

2000

Utilizing the Tools: Successfully Implementing the Stalking Statutes

Stacy Casper Martinez

Follow this and additional works at: https://scholarship.law.uwyo.edu/land_water

Recommended Citation

Martinez, Stacy Casper (2000) "Utilizing the Tools: Successfully Implementing the Stalking Statutes," *Land & Water Law Review*. Vol. 35 : Iss. 2 , pp. 521 - 548.

Available at: https://scholarship.law.uwyo.edu/land_water/vol35/iss2/8

This Comment is brought to you for free and open access by Law Archive of Wyoming Scholarship. It has been accepted for inclusion in Land & Water Law Review by an authorized editor of Law Archive of Wyoming Scholarship.

Comment

UTILIZING THE TOOLS: Successfully Implementing the Stalking Statutes

INTRODUCTION

A recent letter to the editor published in the Casper, *Wyoming Star-Tribune* captured the essence of this comment:

Why is it we claim to have a stalking law? Two times we've had the same person in court for threatening to murder our family. He keeps stalking us, but no order of protection has been given to us...[sic] The law says [the police] are here to serve and protect. Who are they protecting? Not us. We are to sit and wait and see what this person will do and to whom he will do it, before the police will do anything.¹

Primarily, state statutes provide the legal definition of stalking.² While the statutes vary, most define stalking as a course of conduct that places a person in fear for his or her safety.³ The sentiments expressed in the above letter illustrate the frustration often associated with stalking laws as they are currently implemented in Wyoming and other states. Stalking is a crime that affects people in all walks of life and crosses racial, social, religious, ethnic, and economic boundaries.⁴ The investigation and prosecution of this crime presents special challenges to our criminal justice system.⁵ The criminal justice system generally handles an isolated criminal act, usually after the crime occurred. However, stalking is a series of acts that often are not illegal as isolated incidents but which constitute a course of conduct that harasses and intimidates the victim.⁶ This comment examines the federal and state criminal and civil stalking laws. It suggests procedures for both law enforcement officials and members of the criminal justice system to deal with criminal stalking cases. Lastly, this comment provides attorneys with some guidelines for handling stalking cases.

1. Downita Clem, Letters, *Stalking Law is Weak at the Knees*, CASPER STAR-TRIBUNE, July 6, 1999, at A7.

2. See *infra* note 18.

3. *Id.*

4. See NATIONAL INST. OF JUSTICE, U.S. DEP'T OF JUSTICE, DOMESTIC VIOLENCE, STALKING AND ANTI-STALKING LEGISLATION; AN ANNUAL REPORT TO CONGRESS UNDER THE VIOLENCE AGAINST WOMEN ACT at 6 (1996) [hereinafter ANNUAL REPORT TO CONGRESS].

5. See *id.*

6. See *id.* at 3.

BACKGROUND

History

Before the enactment of stalking statutes, civil protection orders and menacing, terroristic threat, or harassment statutes were used in stalking cases.⁷ However, these approaches proved insufficient to protect stalking victims.⁸ Civil protection orders have substantive and procedural limitations that make them ineffective in protecting a stalking victim.⁹ First, statistics show that stalkers frequently violate protection orders.¹⁰ Second, although a protection order empowers police to arrest a stalker who violates the order, civil protection orders suffer from a widespread lack of enforcement.¹¹ A number of reasons explain why protection orders are not enforced: The victim may not report violations of the order to the police; the police may not respond to reported violations; and/or the courts may not monitor compliance with the order.¹² Third, statutory provisions limit the categories of persons who may apply for protective orders in each state.¹³ Eligibility requirements may preclude victims who are stalked by strangers, casual acquaintances, or former partners with whom they did not live from obtaining an order.¹⁴

In order to remedy the civil protection order shortcomings, some states instead applied existing menacing, terroristic threat, and harassment laws to stalking cases.¹⁵ However, in most cases, the statutes were too narrow to meet the broad range of behaviors exhibited by stalkers, and they failed to address the fundamental element of the crime: repetitive behavior.¹⁶

Because these traditional approaches inadequately dealt with stalking cases, states were prompted to pass statutes specifically designed to address stalking behavior. In 1990, California passed the first anti-stalking statute in response to the highly publicized stalking and subsequent murder of television star, Rebecca Schaeffer, and an overall increase in violent crimes related to stalking.¹⁷ Since 1990, all remaining states and the District of

7. See Jennifer Bradfield, *Anti-Stalking Laws: Do They Adequately Protect Stalking Victims?* 21 HARV. WOMEN'S L.J. 229, 236 (1998).

8. *Id.*

9. *Id.*

10. NATIONAL INST. OF JUSTICE, U.S. DEP'T OF JUSTICE, *STALKING IN AMERICA: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY* at 18 (1998) [Hereinafter *STALKING SURVEY*] (finding that seventy percent of protection orders are violated by stalkers).

11. See Julie Miles Walker, Comment, *Anti-Stalking Legislation: Does it Protect the Victim Without Violating the Rights of the Accused?* 71 DENV. U.L. REV. 273, 279 (1993) (noting that only twenty percent of protective order violations result in arrest).

12. See Bradfield, *supra* note 7, at 237.

13. *Id.* at 236.

14. *Id.* at 237.

15. *Id.* at 240.

16. *Id.*

17. See ANNUAL REPORT TO CONGRESS, *supra* note 4, at 1.

Columbia have enacted some form of anti-stalking statute.¹⁸ Wyoming passed its anti-stalking statute in 1993¹⁹ which, rather uniquely, allows for civil liability in stalking cases.²⁰

On the federal level, Congress passed the Violence Against Women Act (VAWA) as part of the Violent Crime Control and Law Enforcement Act of 1994.²¹ The VAWA provides for criminal penalties in interstate domestic violence or stalking cases and also provides for civil remedies.²² In 1996, VAWA was amended to include the Interstate Stalking Punishment and Prevention Act (ISPPA), making interstate stalking a federal offense.²³ The ISPPA was amended because initially it only prohibited interstate stalking by intimate partners or in violation of a protection order.²⁴ However, stalking obviously is not confined to situations involving domestic violence.

18. See ALA. CODE § 13A-6-90 to-94 (1995); ALASKA STAT § 11.41.260-.270 (Michie Supp. 1995); ARIZ. REV. STAT. ANN. § 13-2921 (West Supp. 1996); ARK. CODE ANN. § 5-71 229 (a),(b) & (c), § 5-13-301 (Michie 1993); CAL. PENAL CODE § 646.9 (West Supp. 1996); CAL. CIVIL CODE § 1708.7 (West Supp. 1996); COLO. REV. STAT. § 18-9-111 (Supp. 1996); CONN. GEN. STAT. ANN. § 53a-181d (West 1994); DEL. CODE ANN. tit. 11, § 1312A (1995); D.C. CODE ANN. § 22-504 (1996); FLA. STAT. ANN. § 784.048 (West Supp. 1996); GA. CODE ANN. §§ 16-5-90 to -93 (1996); HAW. REV. STAT. § 711-1106.5 (1994); IDAHO CODE § 18-7905, § 39-6312 (Supp. 1995); ILL. COMP. STAT. ANN. § 5/12-7.3 to -7.4 (West 1993 & Supp. 1996); IND. CODE ANN. § 35-45-10 (West Supp. 1996); IOWA CODE § 708.11 (1993) (amended 1996); KAN. STAT. ANN. § 21-3438 (1995); KY. REV. STAT. ANN. §§ 508.140-508.150 (Michie Supp. 1996); LA. REV. STAT. ANN. § 14:40.2 (West Supp. 1996); ME. REV. STAT. ANN. 17-A § 210-A (West 1997); MD. ANN. CODE art. 27, § 121B (Supp. 1996); MASS. GEN. LAWS ch. 265 § 43 (1993); MICH. COMP. LAWS ANN. § 600.2950a, 600.2954, § 750.411 h, i, § 771.2a (West Supp. 1996); MINN. STAT. ANN. § 609.749 (West Supp. 1996-97); MISS. CODE ANN. § 97-3-107 (1994); MO. ANN. STAT. § 565.225 (West Supp. 1996); MONT. CODE ANN. § 45-5-220 (Supp. 1996); NEB. REV. STAT. §§ 28-311.02 to .05 (1995); NEV. REV. STAT. §§ 200.571, .575, .581, .601 (1992); N.H. REV. STAT. ANN. § 633:3a (1996); N.J. STAT. ANN. § 2C:12-10 (West 1995); N.M. STAT. ANN. § 30-3A-1 (Michie Supp. 1996); N.Y. PENAL LAW § 240.25 (McKinney Supp. 1996-97); N.C. GEN. STAT. § 14-277.3 (Supp. 1995); N.D. CENT. CODE § 12.1-17-07.1 (Supp. 1995); OHIO REV. CODE ANN. § 2903.211 (Anderson 1993 & Supp. 1995); OKLA. STAT. ANN. tit. 21, § 1173 (West Supp. 1996-97); OR. REV. STAT. § 30.855, § 30.866, § 163.730, § 163.750 (1995); 18 PA. CONS. STAT. ANN. § 2709 (West Supp. 1996); R.I. GEN. LAWS §§ 11-59-1 to -3 (1994 & Supp. 1996); S.D. CODIFIED LAWS § 22-19A-1 to -7 (Michie Supp. 1996); TENN. CODE ANN. § 39-17-315 (Supp. 1996); TEX. CODE CRIM. P. ANN. art. 56.11 (West Supp. 1996-97); UTAH CODE ANN. § 76-5-106.5 (1995 & Supp. 1996); VT. STAT. ANN. tit. 13, §§ 1061, 1062, 1063 (Supp. 1996); VA. CODE ANN. § 18.2-60.3 (Michie 1996); WASH. REV. CODE ANN. § 9A.46.110 (West Supp. 1996-97); W. VA. CODE § 61-2-9a (1992 & Supp. 1996); WIS. STAT. § 165.829, § 940.32 (1996); WYO. STAT. ANN. § 1-1-126, § 6-2-506 (Michie 1996).

