reported that it had no stalking cases.

**Prosecution Stalking Staff/Units**

Most prosecutor offices (76.3 percent or 132 offices) assign stalking prosecution to a domestic violence prosecution unit. As Exhibit 2 shows, 26 of these offices also refer stalking cases to another trial unit (e.g., a general trial unit that handles non-domestic violence stalking);
and 18 offices refer stalking cases to special units that combine domestic violence and related offenses such as sex offenses, child abuse, or elder abuse.

### Exhibit 2: Prosecutor Stalking Staff

(n=173)

<table>
<thead>
<tr>
<th>Locus of Prosecutor Stalking Duties</th>
<th>Percent of Agencies</th>
<th>Number of Agencies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic Violence Units</td>
<td>76.3</td>
<td>132</td>
</tr>
<tr>
<td>Domestic violence unit only</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Domestic violence and other trial unit</td>
<td>88</td>
<td></td>
</tr>
<tr>
<td>Special trial unit (domestic violence, sex crimes, child abuse)</td>
<td>26</td>
<td></td>
</tr>
<tr>
<td>Specialized Stalking Unit/Staff</td>
<td>4.0</td>
<td>7</td>
</tr>
<tr>
<td>Stalking unit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stalking prosecutor in domestic violence unit</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Stalking prosecutor in general trial unit</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Other Unit Assignment</td>
<td>1.2</td>
<td>2</td>
</tr>
<tr>
<td>No Special Trial Unit</td>
<td>18.5</td>
<td>32</td>
</tr>
<tr>
<td>Total</td>
<td>100.0</td>
<td>173</td>
</tr>
</tbody>
</table>

Only 7 prosecutor offices (4.0 percent) have specialized stalking units or staff. Three of these offices have special stalking units; 2 have a stalking prosecutor in the domestic violence unit; and two have a stalking prosecutor in a general trial unit. One of the 3 specialized stalking units works with a threat management unit that focuses on protective order violators. In addition, 6 prosecutor offices commented that they have a special stalking prevention unit that handles civil protection orders, and another office has a protection order prosecutor in the domestic violence unit.

Finally, 18.5 percent of prosecutors have no special unit or staff that are responsible for stalking prosecution.
Stalking Training

Regardless of unit assignment, stalking is often thought to be a unique crime requiring specialized training. The survey asked about training for new hires (e.g., police recruits) and in-service training for more experienced staff. An additional question asked about the source of the training (agency provided or external).

**Law Enforcement Recruit Training**

Nearly three-fourths of law enforcement agencies (72.7 percent) report that stalking training is included in the domestic violence training provided to their recruits (see Exhibit 3). Another 13.3 percent (22 agencies) provide specialized stalking training (10 of these provide stalking training both as an element of domestic violence training and as a separate training unit, while 12 provide special training on stalking but do not cover stalking in their domestic violence training). Finally, 13.9 percent of respondents (23 agencies) said they provide no training on stalking to recruits.

**Exhibit 3: Law Enforcement Recruit Training on Stalking**

*(n=165)*

<table>
<thead>
<tr>
<th>Type of Stalking Training Provided</th>
<th>Percent of agencies</th>
<th>Number of Agencies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stalking a Component of Domestic Violence Training</td>
<td>72.7</td>
<td>120</td>
</tr>
<tr>
<td>Specialized Stalking Training Provided</td>
<td>13.3</td>
<td>22</td>
</tr>
<tr>
<td>Stalking included in domestic violence training, plus specialized training in stalking</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Specialized training in stalking (not part of domestic violence training)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No Recruit Training on Stalking</td>
<td>13.9</td>
<td>23</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100.0</td>
<td>165</td>
</tr>
</tbody>
</table>

**Law Enforcement In-Service Training**

Slightly more than half of law enforcement agencies (52.1 percent) said stalking training is provided as annual in-service training for some or all officers assigned to detective duties (see
Exhibit 4). Of these 86 agencies, 15 provide training for all detectives as well as for detectives assigned to special units that handle stalking, while 12 train only detectives assigned to the special unit handling stalking (one of these agencies limits the training to newly assigned detectives).

For nearly half of the responding agencies, in-service training on stalking is offered only when outside funding and sources are available (10.9 percent) or not at all (37 percent).

