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## Local, State, and Federal Responses to Stalking: Are Anti-Stalking Laws Effective?

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LOCAL, STATE, AND FEDERAL RESPONSES TO STALKING:  
ARE ANTI-STALKING LAWS EFFECTIVE?

DR. TRACEY B. CARTER\*

INTRODUCTION

- I. VIOLENCE AGAINST WOMEN ACT (VAWA)
  - A. *Historical Overview of the VAWA*
  - B. *Seven Key Provisions of the VAWA of 1994*
    - 1. *Safe Streets for Women*
    - 2. *Safe Homes for Women*
    - 3. *Civil Rights for Women*
    - 4. *Equal Justice for Women in the Courts Act*
    - 5. *Violence Against Women Act Improvements*
    - 6. *National Stalker and Domestic Violence Reduction*
    - 7. *Protections for Battered Immigrant Women and Children*
  - C. *Amendments and Reauthorization of the VAWA from 1994–2014*
    - 1. *Reauthorization of the VAWA in 2000*
    - 2. *Reauthorization of the VAWA in 2005*
    - 3. *Reauthorization of the VAWA in 2013*
- II. STALKING, STATE AND FEDERAL ANTI-STALKING LAWS, AND THE MODEL ANTI-STALKING CODE
  - A. *Stalking*
    - 1. *Definitions of Stalking*
    - 2. *Stalking Statistics*
      - a. *National Studies on Stalking*
      - b. *Characteristics and Categories of Stalkers*
  - B. *Anti-Stalking Laws*
    - 1. *State Anti-Stalking Laws*
      - a. *State Summary Based Upon the Number of Categories of Stalking in 2014*
        - i. *One Category*
        - ii. *Two Categories*
        - iii. *Three Categories*

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- iv. *Four Categories*
    - b. *State Summary Based Upon the Levels of Punishment for Stalking in 2014*
      - i. *Misdemeanors*
      - ii. *Felonies*
      - iii. *Other Crime Designations*
    - 2. *Federal Anti-Stalking Laws in 2014*
    - C. *The Model Anti-Stalking Code*
  - III. CONSTITUTIONAL CHALLENGES TO ANTI-STALKING LEGISLATION
  - IV. THE EFFECTIVENESS OF ANTI-STALKING EFFORTS AND LAWS AT THE LOCAL, STATE, AND FEDERAL LEVELS AS WELL AS “MODEL” STATE ANTI-STALKING LAWS
    - A. *The Effectiveness of Anti-Stalking Efforts at the Local, State, and Federal Levels*
    - B. *The Effectiveness of Anti-Stalking Laws in Combating Stalking*
    - C. *“Model” State Anti-Stalking Laws*
- CONCLUSION

## INTRODUCTION

Hardly a week goes by without there being something in the news about domestic violence and stalking.<sup>1</sup> It does not matter whether you are watching television, reading a newspaper, listening to the radio, or simply browsing the Internet.<sup>2</sup> Stalking has been described as follows:

In general, stalking refers to repeated harassing or threatening behavior by an individual, such as following a person, appearing at a person’s home or place of business, making harassing phone calls, leaving written messages or objects, or vandalizing a person’s property. Virtually any unwanted contact between two people that directly or indirectly communicates a threat or places the victim in fear can be considered stalking.<sup>3</sup>

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1. *Stalking in the News*, STALKING RES. CTR., <http://www.victimsofcrime.org/our-programs/stalking-resource-center/stalking-information/stalking-in-the-news> [<http://perma.cc/2DG5-KUVE>] (providing links to numerous media articles related to stalking that have been published on an almost daily basis for many years, including news articles from 2014 and 2015).

2. *See id.* (Headlines such as “Long-distance cyberstalker gets 22 years for terrorizing 15+ victims, Sept. 15, 2015,” “Ex-university football player admits to cyberstalking, Sept. 15, 2015,” “Pennsylvania man charged with numerous counts of harassment, stalking, Sept. 14, 2015” are just a few examples of articles related to stalking that have recently been published in 2015 through various media outlets in the United States).