19. WYO. STAT. ANN. § 6-2-506 (Michie Supp. 1995).

20. WYO. STAT. ANN. § 1-1-126 (LEXIS 1999). California, Michigan, Oregon and Texas also provide for a civil cause of action in stalking cases. See CAL. CIV. CODE § 1708.7 (West Supp. 1996); MICH. COMP. LAWS ANN. §600.2954 (West Supp. 1996); OR. REV. STAT. § 30.866 (1995); and TEX. CIV. PRAC. & REM. § 85.001 *et. seq.* (West Supp. 1999).

21. 18 U.S.C. §§ 2261-2265 (1994 & Supp. II 1996).

22. 42 U.S.C. § 13981(a) (1994).

23. 18 U.S.C. § 2261A (1994 & Supp. IV 1998).

24. 18 U.S.C. § 2261 (1994 & Supp. IV 1998).

Profiles

Psychologists identify three broad categories of stalkers and stalking behaviors: erotomania, love obsession, and simple obsession.²⁵ Erotomania is a relatively rare, primarily female phenomenon. These cases involve offenders who believe that a public figure is in love with them. Erotomaniacs represent only about eight percent of stalking cases, and approximately eighty-five percent of offenders are female.²⁶

Second, the love obsession category is characterized by stalkers who develop a love obsession or fixation on other persons with whom they have no personal relationship.²⁷ This category includes stalkers who develop a fixation on ordinary people, including co-workers, casual acquaintances, or strangers.²⁸ Love obsessional stalkers represent approximately twenty to twenty-five percent of all stalking cases, and ninety-seven percent of the offenders are male.²⁹

Third, and most common, are the simple obsession stalkers, who comprise about seventy to eighty percent of stalkers.³⁰ This category is distinguished from the others by the existence of a previous personal or romantic relationship.³¹ Virtually all domestic violence cases fall under this category, as do casual dating relationships.³² Of this classification, approximately eighty percent of the offenders are male.³³ The categorization of stalkers is helpful to recognize the different types of stalking, but one study has gone farther and determined the frequency with which stalking situations occur.³⁴

Statistics

A recent study conducted by the National Institute of Justice and the Center for Disease Control and Prevention concluded that about 1.4 million people are stalked annually.³⁵ Women comprise the majority of victims, at a little over one million.³⁶ The study found that women most often are stalked by someone they know and are significantly more likely to be stalked by an intimate partner.³⁷ The study also indicated a clear relationship between

25. KAREN PARRISH & MELITA SCHAUM, *STALKED: BREAKING THE SILENCE ON THE CRIME OF STALKING IN AMERICA* 46 (Pocket Books 1995).

26. CALIFORNIA STATE UNIVERSITY, NATIONAL VICTIM ASSISTANCE ACADEMY, Ch., 21.2: Stalking (H.N. Burnley, C. Edmunds, M.T. Gatbory & A. Seymour, eds. 1996).

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. See *STALKING SURVEY* *supra* note 10, at 10.

35. *Id.* at 6.

36. *Id.*

37. *Id.* at 11. Only 21 percent of the women were stalked by strangers, while 36 percent of the men

stalking and other physically abusive behavior in intimate relationships.³⁸ In fact, eighty percent of women who were stalked by an intimate partner were physically assaulted by that partner during the course of their relationship.³⁹ In addition, thirty-one percent of these women were sexually assaulted by their partners.⁴⁰

Not all victims reported the stalking to the police, but when they did, the study found that the justice system became involved in some way in about half of the cases.⁴¹ About twenty-five percent of the victims who reported their stalking obtained a restraining order.⁴² Frighteningly, nearly seventy percent of the restraining orders were violated by the assailant.⁴³ Further, only twenty-four percent of the women who reported stalking to the police said that their cases were prosecuted, with fifty-four percent of those resulting in a conviction.⁴⁴ A stalking case may be prosecuted under either state or federal criminal statutes, depending on the circumstances of the case.⁴⁵ However, the required elements of the crime differ under the federal and state criminal stalking statutes.

Federal Criminal Stalking Statutes

The Violence Against Women Act (VAWA) was passed as part of the Violent Crime Control and Law Enforcement Act of 1994.⁴⁶ The enactment of VAWA marked a major change in the national response to crimes against women, including domestic violence, sexual assault, and stalking. VAWA represents a collaboration among law enforcement officials, health care providers, and non-profit service groups.⁴⁷ Also, VAWA allocates federal resources for police, prosecutors, prevention programs, and victim service initiatives in cases involving these crimes.⁴⁸ Several of VAWA's sections warrant examination for the purposes of this comment.

First, section 2261 of VAWA prohibits interstate domestic violence, making it a felony for a person to cross state lines with "the intent to injure, harass, or intimidate that person's spouse or intimate partner" if, in so do-

were stalked by strangers.

38. *Id.* at 14.

39. *Id.*

40. *Id.*

41. *Id.* at 17.

42. *Id.*

43. *Id.* at 18.

44. *Id.*

45. See discussion *infra*, pages 8-18.

46. VAWA includes seven subtitles, including: Subtitle A, Safe Streets for Women, increasing sentences for repeat offenders who commit sex crimes; Subtitle B, Safe Homes for Women, which include the sections now codified at 18 U.S.C. §§ 2261-2265 (1994 & Supp. II 1996); Subtitle C, Civil Rights for Women, creating a federal course of action for crimes of violence motivated by gender, codified at 42 U.S.C. § 13981 (1994).

47. See ANNUAL REPORT TO CONGRESS, *supra* note 4, at 6.

48. *Id.*

ing, he “intentionally commits a crime of violence and thereby causes bodily injury” to the spouse or intimate partner.⁴⁹ The section also prohibits an actor from committing the same acts after he “causes [his] spouse or intimate partner to cross a state line. . . by force, coercion, duress, or fraud.”⁵⁰

Second, section 2262 prohibits the interstate violation of a state court’s protection order “that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons” covered by the order.⁵¹ The threats, harassment, or injury fall within the statute if the offender crosses a state line or causes his partner to do so.⁵²

Third, section 2263 of the act allows the victim the opportunity to be heard regarding the danger posed by the defendant during the criminal pre-trial detention hearing.⁵³ The court may then consider the victim’s testimony when determining whether to release the defendant pending trial.⁵⁴ This provision allows the victim, rather than the prosecutor, to express to the court the level of fear and danger she feels about the defendant being released prior to trial.⁵⁵

Fourth, section 2264 provides restitution for the victim, regardless of other civil or criminal penalties the law allows.⁵⁶ The perpetrator is liable for the “full amount of the victim’s losses” for “medical services relating to physical, psychiatric, or psychological care,” “physical and occupational therapy or rehabilitation,” “necessary transportation, temporary housing, and child care expenses,” “lost income,” “attorney’s fees, plus any costs incurred in obtaining a civil protection order,” and “any other losses suffered by the victim as a proximate result of the offense.”⁵⁷ Under this provision, if convicted of a section 2261 or section 2262 violation, the defendant’s payment for the victim’s losses is mandatory.⁵⁸ While given some discretion in determining how restitution is paid, the court has no discretion in deciding whether or not to impose section 2264.⁵⁹

Finally, section 2265 provides that, nationwide, courts shall give full faith and credit to all valid protection orders issued by state courts.⁶⁰ All jurisdictions are required to enforce any order of protection that one state

49. 18 U.S.C. § 2261 (1994 & Supp. II 1996).

50. § 2261(a)(2).

51. § 2262 (a)(1)(A)(i) (1994).

52. *Id.*

53. § 2263 (1994).

54. *Id.*

55. Michelle W. Easterling, Student Work, *For Better or For Worse: The Federalization of Domestic Violence* 98 W. VA. L. REV. 933, 936 (1996).

56. 18 U.S.C. § 2264 (1994 & Supp. II 1996).

57. *Id.*

58. *Id.*

59. *Id.* See also *U.S. v. Hayes* 135 F.3rd 133 (2nd Cir. 1998) (applying §2264).

