Stalking as a Focus of the STOP Program

Although most STOP efforts have been directed toward domestic violence, the STOP program’s legislative authority is to address three major types of violence against women: domestic violence, sexual assault, and stalking. The legislation specifically identifies stalking as one of the seven purpose areas within which states should target STOP funding efforts. Since STOP funding became available, however, few states have focused their efforts on issues related to stalking. Only eight states included stalking in their initial implementation plans (Burt et al. 1996). To date, stalking is the crime that receives the least amount of attention from STOP-funded activities, with only 7 percent of STOP subgrants citing stalking as a purpose area.

Part of the reason that stalking has received less attention than domestic violence and sexual assault is because stalking cases are particularly problematic—law enforcement and prosecution have a difficult time following, investigating, and obtaining convictions in such cases. Some promising approaches to handling stalking cases have, however, been developed in special law enforcement and prosecution units. This chapter includes background information about the crime of stalking, the reasons why these cases are so difficult to handle, and the ways in which this problem is being addressed through STOP formula grants. The information reported here is based on evaluation projects funded by the Violence Against Women Office (VAWO) and conducted by the Institute for Law and Justice (ILJ).

Stalking is predatory behavior, but not only predatory behavior. Predatory behavior is not uncommon to criminal justice, where the criminal may target his victim for sexual assault or even homicide, follow the victim until conditions are most propitious, and then commit the crime without the victim having any advance warning.

In contrast, the crime of stalking involves much more than predatory behavior, although such behavior is typically one element of criminal stalking. It is important to include stalking in discussions of violence against women because stalking is an intrinsic part of the pattern of severe domestic violence and an extension of the batterer’s control over the victim. Stalking may culminate in sexual assault and/or the murder of the victim.
Most state penal codes define stalking as involving:

- A pattern of willful or intentional harassing or annoying/alarming conduct, such as repeat messages, following, vandalism, and other unwanted behaviors;
- Infliction of credible explicit or implicit threats against a victim’s safety or that of her family; and
- Actual victim fear of the stalker resulting from this behavior.

The prosecution must prove every part of this definition to convict an offender of stalking, and every part creates problems for prosecutors.

**Willful/Intentional Behavior**

State stalking laws in most jurisdictions require that the prosecution show that stalking behavior was intentional; that is, the stalker meant to perform those acts that constituted the stalking, such as following a victim or sending gifts. In many of these states, the prosecution must also prove that the stalker intended to threaten the victim and to cause her fear. Court decisions in several states have reduced the prosecutorial burden of proving intent to threaten and cause fear by holding the defendant’s actions were such that he knew, or should have known, that the consequences of his actions would provoke threat and fear. Nonetheless, a common practice among police and prosecutors is to ensure that the stalker is made aware by the victim or her representative (e.g., a police officer) that his actions are not welcome and provoke fear.

**Threat**

Under most states’ stalking laws, a threat may be either explicit or implicit. Stalking threats need not be for “right now,” but may be in the indefinite near future. However, the threats must meet a “reasonable person” standard to exclude oversensitive reactions. A number of states have also recently amended their stalking laws to cover “cyberstalking” by e-mail, the Internet, and other forms of electronic communication.

**Fear**

Stalker threat and victim fear in response to that threat are easy to separate when the stalking threat is made explicit. But most stalking cases do not involve explicit threats. In cases where the threat is implicit in the stalker’s actions, threat and fear are difficult to separate. Proof of one often also requires proving the other, per the “reasonable person” standard.

An experienced stalking prosecutor with the San Diego district attorney’s office notes that it is the context within which the harassing
or stalking behavior occurs that provides the link between that behavior and victim fear in stalking cases. For example, sending flowers as a gift may be stalking behavior, depending upon the actions preceding the gift. In some cases, the threat against the victim may be obvious even where only implicit—for example, the stalker places a sex doll with a nylon rope tied around its neck in the victim's bed. In other cases, more background information is needed, for example, where the stalker uses the phrase "love forever" in conjunction with references to his prowess as a rifle sharpshooter.

The requirement in most jurisdictions that actual fear be present for the case to be categorized as stalking means that unless the victim is aware of the following, simple predatory behavior does not constitute the crime of stalking. Victim testimony about her fear may be corroborated by showing that actual behavioral changes occurred. In many cases, however, the victim's actions in response to the stalking may not be straightforward and can cloud the issue of victim fear.