3. OFF. FOR VICTIMS OF CRIME, STALKING VICTIMIZATION (2002), [https://www.ncjrs.gov/ovc\\_archives/reports/help\\_series/pdf/stalkingvictimization.txt](https://www.ncjrs.gov/ovc_archives/reports/help_series/pdf/stalkingvictimization.txt) [<http://perma.cc/QY8A-D4EC>] [hereinafter STALKING VICTIMIZATION]; *see infra* notes 122–23 and accompanying text (providing a few other definitions of stalking).



Stalking was first known as “the crime of the nineties,”<sup>4</sup> but the prevalence of stalking in the United States continues to be a serious matter. Currently, there are 7.5 million victims of stalking in the United States each year.<sup>5</sup> Moreover, stalking does not discriminate. “Stalking knows no color, gender, or sexuality . . . anyone can be targeted.”<sup>6</sup> Beginning in 2004, the month of January became designated as “National Stalking Awareness Month.”<sup>7</sup> Additionally, “[i]n 2011, the White House issued the first Presidential Proclamation on National Stalking Awareness Month.”<sup>8</sup>

The year 2014 commemorated the twentieth anniversary of the passage of the federal Violence Against Women Act of 1994 (VAWA).<sup>9</sup>

4. Joseph G. Jarret, *Following the Crime of Stalking*, FLA. B.J., June 1997, at 97, <http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/Author/27C2FD0E696250D685256ADB005D6152> [<http://perma.cc/D5GP-CSNW>]. In his article, Jarret also noted that stalking was “[a] crime that until recently was seldom reported or investigated . . . and it is no longer just the bane of celebrities and the wealthy. A recent media report indicated that as of the mid-1990’s, there were more than 200,000 stalkers in America.” *Id.*

5. *Stalking Statistics and Data*, STALKING RES. CTR., <http://victimsofcrime.org/our-programs/stalking-resource-center/stalking-information/stalking-statistics> [<http://perma.cc/VC49-JB35>]; see *Welcome*, NAT’L STALKING AWARENESS MONTH, <http://www.stalkingawarenessmonth.org/about> [<http://perma.cc/Y7MQ-5A9N>] [hereinafter *Welcome*].

6. Nancy Redd, *Survivors of Stalking: The Lasting Emotional Trauma of Stalking*, HUFFPOST LIVE (May 1, 2013), <http://live.huffingtonpost.com/r/segment/stalking-victims-share-their-stories/517016542b8c2a559100036d> [<http://perma.cc/7S5G-DHR9>].

7. *The History of National Stalking Awareness Month*, NAT’L STALKING AWARENESS MONTH, [http://www.stalkingawarenessmonth.org/sites/default/files/2015NSAM\\_History\\_web.pdf](http://www.stalkingawarenessmonth.org/sites/default/files/2015NSAM_History_web.pdf) [<http://perma.cc/2PV5-GEXQ>] (National Stalking Awareness Month “began in response to a 2003 call to the Stalking Resource Center from Debbie Riddle, the sister of murdered stalking victim Peggy Klinke. Riddle wanted to transform her family’s painful tragedy into a force for good—and to help improve law enforcement’s response to stalking and save lives. Riddle’s call all led to a concurrent Congressional resolution on stalking; a national program on Lifetime Television, hosted by Erin Brockovich, featuring Peggy Klinke’s story; and a Lifetime video, ‘Stalking: Real Fear, Real Crime,’ to train law enforcement about the crime.” *Id.* In fact, in July 2003, Representative Heather Wilson (R-NM) “introduced a Congressional resolution to support National Stalking Awareness Month,” and in January 2004, “the National Center for Victims of Crime launched the first observance of National Stalking Awareness Month” in order “to increase the public’s understanding of the crime of stalking.”).