60. § 2265 (1994).

validly issues, if violated within the territory of another state "as if it were the order of the enforcing state."⁶¹ Unlike other VAWA provisions, this section does not require that the offender cross the state line with criminal intent or that he force the victim to do so.⁶²

The Interstate Stalking Punishment and Prevention Act of 1996 (ISPPA) was enacted as an attempt to fill a gap in VAWA.⁶³ VAWA covered interstate domestic violence but did not extend to similar behavior where the victim either had not been in an intimate relationship with the offender or had not obtained a protection order.⁶⁴ ISPPA prohibits individuals from traveling across a state line with the intent to injure or harass another person or to place the person in reasonable fear of death or bodily injury as a result of, or in the course of, such travel.⁶⁵ IPPSA has no requirement that the stalker be a spouse or intimate partner of the victim or that the victim obtain a protection order.⁶⁶ The authorized penalties are the same as those provided for in section 2261 of VAWA.⁶⁷

VAWA also provides for federal funding at state and local levels to help aid in the fight against domestic violence and stalking.⁶⁸ The Department of Justice, through its various divisions, provides resources to states and organizations to investigate cases, prosecute perpetrators, provide services to victims, provide extensive educational and technical assistance, and explore new approaches in the intervention and prevention of violence against women.⁶⁹ The federal government also has taken steps to fight stalking by creating a uniform national stalking law designed to aid the states in promulgating their state stalking laws.

Model Code

In 1993, the National Institute of Justice commissioned the National Criminal Justice Association (NCJA) to develop a model anti-stalking code to help provide States with a constitutionally enforceable, legal framework to utilize in formulating their anti-stalking statutes.⁷⁰ In the Model Code, the

61. § 2265(a).

62. § 2265.

63. § 2261A (1994 & Supp. IV 1998).

64. § 2261

65. 18 U.S.C. § 2261A (1996).

66. *Id.*

67. 18 U.S.C. § 2261(b). Sentences for violations of this section include fines and imprisonment for any term of years or life if death to the victim results, for up to twenty years if permanent disfigurement or life threatening bodily injury to the victim results, and for up to ten years if serious bodily injury to the victim results or the offender uses a dangerous weapon in the commission of the offense.

68. 42 U.S.C. § 14031-40.

69. See NATIONAL INST. OF JUSTICE, U.S. DEP'T OF JUSTICE, STALKING AND DOMESTIC VIOLENCE, THE THIRD ANNUAL REPORT TO CONGRESS UNDER THE VIOLENCE AGAINST WOMEN ACT at 64 (1998) [hereinafter THIRD ANNUAL REPORT TO CONGRESS].

70. See ANNUAL REPORT TO CONGRESS, *supra* note 4, at 6. The NCJA was composed of members from the American Bar Association, the American Civil Liberties Union, the Los Angeles Police De-

key elements of stalking include: a course of conduct involving repeated physical proximity or threatening behavior or both, the occurrence of at least two incidents, threatening behavior that includes explicit or implicit threats, and conduct occurring against an individual or the individual's family members.⁷¹

Criminal intent to commit stalking is measured by a number of factors in the Model Code.⁷² Included among these factors are: intent to engage in a course of conduct involving repeated following or threatening an individual, knowledge that the behavior reasonably causes fear of bodily injury or death, knowledge or expectation that the specific victim would have a reasonable fear of bodily injury or death, actual fear of death or bodily injury experienced by the victim, and fear of death or bodily injury felt by members of the victim's immediate family.⁷³

The Model Code also makes numerous recommendations regarding state statutes, advising that punishment for stalking crimes be set at the felony level and that the fear element be expanded to include fear of sexual assault.⁷⁴ The Model Code further recommends that harassment, misdemeanor stalking, or intimidation laws be enacted to deal with annoying behavior, including aggravated harassment for persistent behavior that does not rise to felony-level fear.⁷⁵ However, state statutes still vary widely with regard to the legal definitions of stalking and the fear and threat requirements.⁷⁶

State Criminal Stalking Statutes

Although a number of state stalking statutes adopted some of the Model Code provisions or definitions, no state adopted the Code in its entirety.⁷⁷ A detailed analysis of each state statute as compared to the Model Code is beyond the scope of this comment. There are, however, several areas in which many states differ significantly from the Model Code.⁷⁸

partment, the National Organization for Victim Assistance, the National Victim Center, the National District Attorneys Association, the National Conference of State Legislatures, the National Center for State Courts, the National Association of Attorneys General, the National Governors' Association, the Police Executive Research Forum, the U.S. Department of Justice's Office for Victims of Crime and the U.S. Secret Service.

71. See THIRD ANNUAL REPORT TO CONGRESS, *supra* note 69, at 5.

72. *Id.* at 27.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.* at 28.

77. *Id.* at 29-32.

78. *Id.* at 27-8.

First, the Code requires at least two incidents of stalking behavior to constitute repeated behavior as part of a “course of conduct.”⁷⁹ About half of the states do not specify the number of acts that constitute a course of conduct, although some states use the term “repeated” in defining prohibited conduct.⁸⁰ Also, the Code defines threatening behavior as either explicit or implicit threats.⁸¹ However, only twelve states include implied threats in the definition of a “threat.”⁸² Additionally, the Code uses a “reasonable person” test to determine the reasonableness of a victim’s fear in response to the stalking behavior, whereas only six states adopted this test.⁸³ The other forty-four states apply the “reasonable victim” test to determine the reasonableness of a victim’s fear.⁸⁴

States differ widely in their definitions of stalking, their elements of stalking, and their punishment of stalking behavior. For example, in thirty-two states a first conviction for stalking may be a felony.⁸⁵ Of those thirty-two states, some restrict the felony penalty to certain circumstances in stalking, such as the occurrence of bodily injury, use of a weapon, or violation of a protective order.⁸⁶ In the eighteen states that provide only misdemeanor penalties for first stalking offenses, all but two treat repeated stalking convictions as felonies.⁸⁷

In addition, the state criminal procedure laws for enforcement of the stalking statutes vary greatly from state to state.⁸⁸ For example, at common law, arrest without a warrant can occur in two situations. First, officers may arrest a person whom they see committing a crime.⁸⁹ Second, officers may have probable cause to arrest if they believe that an individual committed a crime but did not actually see the commission of the crime.⁹⁰ Thus, police can arrest without warrant any person whom they have probable cause to believe committed a felony.⁹¹ In the eleven states where any stalking crime

79. *Id.* at 28.

80. *Id.*

81. *Id.* at 27.

82. *Id.* at 28.

83. *Id.*

84. *Id.* at 29-32.

85. *Id.* at 24-5. Those states include Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Jersey, New Mexico, North Dakota, Oklahoma, South Carolina, Utah, Vermont, Washington, Wisconsin and Wyoming.

86. *Id.* The states which restrict felony penalties are Alaska, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, New Jersey, New Mexico, North Dakota, Oklahoma, South Carolina, Utah, Washington, Wisconsin and Wyoming.

87. *Id.* States that treat first offenses of stalking as misdemeanors are Hawaii, Idaho, Maryland, Mississippi, Montana, Nebraska, New Hampshire, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Virginia and West Virginia. The only two states that don’t treat repeated stalking convictions as felonies are Mississippi and New York.

88. *Id.* at 32.

89. *Id.*

90. *Id.*

91. *Id.*

is a felony offense, an officer may arrest an alleged assailant without a warrant, if he has probable cause.⁹² In the remaining states, including Wyoming, an officer must first take steps to ascertain the seriousness of the reported stalking before making an arrest based on probable cause.⁹³ Obviously, state stalking statutes deviate in many ways from the Model Code recommendations, and Wyoming's statute is no different.

Wyoming's Stalking Statute

When compared to the Model Code, Wyoming's stalking statute has a number of differences, both positive and negative. First, stalking under the Wyoming statute is not an "automatic" felony offense, though Wyoming provides for felony enhancement under certain conditions.⁹⁴ Second, Wyoming's statute does not specify the number of acts required to demonstrate repeated behavior as part of a course of conduct, though such a bright line number could make prosecutions easier.⁹⁵ Third, while the Model Code requires a victim's actual fear of injury or death, Wyoming requires a lower threshold of fear, that the victim be "seriously alarmed."⁹⁶

Like many states that followed California's lead in promulgating a stalking statute, Wyoming enacted its stalking legislation in 1993.⁹⁷ Under

92. *Id.* at 33.

93. *Id.* Officers may have to determine whether the assailant was armed, injured the victim, or violated a protection order, which may make the stalking a felony rather than a misdemeanor.

94. WYO. STAT. ANN. § 6-2-506 (e)(LEXIS 1999).

95. § 6-2-506 (b).

96. § 6-2-506 (a)(ii).