### Exhibit 4: Law Enforcement In-Service Stalking Training

<table>
<thead>
<tr>
<th>Type of In-Service Stalking Training</th>
<th>Percent of agencies</th>
<th>Number of Agencies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual or Periodic In-Service</td>
<td>52.1</td>
<td>86</td>
</tr>
<tr>
<td>Annual in-service training for all detectives</td>
<td>59</td>
<td></td>
</tr>
<tr>
<td>Annual in-service for all detectives and in-service for special unit detectives</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td>Annual in-service only for detectives assigned to unit handling stalking cases</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Stalking In-Service Training Offered Only as Outside Funds Available</td>
<td>10.9</td>
<td>18</td>
</tr>
<tr>
<td>No In-Service Training on Stalking</td>
<td>37.0</td>
<td>61</td>
</tr>
<tr>
<td>Total</td>
<td>100.0</td>
<td>165</td>
</tr>
</tbody>
</table>

### Prosecutor Training

Most prosecutor offices provide training on stalking to their attorneys (see Exhibit 5), either as part of in-service training to all attorneys (30.6 percent) or only to members of stalking, domestic violence, or other special units (38.2 percent). An additional 5 agencies (2.9 percent) provide stalking training only to new attorneys; 10.6 percent provide stalking training only when outside funds are available; and 17.7 percent provide no stalking training at all.
## Exhibit 5: Prosecutor Training on Stalking

(n=170)

<table>
<thead>
<tr>
<th>Type of Stalking Training Provided Prosecutors</th>
<th>Percent of Agencies</th>
<th>Number of Agencies</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>In-Service Training Provided to All Prosecutors</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stalking included in both new attorney and in-service training</td>
<td>30.6</td>
<td>52</td>
</tr>
<tr>
<td>Stalking training is component of periodic in-service training for all prosecutors</td>
<td>23</td>
<td></td>
</tr>
<tr>
<td>In-service stalking training provided to all prosecutors and to special unit prosecutors</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td><strong>Stalking Unit/Staff In-Service Training Provided</strong></td>
<td>38.2</td>
<td>65</td>
</tr>
<tr>
<td>Stalking training is part of domestic violence training provided only attorneys in this unit also handling stalking prosecution</td>
<td>45</td>
<td></td>
</tr>
<tr>
<td>Stalking specific training provided to special unit members</td>
<td>16</td>
<td></td>
</tr>
<tr>
<td>Stalking training provided to domestic violence or other special unit members only as needed</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td><strong>Stalking Training Included in New Attorney Training Only</strong></td>
<td>2.9</td>
<td>5</td>
</tr>
<tr>
<td><strong>In-Service Training Provided Only as Outside Funding Available</strong></td>
<td>10.6</td>
<td>18</td>
</tr>
<tr>
<td><strong>No Training Provided</strong></td>
<td>17.7</td>
<td>30</td>
</tr>
</tbody>
</table>

**Total** 100.0 170

### Non-Attorney Training

Training on stalking is also provided by about three-fourths of prosecutor offices to the non-attorney staff (e.g., victim advocates, investigators, paralegals). About half of these (51.5 percent) provide stalking training as a component of domestic violence training, 9.3 percent provide specialized stalking training in addition to domestic violence stalking training, and 1.2 percent (2 offices) provide only specialized stalking training (see Exhibit 6). Finally, 11 percent (19 offices) provide stalking training only as outside funds are available; and 27.2 percent (47 offices) provide no stalking training to their non-attorney staff (2 of the 47 said they had no
relevant unit, with one noting that a victims advocate unit was part of another criminal justice agency).

