

# Stalking Technology Outpaces State Laws

Computer technology and the Internet have opened up a whole new world for stalkers. When legislators were drafting the first stalking laws in the early 1990s, few could have foreseen the current widespread use of email, the Internet, chat rooms, websites, global positioning systems (GPS), cell phones, and tiny hand-held video and digital cameras to stalk. Although general stalking statutes (or harassment and related laws) in most states cover some forms of “cyberstalking,” states should review their laws to ensure that they prohibit and appropriately punish acts of stalking accomplished through current or future technology.

## Use of Technology to Stalk

The World Wide Web allows stalkers easy access to personal information about their victims. Perpetrators can anonymously commit stalking by posting their victims’ personal contact information in chat rooms and on websites, encouraging third parties to harass or threaten them. GPS enables stalkers to track their victims’ every move, and computer programs allow stalkers to retrace victims’ keystrokes, capturing the documents they have written and monitoring the Internet sites they have visited.

Despite the power these tools give stalkers, it is unclear whether such actions can be prosecuted under many current state stalking statutes and other related laws. Yet in several recent cases involving the use of technology to stalk, the courts have been required to determine whether the applicable law can be interpreted to include certain types of conduct.

## Recent Court Decisions

Several years ago, a Colorado man installed a GPS in his estranged wife’s car to check on her whereabouts during their divorce proceedings. A Colorado court ruled that the phrase “under surveillance” in the state stalking law included such electronic surveillance and that the husband’s behavior constituted stalking. (See Colorado v. Sullivan, 53 P.3d 1181 (Colo. Ct. App. 2002)). More recently, a Wisconsin man who had used the same tool to follow his ex-girlfriend’s pleaded no contest to the charge of misdemeanor stalking and is awaiting sentencing.

In a recently prosecuted New Jersey case involving the use of a different device, a victim living in the same house as her estranged husband discovered a tiny video camera in a small hole in her bedroom wall. Her husband had

been using the camera to conduct surveillance of her for months. The highest court in New Jersey determined that this use of technology was stalking as defined by that state’s statute. (See H.E.S. v. J.C.S., 815 A.2d 405 (NJ 2003)).

In a 1999 New Hampshire case, after purchasing his victim’s personal information from an information broker, a stalker set up a website that published references to stalking and killing his victim, whom he fatally shot several months later. (See Remsburg, Administratrix for the Estate of Amy Boyer v. Docusearch Inc., 2003 NH LEXIS 17 (NH 2003)). The court recently held that because of the risk of stalking and identity theft, information brokers may be held liable for the sale of such personal information.

In most of these cases, the courts rejected the stalkers’ argument that their conduct did not fall under the state stalking laws. The question remains however, whether the courts will make the same kinds of rulings about each new form of technology.

## Status of the Law

All fifty states have stalking laws. Roughly one-third of the states have incorporated into their stalking statutes language relating to stalking through electronic means. General harassment statutes in some states prohibit harassing electronic communications. A handful of states have enacted separate cyberstalking laws. A number of other states have created a variety of other specific offenses, such as harassing communications, unlawful computerized communications, harassment through electronic communications, misuse of electronic mail, and obscene electronic communications.

## Electronic Communications Laws

Most of these laws emphasize electronic communications to the exclusion of other types of stalking through electronic means. To cover all possible communications tools that stalkers might use, some states’ statutes include long lists of examples of such devices. The danger of adopting this tactic is the potential for omitting other means that would fall under the statute. A better approach is to keep such lists open-ended. Legislators may insert the phrase “including, but not limited to” before a list of examples to ensure that the law will apply to all newly developed forms of communication. They can also use a

catchall phrase intended to make a stalking law all-inclusive (e.g., “makes any form of communication with another,” “threats conveyed by any other means of communication, or “otherwise communicating”).

### Electronic Conduct Laws

While many states have laws on stalking via electronic communications, only a few have expanded their laws to cover other forms of technology-related conduct, such as surveillance, following,<sup>1</sup> and videotaping, as well as communications. California’s stalking statute requires that to be classified as stalking, the course of conduct must include making a credible threat with the intent to place the victim in reasonable fear for his or her own safety. The term credible threat is defined in part as “a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a *combination of verbal, written, or electronically communicated statements and conduct.*”<sup>2</sup> Other states including Kansas, Louisiana, and Massachusetts have laws containing similar language.

### Laws Using Broad Language

Still other states have used even broader, more open-ended language that may be interpreted to cover technology, both current and future. Under Montana law, an individual who harasses, threatens, or intimidates his or her victim “in person or by mail, electronic communication...or *other action, device, or method*” commits the crime of stalking.<sup>3</sup> In Virginia, a person stalks another when he or she “engages in conduct directed at another person” when he or she knows or reasonably should know that the conduct will cause the victim fear.<sup>4</sup> Though subject to case-by-case court interpretation, such language allows the state to argue that any conduct, electronic or otherwise, that causes a reasonable person to be afraid should be recognized as stalking. Open-ended language is useful if it is not so broad that it invites challenges to the law’s constitutionality.

### Posting Electronic Messages

A few states have addressed the use of technology by stalkers who post personal information about their victims online, encouraging others to contact them for illicit purposes. Michigan passed a statute specifically to

prohibit a person from “posting a message through the use of any medium of communication, including the Internet or a computer, computer program, computer system, or computer network, or other electronic medium of communication, without the victim’s consent,” if certain conditions apply. Nevada’s stalking law covers this type of conduct by stating that a person commits the crime of stalking when he or she uses “an Internet or network site or electronic mail or any other similar means of communication to *publish, display or distribute information in a manner that substantially increases the risk of harm or violence to the victim.*”<sup>5</sup>

### Questions to Ask About Your Laws

Stalking laws should define the conduct that constitutes stalking as broadly as possible without being unconstitutionally vague. States reviewing their stalking, harassment, and related statutes should ask themselves three questions: Will the language used in the law cover all conduct and communications that future advances in technology may generate? Does the law require or imply the need for direct physical contact between the perpetrator and the victim, or can electronic monitoring and surveillance be considered stalking? Does the law cover third-party contact initiated by the stalker?

### Conclusion

Protecting victims from all kinds of stalking and holding offenders accountable for their behaviors are important goals of stalking laws. States should look at their stalking, cyberstalking, and other related laws to ensure that their citizens have the same protection from stalkers who use computer spyware or video cameras as they do from those who physically follow, harass, or threaten them.

If you or your community are working on these issues, or would like assistance with this or any other stalking matter please contact us at 202-467-8700 or e-mail [src@ncvc.org](mailto:src@ncvc.org).

### (Endnotes)

- 1 For example, using a global positioning system to follow the victim’s movements and keep track of where they are and where they are going.
- 2 Cal. Penal Code § 646.9 (Deering 2003).
- 3 Mont. Code Ann. § 45-5-220 (2003).
- 4 Va. Code Ann. § 18.2-60.3 (Michie 2003).
- 5 Nev. Rev. Stat. Ann. 200.575 (Michie 2003).

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