97. WYO. STAT. ANN. § 6-2-506 reads in part:

(b) Unless otherwise provided by law, a person commits the crime of stalking if, with the intent to harass another person, the person engages in a course of conduct reasonably likely to harass that person, including but not limited to any combination of the following:

(i) Communicating, anonymously or otherwise, or causing a communication with another person by verbal, electronic, mechanical, telegraphic, telephonic or written means in a manner that harasses;

(ii) Following a person, other than within the residence of the defendant;

(iii) Placing a person under surveillance by remaining present outside his or her school, place of employment, vehicle, or other place occupied by the person, or residence other than the residence of the defendant; or

(iv) Otherwise engaging in a course of conduct that harasses another person.

(d) Except as provided under subsection (e) of this section, stalking is a misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both.

(e) A person convicted of stalking under subsection (b) of this section is guilty of felony stalking punishable by imprisonment for not more than ten (10) years, if:

(i) The act or acts leading to the conviction occurred within five (5) years of a prior conviction under this subsection, or under subsection (b) of this section, or under a substantially similar law of another jurisdiction;

(ii) The defendant caused serious bodily harm to the victim or another person in conjunction with committing the offense of stalking;

(iii) The defendant committed the offense of stalking in violation of any condition of probation, parole or bail; or

(iv) The defendant committed the offense of stalking in violation of a temporary or

the Wyoming statute, a person commits the crime of stalking if "with intent to harass another person, the person engages in a course of conduct reasonably likely to harass that person."⁹⁸ Otherwise lawful demonstrations, assemblies, and picketing are excluded as part of a course of conduct under the statute.⁹⁹ Conduct that constitutes stalking includes, but is not limited to, communications with another person by verbal, electronic, mechanical, telegraphic, telephonic, or written means in a manner that harasses that person.¹⁰⁰ Also prohibited are following or placing a person under surveillance and other conduct that harasses another person.¹⁰¹

Under the statute, stalking is a misdemeanor punishable by imprisonment of not more than six months and/or a fine, not to exceed seven hundred and fifty dollars.¹⁰² The statute provides for enhancement of the crime to a felony if the defendant has any prior conviction within five years; caused serious bodily injury; or acted in violation of probation, parole, bail, or court order.¹⁰³ Such a felony is punishable by imprisonment of not more than ten years, but no fine is imposed.¹⁰⁴

The Wyoming Supreme Court upheld the stalking statute against several constitutional challenges.¹⁰⁵ The entire statute was challenged as vague and overbroad,¹⁰⁶ as were the civil protection order provisions¹⁰⁷ and the enhancement provision of the statute.¹⁰⁸ The enhancement provision also was challenged on equal protection and due process grounds in addition to vagueness and overbreadth.¹⁰⁹

In *Luplow v. State*,¹¹⁰ the defendant challenged the statute on the constitutional grounds of vagueness and overbreadth. Luplow was charged with

permanent order of protection issued pursuant to W.S. 7-3-508 or 7-3-509, or pursuant to a substantially similar law of another jurisdiction. WYO. STAT. ANN. § 6-2-506 (LEXIS 1999).

98. WYO. STAT. ANN. § 6-2-506(b). Under § 6-2-506(a)(i), a "course of conduct" is defined as "a pattern of conduct composed of a series of acts over any period of time evidencing a continuity of purpose."

99. § 6-2-506(c).

100. *Id.* "Harass" is defined in WYO. STAT. ANN. § 6-2-506(a)(ii) (LEXIS 1999) as "to engage in a course of conduct, including but not limited to verbal threats, written threats, vandalism or nonconsensual physical contact, directed at a specific person or the family of a specific person, which the defendant knew or should have known would cause a reasonable person to suffer substantial emotional distress, and which does in fact seriously alarm the person toward whom it is directed."

101. § 6-2-506(b)(iii).

102. § 6-2-506(d).

103. § 6-2-506(e).

104. *Id.*

105. See *Luplow v. State*, 897 P.2d 463 (Wyo. 1995); *Jennings v. Currier*, 897 P.2d 463 (Wyo. 1995); *Vit v. State*, 909 P.2d 953 (Wyo. 1996); *Garton v. State*, 910 P.2d 1348 (Wyo. 1996).

106. *Luplow v. State*, 897 P.2d 463, 464 (Wyo. 1995).

107. *Id.*

108. *Garton v. State*, 910 P.2d 1348 (Wyo. 1996).

109. *Id.*

110. *Luplow*, 897 P.2d at 464.

two counts of misdemeanor stalking after harassing two female victims who were staying at a local hotel.¹¹¹ Luplow followed the women into the hotel building and repeatedly made obscene phone calls to the victims' hotel rooms.¹¹² One victim reported the incident to the front desk clerk, who had seen the defendant using the house phone immediately prior to the victim's report.¹¹³ The other victim was later able to identify Luplow in a photo lineup as the man she had seen following her in the hallway.¹¹⁴

Luplow challenged the statute as facially vague and overbroad, but the Wyoming Supreme Court upheld the statute. The court applied the test for vagueness as set forth in prior caselaw.¹¹⁵ In Wyoming, to demonstrate vagueness, the defendant must prove: 1) the statute reaches a substantial amount of constitutionally protected conduct, or 2) the statute specifies no standard of conduct at all.¹¹⁶ According to the court, the ultimate test under a vagueness challenge is whether a person of ordinary intelligence could read the statute and comprehend what conduct is prohibited.¹¹⁷ Luplow argued that the statute violated both prongs of the test.¹¹⁸

The Wyoming Supreme Court disagreed with Luplow's arguments.¹¹⁹ The court conceded that the statute may inhibit some speech, but only in a constitutionally permissible way, as it allows for "otherwise lawful demonstration, assembly, or picketing."¹²⁰ Regarding the standard of conduct issue, the court held that the statute provides an appropriately clear statement of what constitutes a course of conduct and provides specific articulations of the proscribed activities.¹²¹ Furthermore, the Wyoming Supreme Court noted that civil case law provides a definition of the concepts of "reasonable person" and "emotional distress" so as to prevent definitional uncertainty.¹²² Additionally, the statute provides a definition for "harassment" that is not unusual in criminal law, and subsection (b) requires specific intent to harass.¹²³ Thus, the statute gives sufficient specificity in defining the conduct proscribed to meet the test for vagueness.¹²⁴

111. *Id.* at 465.

112. *Id.*

113. *Id.*

114. *Id.* at 466.

115. See *McCone v. State*, 866 P.2d 740, 745 (Wyo. 1993); *Ochoa v. State*, 848 P.2d 1359, 1363 (Wyo. 1993); *Griego v. State*, 761 P.2d 973, 975 (Wyo. 1988).

116. *Luplow*, 897 P.2d at 466.

117. *Id.*

118. *Id.*

119. *Id.* at 466-67.

120. *Id.* at 467.

121. *Id.*

122. *Id.* at 468.

123. *Id.*

124. *Id.*

The Wyoming Supreme Court then turned to the overbreadth challenge, defining a statute as being “overbroad” if it “does not aim specifically at evils within the allowable area of [government] control, but. . .sweeps within its ambit other activities that constitute an exercise” of protected expressive or associational rights.¹²⁵ The court noted that the government may regulate free speech if the regulation is content-neutral, furthers a substantial governmental interest, and imposes the least restrictive alternative on the speech.¹²⁶ Furthermore, the court maintained that the statute must have a substantial “chilling” effect on First Amendment expression to be considered facially overbroad.¹²⁷ The Wyoming Supreme Court then held that the stalking statute falls under the permissible bounds of governmentally regulated speech because the regulation was content-neutral, and, “in the context of the evil sought to be avoided,” the statute imposed the least restrictive alternative on free speech.¹²⁸

In a case consolidated with *Luplow*, the constitutionality of the stalking protection orders contained in Wyoming Statute sections 7-3-506 through 7-3-511 was challenged on the same grounds of vagueness and overbreadth.¹²⁹ In *Currier v. Jennings*, the parties were neighbors for fifty-two years.¹³⁰ Trouble began after Mrs. Currier sued Mr. Jennings for allegedly shooting her dog. The case was decided against her, but, after the suit, Mr. Jennings began to harass Mrs. Currier.¹³¹ He verbally harassed her in public areas and attempted several times to physically harm her.¹³² Based on these events, an order of protection was entered against Jennings, which he appealed.

Jennings’ constitutional challenge was based on the language in Wyoming Statute section 7-3-506(a)(iii), which adopts the definition of stalking from Wyoming Statute section 6-2-506(b).¹³³ Because the criminal protection order statute adopted the definition set forth in the stalking statute, the validity of the protection order statute was dependent upon the constitutionality of the stalking statute as a whole.¹³⁴ Since the court held in *Luplow* that

125. *Id.* (citing *Ochoa v. State*, 848 P.2d 1359,1363 (Wyo. 1993)).

126. *Id.*

127. *Id.*

128. *Id.*

129. *Jennings v. Currier*, 897 P.2d 463, 468 (Wyo. 1995).

130. *Id.* at 469.

131. *Id.* at 469-70.

132. *Id.* at 468-70.

133. *Id.* at 470-71.