<table>
<thead>
<tr>
<th>Stalking Training for Non-Attorney Prosecution Staff</th>
<th>Percent of agencies</th>
<th>Number of Agencies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stalking training provided as component of domestic violence training</td>
<td>51.5</td>
<td>89</td>
</tr>
<tr>
<td>Specialized stalking training provided in addition to domestic violence stalking training</td>
<td>9.3</td>
<td>16</td>
</tr>
<tr>
<td>Specialized stalking training provided</td>
<td>1.2</td>
<td>2</td>
</tr>
<tr>
<td>Training provided as outside funds are available</td>
<td>11.0</td>
<td>19</td>
</tr>
<tr>
<td>No stalking training or no applicable unit</td>
<td>27.2</td>
<td>47</td>
</tr>
<tr>
<td>No stalking training</td>
<td></td>
<td>(45)</td>
</tr>
<tr>
<td>No applicable unit</td>
<td></td>
<td>(2)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100.0</strong></td>
<td><strong>173</strong></td>
</tr>
</tbody>
</table>

**Written Policies and Procedures on Stalking**

An important complement to training is the establishment of written policies and procedures to guide the exercise of staff discretion.\(^9\) Since stalking is such a new criminal code provision, it requires that even more guidance be made available to agency personnel. The content and placement of the policies and procedures will vary, however, depending upon which agency unit staff are responsible for handling stalking cases.

**Law Enforcement Policies and Procedures**

About 57.4 percent of law enforcement agencies report having written policies and procedures for handling stalking cases. Of these agencies, 50.9 percent incorporate stalking policies into their domestic violence policies and procedures, while 6.5 percent (11 agencies) report

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\(^9\) For example, police discretion is often exercised in making arrests. Even where state law mandates that an arrest be made where probably cause exists to arrest, this mandate does not take into account possible defenses such as self-defense that negate probably cause. Police officers may need to be formally reminded that they should always consider self-defense, especially in a domestic violence situation, in a dual arrest context.
have separate policies for stalking cases (see Exhibit 7). Of the 11 agencies with “stand alone” stalking policies, 3 agencies also address stalking in their domestic violence policies, and 2 agencies have stalking policies as part of another set of written policies and procedures (e.g., policies adopted from the local prosecutor protocol). Finally, 42.6 percent of law enforcement agencies have no written policies and procedures on stalking.

### Exhibit 7: Law Enforcement Written Policies and Procedures on Stalking

(n=169)

<table>
<thead>
<tr>
<th>Written Policies and Procedures</th>
<th>Percent of agencies</th>
<th>Number of Agencies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stalking Policies Part of Domestic Violence Policies and Procedures</td>
<td>50.9</td>
<td>86</td>
</tr>
<tr>
<td>Stalking Specific Policies</td>
<td>6.5</td>
<td>11</td>
</tr>
<tr>
<td>Stalking policies stand alone</td>
<td></td>
<td>6</td>
</tr>
<tr>
<td>Stalking policies are both included in domestic violence policies and stand alone</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Stalking policies included in other materials</td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>No Written Policies and Procedures</td>
<td>42.6</td>
<td>72</td>
</tr>
<tr>
<td>Total</td>
<td>100.0</td>
<td>169</td>
</tr>
</tbody>
</table>

### Prosecutor Policies and Procedures

Slightly more than half of prosecutor offices (53.8 percent) have written policies and procedures for prosecuting stalking cases. Most of these offices (50.3 percent) include stalking in the written policies for domestic violence prosecution; only 3.5 percent (6 offices) have separate written policies for stalking (see Exhibit 8). One of these 6 has both types of policies. Another 46.2 percent of prosecutor offices report having no written policies and procedures for stalking of any kind. (Several offices’ replies suggested they may have informal stalking prosecution policies rather than “written” policies.)

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10 One office did not provide any information about written stalking policies and procedures.
Other Questions

Two additional questions invariably arise when discussing stalking investigation and prosecution. The first concerns the number of stalking cases; there is some reason to believe that how an agency responds to stalking complaints is affected by its perceptions about the number and seriousness of such complaints. Hence, the survey asked law enforcement agencies whether or not they collect statistical information about the incidence of stalking complaints. The second question relates to prosecutor charging practices. Anecdotal reports from prosecutors indicate there are serious impediments to successful stalking prosecution that may lead prosecutors to file other charges that do not have such problems. One survey question asked prosecutors about charges used in lieu of a stalking charge.