### Examples of Stalking Cases

1. **Prior Dating Relationship.** Ms. X was involved in a dating relationship with a fellow student at a university in San Diego. After three months together, Ms. X felt that this man was trying to isolate her from her friends and family and seemed controlling and demanding. Soon after Ms. X told him their relationship was over, she found her car tires slashed and a brick thrown through the windshield. The vandalism was followed by threatening phone calls and messages on her pager citing the California penal code section for murder—187. Ms. X went into hiding from then on. A couple of months later, she was asleep in bed with her daughter when she was awakened by a loud popping noise—the perpetrator was striking Ms. X in the mouth with a ball peen hammer. He fled the scene but was arrested days later. While awaiting trial, the perpetrator approached a cell mate in an attempt to hire a "hit man" to kill Ms. X. Upon being informed of this, the prosecutor's investigators staged a "murder." A make-up artist was hired to prepare Ms. X to appear as if she had been shot in the head. Polaroid photos were then taken of the "assassinated" Ms. X. An undercover investigator then went to the jail and visited the perpetrator, who, after seeing the photo, acknowledged that the murder was what he wanted. Charges were filed by the prosecutors in San Diego, and the perpetrator was convicted of stalking, burglary, assault with a deadly weapon, torture, and soliciting for murder. He received a prison sentence of 13 years to life.

2. **Total Stranger.** An 18-year-old female was singing in her church choir. She was seen performing with the choir by a total stranger, who began to stalk her. Among other things, he sent pornographic pictures and videos to her home. With the pornography, he would add a message saying, "This is you and this is me." He also called her at home, making threats and playing the soundtrack from a pornographic movie. When he was arrested, he explained his actions as motivated by his being a "student of human nature." He said he simply wanted to see how she would react to
his presents, and he would sit in the back of the church to see how she was holding up. The defendant was convicted of stalking by prosecutors in Los Angeles and sentenced to 16 months in prison.

3. **USE OF THE INTERNET.** The defendant had become fixated upon the victim, who refused to engage in a romantic relationship with him. After several years, the defendant began to pose as the victim on the Internet. He placed several sexually graphic “want ads” on Internet bulletin boards and in this way began to correspond with men while posing as the victim. He then solicited the men to rape the victim by claiming that he/she enjoyed rough sex and rape fantasies. As part of the solicitation, he provided the men with the victim’s address, phone number, and other personal information. When the victim learned of these events from one of the men so solicited, she went to local police and was told there was nothing they could do. Eventually the Federal Bureau of Investigation (FBI) referred her to the Los Angeles district attorney’s Stalking and Threat Assessment Team (STAT). After extensive investigation by STAT and the FBI, a felony stalking complaint was issued. The defendant eventually pled guilty and received a six-year sentence to state prison.

4. **FORMER HUSBAND.** After Mrs. Y was divorced, her ex-husband began to threaten and stalk Mrs. Y and her mother, including sending written death threats to both. The perpetrator also sent threats and defamatory mail to the victim’s place of employment. This resulted in Mrs. Y being transferred from a job as a nurse to a clerical position. Complaints to local police were not acted upon because there was no physical harm to Mrs. Y and because the threats came from another state. The victim sought help from a local rape treatment center, where a relationship between the center and a special stalking prosecution unit had already been established. The complaint was referred to the prosecutor’s victim advocate. The investigator followed up the complaint, and a warrant for felony stalking was issued against the ex-husband. The case was also referred to the U.S. attorney’s office, which filed a federal criminal complaint for interstate stalking. As of this writing, the suspect is still a fugitive from justice.

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**Stalking Investigation and Prosecution**

Statutory law defines the elements of the crime of stalking. Each crime element must first be investigated and then proven by the prosecution for a defendant to be convicted of stalking. How law enforcement and prosecution respond to victim reports of stalking varies, depending upon reports of particular stalking activities. Stalking cases do, however, present some unique case elements, including the necessity for threat assessment and management. At the same time that the investigation and prosecution are occurring, officials must also ensure victim safety. Thus, threat assessment and management should be an integral part of the agencies’ stalking response.

**Stalking Laws**

As of November 1999, all 50 state legislatures (and the District of Columbia) had enacted laws making stalking a crime. As discussed
in the Third Annual Report to Congress on Stalking and Domestic Violence (1998), these laws vary significantly in the specific behaviors outlawed and the penalties provided for their violation.