134. *Id.* at 472. WYO. STAT. ANN. § 7-3-506 provides:

(a) As used in W.S. 7-3-506 through 7-3-511:

(i) “Court” means the justice of the peace court, county court or the district court in the county where an alleged victim of stalking resides, or where the alleged perpetrator of the stalking is found;

(ii) “Order of protection” means a court order granted for the protection of a victim of stalking;

(iii) “Stalking” means conduct as defined by W.S. 6-2-506(b). WYO. STAT. ANN.

the stalking statute was constitutional, it logically followed that the protection order statute also was constitutional.¹³⁵ Consequently, with no further analysis by the court, the protection order statute was upheld.¹³⁶

The constitutionality of the stalking statute again was addressed in *Vit v. State*, and the appellant's argument was summarily dismissed in light of *Luplow*.¹³⁷ In that case, as is typical in many stalking cases, the defendant and the victim had been involved in a romantic relationship. After the victim terminated the relationship, the defendant objected to the termination and refused to leave the victim's residence.¹³⁸ He was arrested and charged with property destruction, trespassing, driving under the influence, driving under suspension, and eluding a police officer.¹³⁹ The defendant pled guilty to the charges of criminal trespass and property destruction and was placed on probation.¹⁴⁰ As a condition of his probation, Vit was prohibited from any direct or indirect contact with the victim.¹⁴¹ Yet, he continued to call her and go to her home.¹⁴² The victim called the police, and Vit was arrested and charged with felony stalking in violation of his probation.¹⁴³ Because Vit challenged the statute as a whole for vagueness and overbreadth, rather than the specific constitutionality of the felony enhancement provision, the Wyoming Supreme Court dealt with the case in a cursory manner, simply stating that his claim was without merit.¹⁴⁴

However, the constitutionality of the felony enhancement provision specifically was addressed in a case that soon followed.¹⁴⁵ In *Garton v. State*, the defendant was charged with making unlawful telephone calls and felony stalking after he placed a number of anonymous, obscene phone calls to the victim's residence.¹⁴⁶ He also mailed a pornographic videotape to her and, on another occasion, mailed her a condom and several pages torn from a Penthouse magazine.¹⁴⁷ Garton was on probation for an unrelated embez-

§ 7-3-506 (LEXIS 1999).

135. Currier, 897 P.2d at 471.

136. *Id.*

137. *Vit v. State*, 909 P.2d 953 (Wyo. 1996).

138. *Id.* at 955.

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.* at 956.

144. *Id.*

145. *Garton v. State*, 910 P.2d 1348, 1351 (Wyo. 1996).

146. *Id.* The unlawful telephone calls were made in violation of W.S. § 6-6-103(a) and (b), a misdemeanor which prohibits placing telephone calls anonymously or under a false or fictitious name in conjunction with obscene, lewd or profane language or suggests a lewd or lascivious act with intent to terrify, intimidate, threaten harass annoy or offend. It also prohibits repeated anonymous phone calls that disturb the peace, quiet or privacy of the persons where the call was received, or calls in which the caller threatens to inflict injury or physical harm to the person or property of any person. WYO. STAT. ANN. § 6-6-103 (LEXIS 1999).

147. *Garton*, 910 P.2d at 1351.

zement conviction at the time of these acts and the subsequent charging.¹⁴⁸ Garton argued that the felony enhancement provision of the stalking statute was unconstitutional as vague and overbroad and that it violated his equal protection and Due Process rights.¹⁴⁹

The Wyoming Supreme Court briefly addressed the contention that the stalking statute as a whole was vague and overbroad by revisiting the holdings in *Luplow*, *Jennings*, and *Vit*,¹⁵⁰ again holding that the statute is constitutional. The court then turned its attention to the Due Process claim.¹⁵¹ Garton argued that the felony enhancement provision of the statute¹⁵² was invalid pursuant to the First, Fifth, and Fourteenth Amendments of the United States Constitution¹⁵³ and Article 1, Sections 2 and 6 of the Constitution of the State of Wyoming.¹⁵⁴ He contended that his right to Due Process of law was violated because the provision was vague and did not provide adequate notice of the consequences that attach to the first offense for which he was sentenced to probation.¹⁵⁵ Under the terms of his probation, Garton was not to violate any federal or state law or municipal ordinance.¹⁵⁶ However, he claimed that the legislative intent behind the felony enhancement provision was to punish stalking as a felony offense only if the defendant committed the crime while on probation, parole, or bail with a specific condition that he not harass or threaten a specific person or persons.¹⁵⁷ The State countered that the provision subjects the defendant to felony punishment if he commits the offense while on probation, parole, or bail for any offense with a condition that he violate no law.¹⁵⁸ The Wyoming Supreme Court agreed with the State's position.

In its analysis of the vagueness argument, the court first set forth the rule of statutory construction, under which it determines the ambiguity of a

148. *Id.*

149. *Id.*

150. See *Luplow v. State*, 897 P.2d 463 (Wyo. 1995); *Jennings v. Currier*, 897 P.2d 463 (Wyo. 1995); *Vit v. State*, 909 P.2d 953 (Wyo. 1996).

151. *Id.* at 1352.

152. See *supra*, note 97.

153. U.S. CONST. amend. I. The First Amendment provides in pertinent part: "Congress shall make no law . . . abridging the freedom of speech. . . ." U.S. CONST. amend. IV. The Fourth Amendment provides in pertinent part: "Nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws." The Court found that the Fifth Amendment of the United States Constitution was not pertinent to the case. *Garton*, 910 P.2d at 1352, n. 1.

154. WYO. CONST. art. I, § 2. The section provides:

"In their inherent right to life, liberty and the pursuit of happiness, all members of the human race are equal."

WYO. CONST. art. I, § 6. The section provides:

"No person shall be deprived of life, liberty or property without due process of law."

155. *Garton*, at 1352.

156. *Id.* at 1353.

157. *Id.*

158. *Id.*

statute.¹⁵⁹ Citing case law, the court stated that “[a] statute is unambiguous if its wording is such that reasonable persons are able to agree as to its meaning with consistency and predictability.”¹⁶⁰ The court further held that “[a] statute is ambiguous only if it is found to be vague or uncertain and subject to varying interpretations.”¹⁶¹ The court held that the felony enhancement provision of the stalking statute that makes the crime a felony if “the defendant committed the offense of stalking in violation of any condition of probation, parole or bail”¹⁶² was unambiguous. The court determined that if a person convicted of *any* crime is on probation, parole, or bail, the conditions of which are that he shall not violate any law, the term “any” unequivocally furnishes notice that if he commits the crime of stalking, the prosecutor has discretion to charge the stalking as a felony.¹⁶³ Therefore, the court found that the provision was clear and unambiguous; no reasonable person could be uncertain as to its meaning.¹⁶⁴

As to the equal protection claim, Garton argued that his right to equal protection was violated by the invocation of arbitrary, invidious, and unreasonable classifications between similarly situated people.¹⁶⁵ The Wyoming Supreme Court stated that enhancement of the degree of offense based on the status of a parolee does not cause the statute to be unconstitutional.¹⁶⁶ It maintained that “[p]arolees are not a suspect classification requiring strict scrutiny of a statute applying to them.”¹⁶⁷ Furthermore, the court found that the statute passed muster under the rational basis test used to analyze state constitution equal protection claims.¹⁶⁸ It further noted that Equal Protection simply guarantees that similarly situated people shall be treated similarly and that people in different circumstances will not be treated as if they were similar.¹⁶⁹ Hence, convicted criminals could be treated in a different manner than non-criminal citizens, and the felony enhancement provision of the stalking statute was constitutional.¹⁷⁰

159. *Id.*

160. *Id.* at 1353, citing *Allied-Signal, Inc. v. Wyoming State Board of Equalization*, 813 P.2d 214, 220 (Wyo. 1991).

161. *Id.* citing *Allied-Signal*, 813 P.2d at 219-20.

162. *Id.* citing WYO. STAT. ANN. § 6-2-506(e)(iii) (LEXIS 1999).

163. *Id.* at 1353.

164. *Id.* at 1352.

165. *Id.* at 1352.

166. *Id.* at 1354.

167. *Id.*

168. *Id.* The four part rational basis test for analyzing state constitution equal protection claims was set forth in *Johnson v. State Hearing Examiner's Office*, 838 P.2d 158 (Wyo. 1992). The four aspects of inquiry are: 1) what class is harmed by the legislation and has that group been subjected to a tradition of disfavor by our laws; 2) what is the public purpose to be served by the law; 3) what is the characteristic of the disadvantaged class that justifies disparate treatment; and 4) how are the characteristics used to distinguish people for a disparate treatment relevant to the purpose the challenged law purportedly intends to serve.

169. *Id.* at 1355.

170. *Id.* at 1355-56.

These cases are the only stalking cases decided by the Wyoming Supreme Court. In each case, the stalking law was upheld. As noted earlier, Wyoming is one of the few states to provide a civil remedy for stalking victims, but that provision has yet to be challenged before the Wyoming Supreme Court.¹⁷¹ A victim may also recover damages in a civil suit if the stalking violates federal law.