8. *Id.* In the first-ever Presidential Proclamation on National Stalking Awareness Month, President Obama “stressed the millions affected by the crime [of stalking], its often-devastating consequences, the difficulty of identifying and investigating the crime, and the federal government’s strong commitment to combating stalking.” *Id.* President Obama’s “2012 proclamation elaborated on the dangers of stalking, and the importance of NSAM in building awareness about the crime.” *Id.* Moreover, “[i]n 2012, during National Stalking Awareness Month, the White House convened its first-ever National Roundtable on Stalking, bringing together survivors, law enforcement officers, victim advocates, and researchers, to advance knowledge of the crime and help the federal government combat the crime.” *Id.*

9. U.S. DEP’T OF JUSTICE, OFF. ON VIOLENCE AGAINST WOMEN ANNOUNCES NATIONAL TOUR TO COMMEMORATE THE 20TH ANNIVERSARY OF THE VIOLENCE AGAINST WOMEN ACT, 14-1204 (Oct. 30, 2014), <http://www.justice.gov/opa/pr/office-violence-against-women-announces-national-tour-commemorate-20th-anniversary-violence> [<http://perma.cc/W5GJ-TZXC>].



Former President Bill Clinton signed the VAWA into law on September 13, 1994.<sup>10</sup> Passage of the VAWA in 1994 marked a key transformation in our nation's response to the crimes of domestic violence, sexual assault, and stalking.<sup>11</sup> The VAWA was established to promote "collaboration among law enforcement, health care providers, non-profit service groups, community leaders, and the private sector" to combat the crimes of domestic violence, sexual assault, and stalking.<sup>12</sup> In fact, the Act was created as a "coordinated community response" to respond to these crimes.<sup>13</sup> In addition, the VAWA provided significant "[f]ederal resources for police, prosecutors, prevention programs, and victim service initiatives" in domestic violence, sexual assault, and stalking cases.<sup>14</sup> Moreover, the Act "encourag[ed] jurisdictions to bring together multiple stakeholders to share experience and information and to use their distinct roles to improve community-defined responses to these crimes."<sup>15</sup> The VAWA also included a full faith and credit provision "requir[ing] states and territories to enforce protection orders issued by other states, tribes and territories."<sup>16</sup>

This Article highlights the serious problem of stalking and addresses whether, twenty years after the original passage of the federal VAWA in 1994, anti-stalking laws are effective at the local, state, and federal levels. Part I begins with a discussion of the VAWA. Part II provides definitions of stalking, includes statistics related to the incidences of stalking and its relationship to domestic violence, as well as summarizes and provides a comprehensive analysis of state and federal anti-stalking laws in effect in 2014. Part II also contains an overview of the Model Anti-Stalking Code. Part III discusses the various constitutional challenges that have been made in response to anti-stalking legislation and explains why such laws have and should be upheld. Part IV evaluates the effectiveness of anti-stalking efforts at the local, state, and federal levels, discusses

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10. Lynn Rosenthal, *18th Anniversary of the Violence Against Women Act*, THE WHITE HOUSE (Sept. 17, 2012, 2:18 PM), <https://www.whitehouse.gov/blog/2012/09/17/18th-anniversary-violence-against-women-act> [http://perma.cc/RY85-5ZZZ].

11. Bonnie J. Campbell, *Foreword* to NAT'L INST. OF JUSTICE, DOMESTIC VIOLENCE, STALKING, AND ANTISTALKING LEGISLATION: AN ANNUAL REPORT TO CONGRESS UNDER THE VIOLENCE AGAINST WOMEN ACT, at iii (1996), <https://www.ncjrs.gov/pdffiles/stlkbook.pdf> [http://perma.cc/4QS9-8FVD]; see *Commemorating a Decade of Progress: The Tenth Anniversary of National Stalking Awareness Month*, U.S. DEPT OF JUSTICE OFF. ON VIOLENCE AGAINST WOMEN (Jan. 31, 2014), <http://www.justice.gov/ovw/blog/commemorating-decade-progress-tenth-anniversary-national-stalking-awareness-month> [http://perma.cc/2E3K-EM48] ("Over the past ten years we have seen a paradigm shift in the way the criminal justice system, and our Nation, understands and responds to stalking.").

12. Campbell, *supra* note 11, at iii.

13. *Commemorating a Decade of Progress*, *supra* note 11.

14. Campbell, *supra* note 11, at iii.

15. *Commemorating a Decade of Progress*, *supra* note 11.