**Stalking Statistics Collection (Law Enforcement)**

Slightly more than half of law enforcement agencies (54.5 percent or 90 agencies) indicated they have statistics on stalking cases, while the remaining 45.5 percent (75 agencies) said they do not collect stalking statistics. Among the latter, one agency said that as a result of this survey, the department intends to begin coding stalking with a separate incident reporting number to assess the volume of stalking cases. (Four agencies did not respond to this question.)
Charging Practices (Prosecutors)

Prosecutors were asked about their charging practices in stalking cases. Because of difficulties of proof in some jurisdictions, erstwhile stalking cases may be prosecuted under other statutes. More than half of prosecutor offices (55.5 percent or 96 offices) said that they will sometimes use other charges in lieu of a stalking charge. The most common alternative charge was protective order violation (78 offices), followed by harassment (52 offices), criminal trespass (45), and threats or terroristic threats (40 offices). The rationale for these charges is, as one prosecutor put it, "Anything we can make stick."

Additional Comments

Many of the responding agencies provided written comments on their survey responses. The law enforcement comments indicate a concern about the practical enforceability of the stalking laws and suggest a need for increased policy direction to overcome the barriers to stalking investigation and prosecution. Prosecutors were perhaps even more vehement than law enforcement agencies in expressing concern about the failures of the stalking laws. Respondent comments are grouped below in five categories:

- Seriousness of stalking cases
- Stalking training
- Prosecution problem areas
- Other issues.

Among the more interesting comments were the following.

Seriousness of Stalking Cases

Law Enforcement Comments

There needs to be a mandate to assess persons arrested for stalking . . . on potential levels of violence/lethality and how immediate the threat might be.

Most cases which are initially identified as stalking are really cases of harassment and/or continual violations of protective orders which do not involve a credible threat or use of force.

11 Many offices reported using more than one type of alternative charge.
We don’t have a lot of these cases, but when we do they are usually very serious.

**Prosecutor Comments**

Stalking is taken very seriously... We have seen the death involved in domestic stalking and are mindful of the duty to protect.

We actually don’t have that many applications on stalking. Either the victims aren’t reporting it, or the police don’t recognize it, or it isn’t happening as often as national norms would suggest.

This office recognizes stalking as being a very serious crime involving potentially homicidal defendants.

We consider them [stalking cases] a murder case waiting to happen.

**Stalking Training**

**Law Enforcement Comments**

More training is needed for line officers who must confront and resolve these complaints.

Difficult to get judge to issue protection orders. Judges need training on domestic violence and stalking issues.

**Prosecutor Comments**

Many prosecutors do not realize that telephone harassment, terroristic threats and trespass can amount to stalking. More training...should be made available . . . .

I believe that specialized training for stalking is essential.

Our primary concern is that stalking is not well understood by the police officers.

A problem I’ve encountered is police agencies viewing the incidents separately instead of one incident in a pattern of conduct . . . . Consequently there are many serious stalking cases which are not investigated . . . .

Additional training for law enforcement is needed.

It is hard for me to believe that attorneys trained to prosecute various types of assaults need special training for stalking cases. It is not training that is needed—it is sensitivity.

Judges need more training to understand the seriousness of these cases.

Judges are still uneducated in interpreting the warning signs in stalking cases.
Prosecution Problem Areas

Law Enforcement Comments

We must have an open-and-shut case for prosecutors to file charges. The amount of evidence that is necessary makes it difficult to provide protection and to prosecute.

District Attorney said that a threat of violence is needed for fileable cases. Following the person is not sufficient.

Stalking in Texas is not very useful—most cases are filed as harassment or terroristic threat . . . . Stalking is often difficult to prove, especially when the pattern is not overtly threatening.

There does not seem to be a clear, universal definition of stalking among law enforcement, prosecutors, etc.

Prosecution Comments

Our biggest problem is getting the jury, and sometimes the court, to find a ‘credible threat’ if it is an implied one.

[C]redible threat . . . is harder to prove than [crimes] that prescribe certain conduct.

It has been very difficult to persuade jurors that a ‘credible threat’ has occurred . . . absent bodily injury or an actual threat to kill . . . .

The specific intent requirements . . . as well as the requirements of fearing serious bodily injury make this crime almost impossible to prove beyond a reasonable doubt.

[The] statute requires a threat as an element. This requirement poses problems when trying to prosecute certain erotomania cases.

The problem with prosecuting these cases is the lack of corroborative evidence.

Most of the anti-stalking legislation we have seen . . . is either ‘copied’ from other states and therefore does not mesh [with existing state law] or is a knee-jerk piece of legislation and therefore unworkable and in many cases unconstitutional.