Stalking is one of several related crimes that threaten a victim’s privacy and safety. Related crimes include harassment, terroristic threats, and invasion of privacy. The most serious of these offenses is the terroristic threat against the victim’s person. Stalking differs from terroristic threats in that for stalking, both the threat and the victim fear result from a series of acts, and the threat is for an act that may occur at some indefinite time in the future. With terroristic threats, a single act can constitute the threat, but that threat must be one of imminent behavior (“right now”) and must include the capacity to act on the threat.

“Making” a stalking case is almost always a long process. Each stalking investigation must proceed on two tracks—identifying the stalker and proving a crime has been committed.

Identifying the Stalker
In most criminal cases, especially the most serious, identifying the criminal is all that the investigation is required to do—that is, the need is to prove “who did it.” In many stalking cases, the identity of the stalker is unknown. Indeed, in many instances, there may not even be any suspects. Thus, the first task in a stalking investigation in these latter cases will be to develop a list of potential suspects. These may be gained from the victim, the victim’s family, friends, and coworkers. Each possible suspect must be investigated and each alibi checked out.

Because stalking is an ongoing crime that continues to occur after law enforcement enters the case, it may be possible to use surveillance methods to help identify the stalker. Thus, law enforcement may use cameras posted at the victim’s home that show the area around the residence. Or their own stalking team may follow the victim to see if any of the possible suspects appear in the area of the victim (e.g., while shopping). Alternatively, law enforcement may set up a counterstalking watch over a possible suspect to see if he engages in stalking behavior. In one case, law enforcement staked out the suspect’s vehicle and when he appeared at the car, he was found carrying an envelope he planned to mail to the victim that contained a threatening note and feces. In another case, law enforcement used cameras at a local university computer laboratory to identify who was using a specific machine that was determined to be the site of cyberstalking.

Proving a Crime Was Committed
Proving stalking requires showing both that specific stalking acts occurred and that they resulted in victim fear. The primary source of evidence for proving both crime elements is the testimony of the
victim herself. This testimony must be corroborated by other evidence, such as:

- Testimony of victim's friends or coworkers who were present at a stalking event;
- Documentary evidence, such as letters or notes sent to the victim by the stalker;
- Printed versions of e-mail messages sent to the victim; and
- A log of stalking events maintained by the victim noting time, date, and specific occurrences.

Proof that the victim had a reasonable fear for her safety due to the stalking also begins with the victim's testimony. It, too, must be corroborated by testimony from:

- The victim's friends and coworkers regarding changes in the victim's behavior, such as asking for an escort to go shopping or to the parking lot when leaving work;
- A psychiatrist, psychologist, or other treatment professional offering expert testimony;
- Security officials at the workplace who had been informed of stalking occurrence;
- A record of victim statements that are not hearsay rule limited (e.g., 911 tapes, police incident reports);
- Answering machine tapes, audiotapes of phone calls, etc.;
- Pictures of the stalker taken by the victim (date and time stamped);
- Search warrant–gained evidence, including computer files, the stalker's diary, property of the victim found at the stalker's residence, pictures of the victim taken by the stalker, etc.; and
- A videotaped interview with the stalker.

**Problems with Stalking Investigation and Prosecution**

One California prosecutor describes the difficulties with investigating and prosecuting stalking cases as follows:

- Cases are hard to identify at the outset. A course of conduct must be seen and shown.
- Investigations may be going on in different jurisdictions at the same time.
• Cases require a threat assessment that also informs the decision to seek a temporary restraining order.

• Cases require corroboration to prove what the defendant did.

• Cases require corroboration to prove the victim’s state of mind (fear).

• Cases do not necessarily end with a conviction.

• Conviction and incarceration may not end the stalking, even during incarceration.

Some other, less frequent problems that may be encountered include:

• A stalker on probation requests a move to a state where supervision of stalkers may be less vigorous unless law enforcement is contacted and warned:

• The need to add special conditions of probation for stalkers (e.g., barring a stalker from possessing painting equipment if spray painting the victim’s possessions is one element of his stalking pattern); and

• Enforcement of witness-tampering laws when stalking involves former intimates.

In addition to the problems discussed above, it should also be noted that stalking is one of three personal crimes that can be committed on the Internet. The other crimes are, of course, terroristic threat and harassment, both stalking-related offenses.

The most important question in a stalking case is “How dangerous is the stalker likely to be to the victim?” Protecting the victim is a higher priority than a successful prosecution. Hence, both law enforcement and prosecution will try to assess the degree of danger that exists both at the initial complaint and as the case continues. Typical factors considered in threat assessment include the suspect’s history of mental illness or violence, history of domestic violence, explicit threats of violence, vandalism or pet abuse, and increases in stalking activity.