16. *Id.*



whether anti-stalking laws are effectively combating stalking, and emphasizes “model” anti-stalking laws that are being successfully utilized at the state level. This Article concludes that anti-stalking laws are effective on their face, but provides recommendations regarding interventions, prevention efforts, and law enforcement practices to better protect victims of stalking. It also recommends that in order to make anti-stalking laws the most effective, there should be better identification of stalking offenses; increases in arrests, prosecutions, convictions, and sanctions imposed upon stalkers to exhibit that stalkers will be held accountable for their conduct; and mandated professional counseling for stalkers.

## I. VIOLENCE AGAINST WOMEN ACT (VAWA)

### A. *Historical Overview of the VAWA*

In 1990, former U.S. Senator Joseph Biden introduced the first Violence Against Women Act.<sup>17</sup> Moreover, in 1993, “Senator Joseph Biden and the majority staff of the Senate Judiciary Committee conclude[d] a three-year investigation into the causes and effects of violence against women.”<sup>18</sup> Senator Biden then reported the following:

Through this process, I have become convinced that violence against women reflects as much a failure of our nation’s collective moral imagination as it does the failure of our nation’s laws and regulations. We are helpless to change the course of this violence unless, and until, we achieve a national consensus that it deserves our profound public outrage.<sup>19</sup>

Thereafter, in 1994, Senator Biden sponsored the federal Violence Against Women Act (VAWA) as part of the Violent Crime Control and Law Enforcement Act of 1994.<sup>20</sup> Under Senator Biden’s leadership, the U.S. “Congress recognized the severity of violence against women and our [nation’s] need for a national strategy with the enactment of the Violence Against Women Act in 1994.”<sup>21</sup> The VAWA was later

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17. *The History of the Violence Against Women Act*, U.S. DEP’T. OF JUSTICE, OFF. ON VIOLENCE AGAINST WOMEN, [http://www.ncdsv.org/images/OVW\\_HistoryVAWA.pdf](http://www.ncdsv.org/images/OVW_HistoryVAWA.pdf) [<http://perma.cc/YR94-WZCF>].

18. *Id.*

19. *Id.*

20. *Id.* Senator Biden’s “legislation passe[d] with bipartisan support of 226 sponsors in the House and 68 in the Senate.” *Id.*

21. *Factsheet: The Violence Against Women Act*, THE WHITE HOUSE, [http://www.whitehouse.gov/sites/default/files/docs/vawa\\_factsheet.pdf](http://www.whitehouse.gov/sites/default/files/docs/vawa_factsheet.pdf) [<http://perma.cc/B3DH-M26M>].



signed into law by former President Bill Clinton on September 13, 1994,<sup>22</sup> as part of the Violent Crime Control and Law Enforcement Act of 1994.<sup>23</sup>

### *B. Seven Key Provisions of the VAWA of 1994*

In general, the VAWA of 1994 was considered “landmark federal legislation[.]” and the Act’s “comprehensive approach to violence against women combined tough new provisions to hold offenders accountable with programs to provide services for the victims of such violence.”<sup>24</sup> The Act required “a coordinated community response to domestic violence, sexual assault and stalking crimes, encouraging jurisdictions to bring together multiple players to share experience and information and to use their distinct roles to improve community-defined responses.”<sup>25</sup>

As part of Title IV of the Violent Crime Control and Law Enforcement Act of 1994, the VAWA of 1994 contained seven key provisions.<sup>26</sup> Below is an overview regarding those provisions:

#### *1. Safe Streets for Women*

Subtitle A of the VAWA discussed safe streets for women.<sup>27</sup> This subpart of the VAWA, known as the “Safe Streets for Women Act of

22. *The History of the Violence Against Women Act*, *supra* note 17; Rosenthal, *supra* note 10 (referencing the VAWA that was signed into law by former President Clinton on September 13, 1994 as “groundbreaking legislation [that] was the result of many years of dedication by women’s advocates and the incredible leadership of then-Senator Biden”).