Federal Civil Remedies for Stalking

In addition to criminal sanctions, VAWA includes a section that provides a federal civil rights cause of action for victims of crimes motivated by gender, aptly called "Civil Rights Remedies for Gender-Motivated Crimes."¹⁷² Under this section, "[a] person. . . who commits a crime of violence motivated by gender" and deprives the victim of her civil right to be free from crimes of violence "shall be liable to the party injured, in an action for the recovery of compensatory and punitive damages, injunctive and declarative relief, and such other relief as a court may deem appropriate."¹⁷³ However, the civil rights provision does not address every rape, battery, or stalking.¹⁷⁴ The provision addresses only "crime[s] of violence committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim's gender."¹⁷⁵ The victim must prove by a preponderance of the evidence that gender partially motivated her assailant.¹⁷⁶ A "crime of violence" is an act that state or federal government has defined as a felony posing a "serious risk of physical injury to another."¹⁷⁷ However, victims can bring this cause of action in either federal or state courts,¹⁷⁸ regardless of whether a state also pursues criminal charges.¹⁷⁹

State Civil Stalking Statutes

Wyoming is one of only five states that expressly provides for civil remedies in stalking cases.¹⁸⁰ Wyoming's stalking civil remedy statute allows victims to recover compensatory and punitive damages in addition to

171. See *supra* note 20, and accompanying text.

172. 42 U.S.C. § 13981 (1994).

173. § 13981(c).

174. § 13981(e)(1), ("Nothing in this section entitles a person to a cause of action under...this section for random acts of violence unrelated to gender. . ."). Nor does the section confer federal jurisdiction over divorce, child custody, and other domestic relations claims. § 13981(e)(4).

175. § 13981 (d)(1).

176. § 13981 (e)(1).

177. § 13981 (d)(2)(A).

178. § 13981 (e)(3).

179. § 13981 (d)(2)(A).

180. See CAL. CIV. CODE § 1708.7(c) (West Supp. 1996); MICH. COMP. LAWS ANN. § 600.2954(1); OR. REV. STAT. § 30.866(4); TEX. CIV. PRAC. & REM. § 85.001 *et. seq.* (West Supp. 1999); WYO. STAT. ANN. § 1-1-126(a) (LEXIS 1999).

attorney's fees and court costs.¹⁸¹ Although state civil stalking suits are relatively rare, they can and have been won.

Recently, Wyoming's civil stalking statute was utilized in a case that ended with a jury verdict for one hundred and seventy-six thousand dollars¹⁸² David Veile and Michael Bryant were owners of competing funeral homes in Washakie County. When Bryant moved to town and started his business, Veile began to watch Bryant's place of business, threatened to ruin him, followed him, and, at one point, blocked him in a parking lot.¹⁸³ Veile even brought suit in federal court against Bryant and his business, the Washakie County coroner and deputy coroners, the Sheriff of Washakie County, employees of the Washakie County Ambulance Service, and the Washakie County Board of County Commissioners alleging various causes of action.¹⁸⁴ Bryant counterclaimed against Veile for abuse of process, malicious prosecution, defamation, stalking, interference with prospective economic advantage, and anti-trust violations.¹⁸⁵ Veile's claims eventually were dismissed, and Bryant's claims went to trial. The court directed a verdict for Veile on the anti-trust and defamation claims, and the stalking claim was submitted to the jury.¹⁸⁶

Bryant demonstrated, through a journal he had kept, that Veile engaged in a pattern of conduct which harassed Bryant over a period of three years.¹⁸⁷ The acts included following Bryant, watching his place of business, calling and then hanging up, and issuing threats.¹⁸⁸ Bryant sought compensatory damages and punitive damages, which were awarded by the jury in the amount of ninety thousand dollars and eighty-six thousand dollars, respectively.¹⁸⁹ Bryant's success in his civil stalking claim may indicate an in-

181. WYO. STAT. ANN. § 1-1-126 provides:

(a) A person who is the victim of stalking as defined by W.S. 6-2-506 may maintain a civil action against an individual who engages in a course of conduct that is prohibited under W.S. 6-2-506 for damages incurred by the victim as a result of that conduct. The aggrieved party may also seek and be awarded exemplary damages, reasonable attorney's fees and costs of the action.

(b) A civil action may be maintained under this section whether or not the individual who is alleged to have engaged in a course of conduct prohibited under W.S. 6-2-506 has been charged or convicted under W.S. 6-2-506 for the alleged crime.

(c) Neither the pendency nor the termination of a civil action under this section shall prevent the criminal prosecution of a person who violates W.S. 6-2-506.

WYO. STAT. ANN. § 1-1-126(a)(LEXIS 1999).

182. Veile v. Bryant, No. 98-CV-194 J (D. Wyo. filed Aug. 3, 1998).

183. Defendant's Memo in Support of Motion to Vacate Verdict at 4-5, Veile v. Bryant, No. 98-CV-194 J (D. Wyo. filed Sept. 24, 1999).

184. Complaint at 2-4, Veile v. Bryant, No. 98-CV-194 J (D. Wyo. filed August 3, 1998).

185. Defendant's Answer and Counterclaim at 8-10, Veile v. Bryant, No. 98-CV-194 J (D. Wyo. filed August 23, 1998).

186. Defendant's Memo in Support of Motion to Vacate Verdict at 2, Veile v. Bryant, No. 98-CV-194 J (D. Wyo. filed Sept. 24, 1999).

187. *Id.* at 2-5.

188. *Id.*

189. *Id.* at 2.

creased awareness of the crime of stalking and the community's intolerance of stalking behavior.

Other victims, too, have been successful in utilizing civil stalking remedies. In Maine, Joanne Stinson filed a lawsuit against her stalker and was awarded one hundred and fifty thousand dollars in compensatory damages and five hundred thousand dollars in punitive damages.¹⁹⁰ Stinson was the first victim to convince a jury to award damages from her stalker.¹⁹¹ Stinson accepted two dinner dates with Richard Slaughter in 1992.¹⁹² After she told him she no longer wished to see him, Slaughter became obsessed with Stinson and began following her.¹⁹³ Stinson obtained a temporary restraining order against him, which he promptly violated.¹⁹⁴

Slaughter eventually was arrested for violating the restraining order, but within days of his release, he began calling her.¹⁹⁵ A background check revealed that Virginia officials indicted Slaughter in 1990 for the fatal stabbing of another woman whom he had stalked.¹⁹⁶ Unfortunately, Slaughter could not be arrested under Maine's stalking statute because the stalking incidents were insufficient to seek a criminal indictment.¹⁹⁷ Stinson's attorney advised her to file a civil suit against Slaughter, because the criminal system was inadequate in its response to her victimization.¹⁹⁸

Stinson's story illustrates how civil stalking remedies can be used as either an additional remedy to criminal stalking charges, or in place of criminal charges, if a case fails to meet the criminal statutory elements. Like so many other stalking victims, Stinson followed the criminal justice system's requirements. She reported the incidents, obtained a protective order, and reported Slaughter's violations of the order. When the criminal justice system failed her, Stinson turned to the civil system. Thus, civil remedies for stalking may allow the victim to obtain some relief, particularly in cases where the criminal system is unable to help the victim.

ANALYSIS

The promulgation of state and federal stalking laws within the last few years signals a broader national recognition of the negative impact that vio-

190. See Royal Ford, *Fending Off a Stalker Woman Wins \$650,000 in Suing Tormentor*, Boston Globe, March 28, 1995, at 1, 9.

191. See Kristin Bouchard, Note, *Can Civil Damage Suits Stop Stalkers?* 6 B.U. PUB. INT. L.J. 551 (1997).

192. See Ford, *supra* note 190, at 9.

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

lence against women has on society.¹⁹⁹ That recognition resulted in a commitment to end violence against women.²⁰⁰ This commitment is apparent by the adoption of state and federal criminal and civil statutes that prohibit such conduct, in the measures taken to educate the public on the dynamics of domestic violence and stalking, and in the development of training programs designed specifically to educate those in the criminal justice system.²⁰¹ However, to truly eradicate violence against women, these developments must be both adopted and utilized effectively. This section examines the efficacy of state and federal anti-stalking laws and proposes improvements for the statutes and their execution.

Federal Criminal Statutes

Bringing domestic violence and stalking crimes against women to national attention was one of VAWA's primary purposes.²⁰² Another purpose of the Act was to illustrate the insufficiency of state remedies to combat the problem of violence against women.²⁰³ Ultimately, however, VAWA was intended to prevent, punish, and deter violence against women.²⁰⁴ Despite admirable congressional intent in promulgating VAWA, its inherent flaws keep it from being utilized widely and effectively.