[A]s long as no threats are made, no weapons involved, [stalking] can be impossible to prove.

[M]aking a stalking case . . . is difficult . . . . It is easier to make related case charge stick.

Cases are difficult to prosecute because victims who know their stalkers often recant statements that they are in fear.

The main difficulty we have in prosecuting stalking cases has been lack of victim cooperation. We have had more than one case where the victim has
gotten engaged to the defendant while the case was pending. In other cases, once the harassment stops, the victim is no longer interested . . . and is unwilling to testify.

Frequently the defendant and victim have children in common. This...is used . . . as a defense. Consequently if restraining orders were more . . . precise, it would make it easier to prosecute.

The mental distress element of menacing by stalking will always guarantee a not guilty finding due to the fact that once prosecution shows mental illness on the part of the victim, neither a judge nor jury will find the victim credible.

Other Issues

Law Enforcement Comments

Protective orders don’t work. They provide a false sense of security and tend to anger the recipient. The prosecutor’s office does not act on violations in a timely manner.

Perhaps the most common problem . . . is the coordination and cooperation that is often necessary between various police departments and jurisdictions.

Conclusions

This report discusses the findings from our survey of law enforcement and prosecutor agencies in large jurisdictions and leads to several policy conclusions. First and foremost, the responses show that a considerable proportion of these agencies are trying to be responsive to the needs of stalking victims. At the same time, their responses often indicate that critical elements are lacking. Many agencies have no structural or organizational response to stalking cases; staff training in stalking investigation and prosecution is not available for all relevant staff, nor are there policies in place to guide staff in their tasks. In short, while many agencies have directed staff resources to respond to stalking complaints, much more needs to be done.

The most serious organizational problems lie with the need for more staff training and development of stalking-specific policies and procedures. Stalking cases present some unique challenges to the criminal justice system that require innovative and case-specific responses. Stalking cases are especially hard to both identify and respond to. While most agencies provide some training to some staff in handling stalking cases, it is clear that only a handful of agencies train all personnel on stalking issues. Law enforcement training often focuses on a few detectives handling these cases (as part of a larger caseload). Patrol officers who must identify
stalking cases before they are referred to the detectives typically receive no training other than a few hours in recruit training. Only a handful of agencies report providing in-service training on stalking to patrol officers. Prosecutor office training usually focuses on stalking in the domestic violence context, which is not surprising since stalking cases are usually assigned to the domestic violence prosecution unit. Allocation of training resources in this way shortchanges prosecutors who handle stranger stalking cases.

Agency policies and procedures for stalking cases complement and supplement staff training on stalking. But many agencies do not have such policies and procedures. Although most agencies report that their written policies for domestic violence include stalking guidelines, the adequacy of such policies may rest on the assumption that stalking does not differ in its dynamics or outward manifestations from domestic violence cases. This is manifestly not true, especially for stranger stalking. Hence, the adequacy of such policy materials for stalking that is not related to domestic violence must be considered problematic.

How Far Have We Come? How Far to Go?

The survey findings overall may be viewed from either the “half-filled glass” or “half-empty glass” perspective. The “half-full” perspective focuses on the newness of the enactment of criminal legislation on stalking and how far we have come. The “half-empty” perspective looks at how far we have to go.

A third policy perspective is nonjudgmental. This perspective focuses on what we need to do. In this context, statistical reviews of a limited survey can take us only so far. We must also consider the comments provided by the respondents. The most striking comments are those that explicitly and implicitly indicate the following problems and needs:

- Problems with the existing statutory definitions of stalking. Particular concern was expressed about the statutory “credible threat” language and the difficulty of proving beyond a reasonable doubt any implied threat.
- Problems of coordination between law enforcement agencies and between law enforcement and prosecution.
- The need for more and better training for staff (law enforcement, prosecutors, and judges).
- Recognition of the seriousness of stalking cases, especially as precursors of homicide.
Overall, the findings indicate a need for increased high-level agency understanding of what is required to appropriately respond to complaints of stalking behavior. There is no question that most agencies recognize the seriousness of many stalking cases. The trend toward specialized staff handling these cases is but one indicator of this recognition. But there is little agreement about the best strategies for managing anti-stalking programs. The next report to Congress will address this gap in knowledge.