23. Violent Crime Control and Law Enforcement Act of 1994, H.R. 3355, 103d Cong. (1994); Pub. L. No. 103-322, 108 Stat. 1796, 1902 (1994) (noting under Title IV, § 40001 of the Violent Crime Control and Law Enforcement Act of 1994 that “This title may be cited as the ‘Violence Against Women Act of 1994.’”); Campbell, *supra* note 11, at iii.

24. *Factsheet*, *supra* note 21; see Rosenthal, *supra* note 10 (Remembering the day that the VAWA was signed into law by President Clinton in 1994 while she was working as an advocate in Florida, Rosenthal stated, “[f]or those of us on the frontlines, that was the day everything changed. No longer did we stand alone in the fight to end rape and battering. Finally, we had validation from the highest levels of our government that violence against women was a national crisis and a high priority. From that day forward, our local hotlines were inundated with calls from victims who felt they could finally step forward and seek help.”).

25. *The History of the Violence Against Women Act*, *supra* note 17 (emphasis omitted); see *Commemorating a Decade of Progress*, *supra* note 11.

26. §§ 40101–40703, 108 Stat. at 1906–55. The entire Violent Crime Control and Law Enforcement Act of 1994 was 356 pages. However, the VAWA section of the Violent Crime Control and Law Enforcement Act of 1994, Title IV, was 53 pages. *Id.*

27. *Id.* §§ 40101–40156.



1994” (SSWA),<sup>28</sup> strengthened the federal penalties for sex crimes.<sup>29</sup> Specifically, the SSWA increased the punishment for repeat sex offenders, allowing them to be sentenced to “a term of imprisonment up to twice that otherwise authorized.”<sup>30</sup> The SSWA also directed the United States Sentencing Commission to review and amend its sentencing guidelines, as necessary, related to sex offenses and to submit a report to Congress within 180 days of the Act’s enactment “containing an analysis of Federal rape sentencing.”<sup>31</sup> Moreover, the SSWA incorporated mandatory restitution for victims of sex crimes.<sup>32</sup>

In addition, the SSWA authorized the appropriation of funds for United States Attorneys to appoint federal “Victim/Witness Counselors for the prosecution of sex crimes and domestic violence crimes.”<sup>33</sup> The SSWA also provided for the availability of law enforcement and prosecution grants to reduce and combat violent crimes against women,<sup>34</sup> as well as grants for capital improvements in public transportation, in national parks, and in public parks to protect the safety of women against violent crimes.<sup>35</sup> Moreover, the SSWA amended Rule 412 of the Federal Rules of Evidence relating to sex offense cases and provided for the general inadmissibility of an alleged victim’s past sexual behavior or alleged sexual predisposition in any civil or criminal proceeding involving alleged sexual misconduct, with a few exceptions.<sup>36</sup> The SSWA also provided assistance to victims of sexual assault or sexual abuse through (1) the availability of education and prevention grants to reduce sexual assaults against women;<sup>37</sup> (2) training programs;<sup>38</sup> (3) the maintaining of confidentiality of communications between sexual assault or domestic violence victims and their counselors;<sup>39</sup> (4) information programs;<sup>40</sup> (5) the availability of education and prevention grants to reduce sexual abuse of runaway, homeless, and street youth;<sup>41</sup> and (6) victims of child abuse programs.<sup>42</sup>

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28. *Id.* § 40101.

29. *See id.* §§ 40111–40114.

30. *Id.* § 40111(a).

31. *Id.* §§ 40112(a)–(b).

32. § 40113, 108 Stat. at 1904.

33. *Id.* § 40114.

34. *Id.* § 40121.

35. *Id.* §§ 40131–40133.

36. *Id.* § 40141; *see The History of the Violence Against Women Act*, *supra* note 17 (noting that the VAWA of 1994 “included a federal ‘rape shield law,’ which is intended to prevent offenders from using victims’ past sexual conduct against them during a rape trial”).

37. § 40151, 108 Stat. at 1920.

38. *Id.* § 40152.

39. *Id.* § 40153.

40. *Id.* § 40154.

41. *Id.* § 40155.

42. *Id.* § 40156.