Once the threat is assessed, the question arises as to how best to protect the victim. Each case must, of course, be assessed on its individual merits. Thus, in some cases, a simple intervention interview will suffice; in others, a court injunction or protection order may be sought. In yet other cases, obtaining a civil order of protection may have the reverse effect of increasing the level of danger to the victim. Other common tactics used by law enforcement include
Providing the victim with an alarm system that will trigger police action at the home. Where this is done, more advanced systems will also ensure that the 911 dispatcher has access to descriptive information about any suspect and his vehicles. Victims will also be advised to take other actions such as changing phone numbers, varying routes to work, or renting a post office box for mail. In extreme actions, the victims will be aided in relocating their residence, perhaps even out of the jurisdiction. In a number of states, laws now permit victims to protect their personal information, such as driver's license and even Social Security numbers.

Either as part of threat management or for her own sake, the victim should receive additional services, for example, education about the nature of stalking and what she must do to help prove the case. A number of jurisdictions have developed brochures and other resources, such as a formal log for recording stalking incidents. Victims should also be helped to plan for their safety by changing their behavioral patterns to reduce the likelihood of stalking incidents (e.g., changing the route by which they travel to and from work). Therapeutic services may also be made available, although such programs are still rare.

**STOP Funding**

Because stalking laws are so new, their implementation has not yet been fully achieved. Both criminal justice and victim service personnel require training in recognizing and responding to stalking cases. Policies and procedures must be implemented to guide agency staff. Because these cases are often complex and time consuming, specialized staff need to be designated to develop the necessary expertise.

The STOP program explicitly provides for funding of stalking projects. However, stalking has not been a major priority for most of the state offices administering the STOP funds. Few state grantee initiatives have asked for proposals from subgrantees for projects directed at stalking, nor has any effort been made to encourage subgrantees to specify that stalking be part of a larger project directed at domestic violence or sexual assault. According to a review of Subgrant Award and Performance Reports (SAPRs), 389 subgrants reported conducting work within the purpose area of stalking. However, no programs reported an exclusive focus on stalking, only 11 percent reported focusing on stalking in addition to domestic violence and sexual assault, and just 3 percent reported focusing only on domestic violence and stalking. Thus it is not surprising that further analysis revealed only 18 subgrants with a significant portion of their work focused on stalking. Even among these reports, stalking enforcement or prosecution is in most instances a secondary objective. Moreover, none of the domestic violence or sexual assault project descriptions indicate any significant commitment to including stalking crimes in their scope of work.
Chapter 7: Stalking as a Focus of the STOP Program

There is good reason to believe, however, that these reports significantly underestimate the number of STOP-funded projects that deal with stalking cases. These reports are based on subgrantee project proposals; project activities are likely to vary considerably once they begin operations and have to meet victim demands. Because stalking cases are, in fact, much more numerous than many subgrantees understood when first submitting proposals, personnel are seeing many more stalking cases than originally estimated. The federal reporting program does not, however, track changes in project design or objectives.

To fill this information gap, ILJ personnel conducted site visits to stalking projects, reviewed project materials, and undertook a limited telephone survey of state STOP administrators to:

- Verify the information provided that stalking was a project component;

- Identify other projects that contain a stalking element, even if not officially reported as such.

Once a stalking project was identified by state officials, further telephone calls were made to verify that stalking was an important project component. Not all states responded to the survey. Furthermore, not all state STOP agencies were able to identify stalking projects because their funds are allocated to regional offices for further distribution to subgrantees. Hence, the information reported here is not a census of STOP-funded stalking projects. Table 7.1 shows those states reporting STOP-funded stalking projects.

A total of 16 states report having funded 38 projects directed at stalking. These include 7 projects to improve investigation of stalking, 9 projects to improve prosecution of stalking crimes, 12 projects to help victims of stalking, and 10 projects primarily providing training or developing protocols on stalking.