Although VAWA creates new federal crimes to combat domestic violence and the stalking behavior that often accompanies it, the statute has several failings.²⁰⁵ First, section 2261 and section 2262 address only small minority of domestic violence and stalking crimes.²⁰⁶ Most domestic violence and stalking crimes occur within one state.²⁰⁷ Federal jurisdiction only is invoked in cases where the parties have traveled across state lines.²⁰⁸

Second, VAWA sets no standards to determine state or federal jurisdiction over a case.²⁰⁹ The decision to prosecute federally often depends on whether the federal prosecutor wants to "set an example" with a given case or the defendant refuses to "plead down."²¹⁰ The much harsher penalties for federal domestic violence offenses can be an excellent bargaining tool for prosecutors determined to reduce a case to a state offense.²¹¹ For example, if

199. THIRD ANNUAL REPORT TO CONGRESS, *supra* note 69, at 1.

200. *Id.*

201. *Id.*

202. Jennifer C. Philpot, Note, *Violence Against Women and The Commerce Clause: Can this Marriage Survive?* 85 KY. L.J. 767, 783 (1997).

203. *Id.*

204. Easterling, *supra* note 55, at 938.

205. *Id.* at 948.

206. *Id.* at 949.

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

211. *Id.* at 951.

a defendant either stalks his victim across a state line or in violation of a protection order and injures his victim, the defendant could face a federally imposed life sentence in prison.²¹² If the same crime is committed within state boundaries, the perpetrator may not serve any prison sentence or may be imprisoned only for a short time.²¹³ Yet, the injuries suffered by the victims in each case are the same.

VAWA is a move in the right direction toward recognizing the need for legislation to protect women from violence. The Act also recognizes the inadequacy of state laws to combat the problems of domestic violence and stalking.²¹⁴ However, so few cases are federally prosecuted that the Act is more bark than bite.²¹⁵ In actuality, VAWA does little to protect women from their abusers.²¹⁶

Congress could have a nationwide impact on domestic violence and stalking crimes by creating an incentive for states to provide stricter enforcement and harsher penalties for crimes of violence against women.²¹⁷ Federal funding for states could be tied to the enactment of victim-friendly crime statutes, their strict enforcement, and the imposition of stiffer sentences for those convicted.²¹⁸ Such incentives would allow for a wider range and higher number of cases to be prosecuted, thus furthering the national policy to combat violence against women. VAWA already provides for grants to states that certify that they require or encourage mandatory arrests in domestic violence offenses.²¹⁹ The same sort of incentive program should be implemented to encourage the creation of tougher state statutes for violence against women, to encourage widespread enforcement of the statutes, and to provide for more serious punishment of offenders.

Wyoming's Criminal Statute

A recent case before the Wyoming Supreme Court well illustrates the need for, but current lack of, implementation of Wyoming's stalking statute. In *Brock v. State*,²²⁰ the defendant was charged with one count of aggravated assault and battery²²¹ and two counts of making threatening phone calls.²²² Barry Brock's girlfriend ended their relationship in early December 1996, but he apparently believed he could win her back by threatening her and her

212. *Id.*

213. *Id.*

214. *Id.* at 951.

215. *Id.*

216. *Id.*

217. *Id.* at 952.

218. *Id.*

219. 42 U.S.C. § 3796hh (c) (1994).

220. *Brock v. State*, No. 97-311, 1999 WL 311459 (Wyo. 1999).

221. *Id.* WYO. STAT. ANN. § 6-2-502(a)(iii) (LEXIS 1999).

222. *Id.* WYO. STAT. ANN. § 6-6-103 (LEXIS 1999).

friends.²²³ In response to Brock's behavior, his ex-girlfriend instituted a proceeding to obtain a restraining order against Brock, and following a death threat from Brock, she sought the assistance of mutual friends.²²⁴ Brock then began terrorizing this couple as well as his ex-girlfriend, telephoning and making threats against all three of the victims.²²⁵ At one point, Brock attempted to run the husband off the road, threatened him with a baseball bat, and smashed the windshield of his truck.²²⁶ Brock was finally arrested because he called and left a message on his former girlfriend's workplace voice mail. In the message Brock asked her to visualize a schoolyard full of children, with a gunman across the street, making decisions as to who might live and die.²²⁷ The police were called and, based on Brock's recent violent behavior and information that he had been abusing controlled substances, a police officer alerted the school district of the message.²²⁸ The schools were placed on security alert, which disrupted educational functions for several days.²²⁹

Brock later was arrested and charged with two misdemeanors and three felonies, none of which included a stalking charge.²³⁰ Ultimately, Brock was convicted of two misdemeanor charges and sentenced to two-to-four years imprisonment.²³¹ This case was arguably the perfect candidate for charging the defendant under the stalking law. Yet, a number of reasons may exist to explain why the prosecutor chose not to charge Brock under the statute.

Although Wyoming's stalking statute is one of the most progressive, prosecutors infrequently charge defendants under the statute.²³² In some cases, prosecutors are unaware of the statute and its potential use.²³³ In other cases, charging a defendant under another criminal statute is easier for a prosecutor.²³⁴ A prosecutor need only prove a single incident under other statutes, as opposed to a series of acts as required by the stalking statute.²³⁵

223. *Brock*, 1999 WL 311459, at 1.

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.*

230. *Id.* at 2. The misdemeanor charges were with regard to the unlawful phone calls under WYO. STAT. ANN. § 6-6-103. The felonies included aggravated assault, in violation of WYO. STAT. ANN. § 6-2-502(a)(iii); terroristic threats in violation of WYO. STAT. ANN. § 6-2-505(a); and destruction of property valued over \$500.00 in violation of WYO. STAT. ANN. § 6-3-201(a).

231. *Brock* at 2.

232. Telephone Interview with Mike Schaeffer, Assistant District Attorney for Natrona County, Wyoming (April 3, 1999).

233. *Id.*

234. *Id.*

235. See *supra* note 97, and accompanying text.

In addition, the possible sentences under either the stalking statute or another criminal statute may be similar or the same.²³⁶

While, in some cases, the end result may be the same whether a prosecutor utilizes the stalking statute or another criminal statute, cases may arise where the stalker's actions do not lend themselves to the elements of an alternative criminal statute.²³⁷ In those cases, criminal justice professionals should be familiar with the stalking statute so the victim can be protected and the stalker punished accordingly. Alternatively, cases may arise in which a stalker's behavior does not rise to a criminal level. In those cases, a civil stalking suit should be considered.

Civil Remedies

Civil suits can be a useful tool to enable a stalking victim to fight back against her stalker, but pros and cons exist when utilizing the civil remedies in stalking cases.²³⁸ The benefits of pursuing a civil action against a stalker are numerous.²³⁹ The victim may bring suit even if the stalker's conduct does not meet the state criminal statute's requirements, thereby giving her some vindication against her assailant.²⁴⁰ Allowing for attorney's fees and court costs encourages a victim to bring suit because if she prevails, she is not responsible for the substantial costs of the suit.²⁴¹ More importantly, damage awards send a message to stalkers and the community that such conduct is punished, either by incarceration or by monetary compensation.²⁴² Civil remedies empower victims by providing another avenue to deter the stalker's behavior.²⁴³ In addition, the burden of proof in a civil case is "preponderance of evidence," which is much easier to meet than the criminal burden of "beyond a reasonable doubt."²⁴⁴

The drawbacks to a civil stalking suit are comparatively few, but important. In bringing a civil suit as opposed to criminal charges, the stalker will not be detained.²⁴⁵ While the trial is pending and after the case, he will remain free and able to continue or even to escalate his stalking behavior.²⁴⁶ Thus, if possible, civil suits should be used in conjunction with criminal charges.²⁴⁷ Furthermore, if the victim fails to prove her case, she is respon-

236. *Id.*

237. *See supra*, note 233.

238. *See* Bouchard, *supra* note 191, at 561-62.

239. *Id.* at 562.

240. *Id.*

241. *Id.*

242. *Id.*

243. *Id.*

244. *Id.*

245. *Id.* at 565.

246. *Id.*

247. *Id.*

sible for attorney's fees and court costs.²⁴⁸ In criminal cases, the state bears the financial burden of prosecution.²⁴⁹ The victim and her attorney should carefully consider and discuss the benefits and drawbacks of a civil suit before bringing such an action. If they decide to bring a civil suit in conjunction with a criminal charge, the criminal charge will be handled according to state statutes and local prosecutorial policies.

Enforcement of Stalking Statutes

Currently, many law enforcement agencies and prosecutors' offices assign stalking cases to centralized domestic violence units.²⁵⁰ In other agencies and offices, including Wyoming, stalking cases are handled by the first available investigator or prosecutor.²⁵¹ However, because of the increasing attention from the public and media to stalking, policymakers, legislators, criminal justice officials, and victim service providers have developed new policies and practices to address the complex crime of stalking.²⁵²

One law enforcement agency, the Los Angeles Police Department (LAPD), created a special stalking unit in 1990 to handle stalking cases almost exclusively.²⁵³ Another method that agencies developed to deal with stalking cases is centralized case management, in which stalking cases are assigned to one of several specialized investigation units depending on the facts of the case.²⁵⁴ Some jurisdictions implement department-wide case management, in which all department personnel are trained to handle domestic violence and stalking cases and share the responsibility for managing those cases.²⁵⁵ Regardless of which type of program is developed to deal with stalking cases, the success of any program depends on education, training, and funding.