## 2. *Safe Homes for Women*

Subtitle B of the VAWA discussed safe homes for women.<sup>43</sup> This subpart of the VAWA is referred to as the "Safe Homes for Women Act of 1994" (SHWA).<sup>44</sup> The SHWA provided for the availability of a grant to a private, nonprofit entity to operate a national, toll-free telephone hotline to provide information and assistance to victims of domestic violence.<sup>45</sup> The SHWA also provided for interstate enforcement of penalties for interstate domestic violence and interstate violation of an order of protection.<sup>46</sup> Moreover, the SHWA gave victims of domestic violence an opportunity to be heard at any proceedings regarding the danger posed by a defendant in determining whether a defendant should be granted pretrial release or for determining the conditions of such release.<sup>47</sup> In addition, the SHWA included a mandatory restitution provision, stating "in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter."<sup>48</sup>

Another key component of the SHWA as part of the VAWA included the creation of a full faith and credit provision for protection orders.<sup>49</sup> This provision "requires states and territories to enforce protection orders issued by other states, tribes and territories."<sup>50</sup> Following passage of the VAWA, researchers have concluded:

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43. §§ 40201–40295, 108 Stat. at 1925–41.

44. *Id.* § 40201.

45. *Id.* § 40211. This grant provided for the creation of the National Domestic Violence Hotline. *Id.*

46. *Id.* § 40221. Regarding interstate domestic violence, the SHWA punished any person who crossed state lines or who caused their spouse or intimate partner to cross state lines, and the person caused bodily injury to their spouse or intimate partner. *Id.* The Act referred to

[a] person who travels across a State line or enters or leaves Indian country with the intent to injure, harass, or intimidate that person's spouse or intimate partner, and who, in the course of or as a result of such travel, intentionally commits a crime of violence and thereby causes bodily injury to such spouse or intimate partner . . . [or a] . . . person who causes a spouse or intimate partner to cross a State line or to enter or leave Indian country by force, coercion, duress, or fraud and, in the course of or as a result of that conduct, intentionally commits a crime of violence and thereby causes bodily injury to the person's spouse or intimate partner, as committing the offense of interstate domestic violence.

*Id.*

47. *Id.*

48. *Id.*

49. § 40221, 108 Stat. at 1930; see *The History of the Violence Against Women Act*, *supra* note 17.

50. *The History of the Violence Against Women Act*, *supra* note 17; see § 40221, 108 Stat. at 1930 ("Any protection order issued that is consistent with subsection (b) of this section by the court of one State or Indian tribe (the issuing State or Indian tribe) shall be accorded full faith and credit by the court of another State or Indian tribe (the enforcing State or Indian tribe) and enforced as if it were the order of the enforcing State or tribe.").



States cannot constitutionally resist the requirements of the Full Faith and Credit Clause and the VAWA legislation. The states must act to bring themselves into compliance with these requirements and remove all unnecessary obstacles to providing the protection that is required both by the Constitution and the federal law to victims of domestic violence.<sup>51</sup>

In addition, the SHWA strongly encouraged arrest policies in domestic violence cases.<sup>52</sup> The SHWA encouraged states, tribes, and local governments “to treat domestic violence as a serious violation of criminal law.”<sup>53</sup> Specifically, the SHWA provided for the availability of grants to states, tribes, and local governments for the following purposes:

- (1) To implement mandatory arrest or proarrest programs and policies in police departments, including mandatory arrest programs and policies for protection order violations.
- (2) To develop policies and training in police departments to improve tracking of cases involving domestic violence.
- (3) To centralize and coordinate police enforcement, prosecution, or judicial responsibility for domestic violence cases in groups or units of police officers, prosecutors, or judges.
- (4) To coordinate computer tracking systems to ensure communication between police, prosecutors, and both criminal and family courts.
- (5) To strengthen legal advocacy service programs for victims of domestic violence.
- (6) To educate judges in criminal and other courts about domestic violence and to improve judicial handling of such cases.<sup>54</sup>

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51. Emily J. Sack, *Domestic Violence Across State Lines: The Full Faith and Credit Clause, Congressional Power, and Interstate Enforcement of Protection Orders*, 98 NW. U. L. REV. 827, 906 (2004). In this article, Sack explored whether each state was in fact required to grant full faith and credit recognition to domestic violence protection orders from other “sister” states. *Id.* at 830. She noted that despite Congress enacting the full faith and credit provision for such protection orders, several states had not complied. *Id.* at 905. Her article examined the scope of the Constitution’s Full Faith and Credit Clause and the extent of congressional power to require full faith and credit, despite not being constitutionally mandated, and she came to the above conclusion. *Id.* at 830.