In addition to the subgrantee projects funded under STOP, the Violence Against Women Office directly funds the STOP TA (Technical Assistance) Project. As part of its work, the project prepared a *Promising Practices Manual* (STOP TA Project, 1998), profiling some of the exemplary projects directed at violence against women around the country. Chapter 3, on law enforcement initiatives, includes a section, “Develop Police Strategies to Intervene in Stalking Cases.” Chapter 4, on prosecution, includes a section, “Develop a Plan and Implement Strategies for Complex Cases,” and a subsection, “Develop Specific Strategies for Investigating and Prosecuting Stalking Cases.” Chapter 5, on victim services, includes a section entitled “Design Services to Address Stalking and Advocate for an Improved Community Response to Women Who Are Stalked.” Also included in these materials are profiles of anti-stalking initiatives in the Nashville, Tennessee, Metropolitan Police Department; the Dover, New Hampshire, Police Department; and

No programs reported an exclusive focus on stalking. 11 percent reported focusing on stalking in addition to domestic violence and sexual assault, and 3 percent reported focusing only on domestic violence and stalking.
<table>
<thead>
<tr>
<th>State</th>
<th>Grantee</th>
<th>Description/Activity</th>
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<tbody>
<tr>
<td>Arizona</td>
<td>M. Graham Safe House</td>
<td>Provide services to domestic violence victims, including those who have been stalked by their abuser; advocates attend state POST training on stalking.</td>
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<tr>
<td>California</td>
<td>San Diego District Attorney</td>
<td>The stalking prosecution unit includes one attorney, one investigator, and a victim witness advocate assigned to vertically handle all domestic violence-related stalking cases; complements existing unit staff assigned to stranger stalking cases.</td>
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<tr>
<td>Los Angeles District Attorney</td>
<td>The stalking prosecution unit includes two attorneys, one investigator, and a victim witness advocate assigned to vertically prosecute most serious stalking cases in county.</td>
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<tr>
<td>Alameda County District Attorney</td>
<td>Stalking prosecution team to vertically prosecute stalking cases in county and to coordinate state efforts to collect data about stalking protection orders.</td>
<td></td>
</tr>
<tr>
<td>San Joaquin District Attorney</td>
<td>Establish part-time stalking prosecution unit and assign one probation officer for intensive supervision of stalkers on probation.</td>
<td></td>
</tr>
<tr>
<td>San Francisco District Attorney</td>
<td>Establish stalking prosecution team to vertically prosecute all stalking cases in county.</td>
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<tr>
<td>California District: Attorneys Association</td>
<td>Multidisciplinary training program, including stalking seminar and stalking as part of domestic violence training.</td>
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<tr>
<td>Peace Officer Standards and Training Commission</td>
<td>Train law enforcement using a previously developed multimedia stalking training unit as part of training for first responders (40 sessions), detectives (8 sessions), and sexual assault first responders (20 sessions).</td>
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<tr>
<td>Colorado</td>
<td>Ending Violence Against: Women</td>
<td>Coalition of state prosecutors, sheriffs, and coalitions against domestic violence and sexual assault sponsors statewide training on violence against women issues, including stalking.</td>
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<tr>
<td>AMEND</td>
<td>Project PAVE</td>
<td>Statewide training.</td>
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<td></td>
<td>Provide group counseling to domestic violence and stalking victims; individual counseling also provided.</td>
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<tr>
<td></td>
<td>Violence Prevention Coalition (Durango)</td>
<td>Develop protocols for risk assessment, victim logs, employers, and other system professionals.</td>
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<td></td>
<td>Project Safeguard (Denver)</td>
<td>Assist with gaining orders of protection for domestic violence victims, including stalking victims (30 percent estimate), and provide related services, such as name change and safety planning.</td>
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<td></td>
<td>Douglas County Sheriff</td>
<td>Domestic violence investigative unit also handles all stalking cases.</td>
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<td></td>
<td>18th Judicial District Fast Track Prosecution</td>
<td>Include stalking in the fast track prosecution program; special emphasis on training for C.J. (criminal justice) personnel, volunteers, and the community in recognizing stalking and implementing new stalking law and on tracking stalking defendants' locations through the pretrial release Emergency Protection Program using beepers and mandatory callbacks.</td>
</tr>
<tr>
<td>Connecticut</td>
<td>Sexual Assault Coalition &amp; POST</td>
<td>Develop sexual assault, domestic violence, and stalking training materials. A Train-the-Trainers model was first implemented, then multidisciplinary teams deliver training.</td>
</tr>
<tr>
<td>Delaware</td>
<td>Wilmington Police Department</td>
<td>Provide victim advocate services to victims of violence against women, including stalking.</td>
</tr>
<tr>
<td>Georgia</td>
<td>Athens/Carke County Police Department</td>
<td>Establish a special investigative unit for domestic violence crimes where no arrest was made, including protective order violations and stalking.</td>
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