248. *Id.*

249. *Id.*

250. See NATIONAL INST. OF JUSTICE, U.S. DEP'T OF JUSTICE, DOMESTIC VIOLENCE AND STALKING, THE SECOND ANNUAL REPORT TO CONGRESS UNDER THE VIOLENCE AGAINST WOMEN ACT at 18 (1997) [hereinafter SECOND ANNUAL REPORT TO CONGRESS].

251. *Id.*

252. *Id.* at 17.

253. *Id.* at 19. The Threat Management Unit (TMU) includes eight detectives who handle the investigations, including single threats made against public officials and high level threats of workplace violence within the city government agencies. However, a requisite of TMU's case strategy is the "absolute separation of the victim and the suspect." Therefore, the unit will not accept cases in which the victim and the suspect are still married, or divorced couples who have legitimate reasons to have contact, such as child custody arrangements. As a result of TMU's case strategy, they handle few domestic violence cases involving stalking, and refer those cases to the LAPD Domestic Violence Unit.

254. *Id.* at 20. The Seattle Police Department has implemented this type of centralized case management. Stalking cases are assigned to either the Domestic violence Unit, which handles stalkings that occur under domestic violence situations; the Homicide and Assault Unit, which manages non-domestic violence stalkings; and the Fraud and Explosives Unite, which responds to cases that fall within its jurisdiction.

255. *Id.* The Chicago police Department has developed a departmentwide case management approach, in which the focus of the department's domestic violence project is to provide training and information about these cases to the beat cops, who are the primary responders.

One congressional report indicated that victims' stalking reports to the police have increased since the passage of anti-stalking laws in all fifty states.²⁵⁶ Yet, the same report showed no significant difference in the number of arrests made in stalking cases after the promulgation of these laws.²⁵⁷ In order to help protect the victims of stalking, law enforcement officials must take this crime seriously. Training in stalking behaviors and domestic violence dynamics would sensitize law enforcement officials to the signs of stalking.²⁵⁸ Further, being knowledgeable about what behaviors constitute stalking in the state statutes would help law enforcement officials recognize when a stalking situation occurs. The police must pay more attention to the first signs of stalking behavior, and listen attentively, placing the discrete acts complained of into a larger context. Further, they should provide the victim with advice on how to document the conduct in order to build a stalking case.²⁵⁹

To assist in stalking documentation, New Mexico's Department of Public Safety Training Center, in conjunction with the State's Coalition Against Domestic Violence, developed a "Stalking Critical Incident Diary" that victims use to record the date, time, location, type of incident, officers' names and badge numbers, and witness information.²⁶⁰ The diaries and accompanying brochure about stalking are distributed at hospitals, police stations, shelters, and other locations as an outreach and educational tool.²⁶¹ Such procedures are relatively inexpensive and can be invaluable in developing a stalking case and ultimately protecting the victim.²⁶²

The role of the victim also is essential to the criminal justice process. Victims are the principal sources of information and evidence of stalking, particularly at the earliest stages of case development. A victim should be encouraged by law enforcement officials to assist in the investigations by recording the times, places, and events related to the stalking, much in the same manner as New Mexico's Stalking Critical Incident Diary. A victim should keep a daily log, take pictures, and save tape recordings in an effort to build a case against their assailant. A victim should also be encouraged to report any intrusions to the police and to call any time she feels fearful or anxious, because the application of most state statutes hinges on evidence that the victim is being threatened or fears injury at the hands of her stalker. Therefore, the police also should be encouraged to file numerous incident reports, even if the incident seems innocuous, in order to help document the pattern of behavior that is critical to the application of the stalking

256. See THIRD ANNUAL REPORT TO CONGRESS, *supra* note 69, at 16.

257. *Id.*

258. See SECOND ANNUAL REPORT TO CONGRESS *supra* note 251 at 251-2.

259. *Id.*

260. See ANNUAL REPORT TO CONGRESS *supra* note 4, at 38.

261. *Id.*

262. *Id.*

statutes.²⁶³ Likewise, the victim must participate in reporting any violations of a protection order by her stalker because efforts to protect the victim are ineffective without her active participation in enforcing the order.

Prosecutors also provide an essential element to implementing stalking statutes because of their charging discretion.²⁶⁴ In the stalking study conducted by the National Institute of Justice and the Center for Disease Control and Prevention, researchers found that only twelve percent of the stalking victims reported that their stalkers were prosecuted for any crime.²⁶⁵ Of the prosecuted cases, prosecutors charged stalkers with a variety of crimes, including stalking, harassment, menacing or threatening behavior, vandalism, trespassing, breaking and entering, robbery, disorderly conduct, intimidation, and simple or aggravated assault.²⁶⁶

The low incidence of prosecution is a result of prosecutors' difficult positions in stalking cases.²⁶⁷ First, the case depends upon the evidence collected by law enforcement officials and the victim. If a case cannot satisfy the elements of the state stalking statutes, the prosecutor may choose to proceed under a different charge. Furthermore, early prosecutorial intervention in stalking cases results in a reported decline in the use of stalking statutes.²⁶⁸ The decline in the implementation of the statutes is attributed to the prosecutors' desire to intervene in the case at the earliest possible opportunity, often before the behavior has escalated to the level required by the stalking laws.²⁶⁹ As a result of the early intervention, most stalking cases are prosecuted as violations of protective orders, which often carry more lenient sentences.²⁷⁰ Thus, while well intentioned, early prosecutorial intervention puts an immediate end to the stalking. While this intervention protects the victim in the short-term—if the prosecution results in an incarceration, its duration is often limited—which does not protect the victim in the long-term.²⁷¹

Second, prosecutors must balance the victim's safety with the traditional goal of a conviction.²⁷² In some cases, participation in a prosecution may endanger a victim's physical or emotional well being and victim safety issues should be addressed throughout the trial process.²⁷³ The likelihood of

263. US DEPT OF JUSTICE, VIOLENCE AGAINST WOMEN GRANTS OFFICE, ASSESSING JUSTICE SYSTEM RESPONSE TO VIOLENCE AGAINST WOMEN at 8 (1997) [hereinafter RESPONSE ASSESSMENT].

264. *Id.* at 18. The question of a "no drop policy" in which victim is unable to withdraw a complaint once formal charges have been filed is pertinent, but beyond the scope of this comment.

265. See STALKING SURVEY, *supra* note 10, at 17.

266. *Id.*

267. See RESPONSE ASSESSMENT, *supra* note 264, at 18.

268. See SECOND ANNUAL REPORT TO CONGRESS, *supra* note 251, at 25.

269. *Id.*

270. *Id.* at 37.

271. *Id.*

272. See RESPONSE ASSESSMENT, *supra* note 264, at 18.

273. *Id.*

continued harassment or increased levels of harassment or violence should be assessed from the time of arrest through the conclusion of the trial.²⁷⁴ As a result, pre-trial release options, such as pre-trial detention of the defendant, should be considered.²⁷⁵ Prosecutors also should work closely with local victim advocacy programs to provide support during interviews and other legal and non-legal proceedings.²⁷⁶ Such support might include providing the victim with information on legal remedies, victim rights, and community referrals.²⁷⁷ Victim advocates also might aid the victim by assisting with safety planning, victim compensation, or other financial aid; providing information on court dates and the judicial process; and accompanying the victim through hearings and other court proceedings.²⁷⁸

CONCLUSION

Stalking is a pervasive and often deadly crime that affects over a million private citizens every year.²⁷⁹ Every state in the country recognizes the crime of stalking, but without the successful implementation of the laws, the laws might as well be non-existent. In order to effectively utilize the statutes, those in the criminal justice system, as well as attorneys in the private sector, must know and understand the applicable state statutes. Therefore, education and training programs must be implemented to teach criminal justice officials and the legal community how to enforce the laws.

Law enforcement officials must be aware of the dynamics of stalking behavior through education and training programs in order to provide early intervention and effective evidentiary documentation in stalking cases. Victims should be encouraged to document their cases and obtain corroborating evidence to ensure the evidentiary support necessary for successful stalking convictions and civil suits. Community response programs and state agencies need to cooperate in disseminating information to stalking victims to help them understand the importance of an evidentiary base in stalking cases. They also must help the victims to implement procedures to document incidents.

Prosecutors must be sensitive to the complex nature of stalking and balance the zealous prosecution of stalking cases with an overarching objective to provide for the victim's safety. Prosecutors should establish training for their staff regarding stalking and domestic violence dynamics, advise and train law enforcement officials on evidentiary issues and state

274. *Id.* at 20.

275. *Id.* Some options to consider may include prohibitions against threats, no contact orders, confiscation of weapons, participation in substance or alcohol abuse programs.

276. *Id.* at 26.

277. *Id.*

278. *Id.*

279. See STALKING SURVEY *supra*, note 10 at 6.

stalking laws, and cooperate with community-based victim advocacy groups to aid in the support of the victim. Also, attorneys need to recognize that other civil avenues exist to assist their clients in putting an end to the nightmare of stalking. The stalking laws, both criminal and civil, are excellent tools for combating the crime of stalking only if they are implemented effectively.

STACY CASPER MARTINEZ