52. § 40231, 108 Stat. at 1932.

53. *Id.*

54. *Id.*



In the awarding of grants under the SHWA relating to arrest policies, the Attorney General was directed to give priority to applicants (1) who did "not currently provide for centralized handling of cases involving domestic violence by police, prosecutors, and courts;" and (2) who "demonstrate[d] a commitment to strong enforcement of laws, and prosecution of cases, involving domestic violence."<sup>55</sup> The SHWA also provided for the appropriation of grant funds for battered women's shelters.<sup>56</sup>

Another important provision of the SHWA provided for the selection, implementation, and evaluation of four separate model programs for youth education at primary schools, middle schools, secondary schools, and higher education institutions about domestic violence and violence among intimate partners.<sup>57</sup> Moreover, the SHWA included the establishment of community programs on domestic violence and allowed for the provision of "grants to nonprofit private organizations to establish projects in local communities involving many sectors of each community to coordinate intervention and prevention of domestic violence."<sup>58</sup> The SHWA required amendments to the Family Violence Prevention and Services Act, including a grantee reporting requirement and other technical amendments.<sup>59</sup> Furthermore, the SHWA required the United States Postal Service to "promulgate regulations to secure the confidentiality of domestic violence shelters and abused persons' addresses."<sup>60</sup>

Additionally, the SHWA included a research and data component.<sup>61</sup> Under the SHWA, the National Academy of Sciences, or a nonprofit private entity recommended by the National Academy of Sciences, was to conduct a study and "develop a research agenda to increase the understanding and control of violence against women, including rape and domestic violence."<sup>62</sup> In conducting the study and developing a research agenda, the entity was required to "convene a panel of nationally recognized experts on violence against women, in

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55. *Id.*

56. *Id.* § 40241.

57. *Id.* § 40251. The model programs were to "be selected, implemented, and evaluated in consultation with educational experts, legal and psychological experts on battering, and victim advocate organizations such as battered women's shelters, State coalitions and resource centers." *Id.*

58. § 40261, 108 Stat. at 1935.

59. *Id.* §§ 40271–40272.

60. *Id.* § 40281. However, this section of the Act did "not prohibit the disclosure of addresses to State or Federal agencies for legitimate law enforcement or other governmental purposes." *Id.*

61. *Id.* §§ 40291–40293.

62. *Id.* § 40291.



the fields of law, medicine, criminal justice, and direct services to victims and experts on domestic violence in diverse, ethnic, social, and language minority communities and the social sciences.”<sup>63</sup> In setting the agenda, the entity was directed to “focus primarily on preventive, educative, social, and legal strategies, including addressing the needs of underserved populations.”<sup>64</sup>

The SHWA’s research and data component also required the Attorney General to “study and report to the States and to Congress on how the States may collect centralized databases on the incidence of sexual and domestic violence offenses within a State.”<sup>65</sup> In conducting this study, the Attorney General was required to “consult persons expert in the collection of criminal justice data, State statistical administrators, law enforcement personnel, and nonprofit non-governmental agencies that provide direct services.”<sup>66</sup> Also, the Secretary of Health and Human Services was directed to “conduct a study to obtain a national projection of the incidence of injuries resulting from domestic violence, the cost of injuries to health care facilities, and recommend health care strategies for reducing the incidence and cost of such injuries.”<sup>67</sup> Moreover, the SHWA appropriated grant funds for rural domestic violence and child abuse enforcement assistance.<sup>68</sup>

### 3. *Civil Rights for Women*

Subtitle C of the VAWA, known as the “Civil Rights Remedies for Gender-Motivated Violence Act,” discussed civil rights for women.<sup>69</sup> This Act gave a federal right of protection against crimes of violence shown by a preponderance of the evidence to be motivated by one’s

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63. *Id.*

64. § 40291, 108 Stat. at 1939.

65. *Id.* § 40292.

66. *Id.*

67. *Id.* § 40293.

68. *Id.* § 40295. Specifically, the Attorney General was allowed to make grants to States, Indian tribal governments, and local governments of rural States, and to other public or private entities of rural States—(1) to implement, expand, and establish cooperative efforts and projects between law enforcement officers, prosecutors, victim advocacy groups, and other related parties to investigate and prosecute incidents of domestic violence and child abuse; (2) to provide treatment and counseling to victims of domestic violence and child abuse; and (3) to work in cooperation with the community to develop education and prevention strategies directed toward such issues.

*Id.*

69. *Id.* §§ 40301–40304. See *The History of the Violence Against Women Act*, *supra* note 17 (stating that the Violence Against Women Act of 1994 “allow[ed] victims to seek *civil rights remedies* for gender-related crimes”).



gender and provided “[a]ll persons within the United States . . . the right to be free from crimes of violence motivated by gender.”<sup>70</sup> Injured victims were entitled to recover “compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate.”<sup>71</sup> This Act also included a provision regarding the protection of a rape victim’s identity.<sup>72</sup>

#### *4. Equal Justice for Women in the Courts Act*

Subtitle D of the VAWA is cited as the “Equal Justice for Women in the Courts Act of 1994.”<sup>73</sup> This section appropriated funds to award grants for the development, testing, presentation, and dissemination of model programs to educate and train judges and court personnel in state courts and tribal judges and court personnel in Indian tribes on crimes of violence motivated by the victim’s gender including rape, sexual assault, and domestic violence.<sup>74</sup> Moreover, this section encouraged and appropriated grant funds for the federal circuit judicial councils to conduct studies to determine if there were any instances of gender bias in their respective circuits and to implement recommended reforms.<sup>75</sup>

#### *5. Violence Against Women Act Improvements*

Subtitle E of the VAWA discussed improvements to the VAWA,<sup>76</sup> including the following: (1) pretrial detention in sex offense cases;<sup>77</sup> (2) increased penalties for sex offenses against victims below the age of sixteen;<sup>78</sup> (3) payment of costs for the testing of sexually transmitted

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70. §§ 40302(a)–(b), (e)(1), 108 Stat. at 1941. The Civil Rights Remedies for Gender-Motivated Violence Act’s purpose was “to protect the civil rights of victims of gender motivated violence and to promote public safety, health, and activities affecting interstate commerce by establishing a Federal civil rights cause of action for victims of crimes of violence motivated by gender.” *Id.* § 40302(a).

71. *Id.* § 40302(c).

72. *Id.* § 40304 (“It is the sense of the Senate that news media, law enforcement officers, and other persons should exercise restraint and respect a rape victim’s privacy by not disclosing the victim’s identity to the general public or facilitating such disclosure without the consent of the victim.”).

73. *Id.* § 40401.

74. *Id.* §§ 40411–40412, 40414. Moreover, any model programs developed through the grant were required to be “developed with the participation of law enforcement officials, public and private nonprofit victim advocates, legal experts, prosecutors, defense attorneys, and recognized experts on gender bias in the courts.” *Id.* § 40413.

75. *Id.* §§ 40421–40422.

76. §§ 40501–40509, 108 Stat. at 1945–50.

77. *Id.* § 40501.

78. *Id.* § 40502.



diseases;<sup>79</sup> (4) extension and strengthening of restitution to victims;<sup>80</sup> (5) enforcement of restitution orders through the suspension of federal benefits provided to offenders, including any “grant, contract, loan, professional license, or commercial license provided by an agency of the United States;”<sup>81</sup> (6) a national baseline study on sexual assaults at institutions of post-secondary education, examination of the effectiveness of institutional and legal policies in addressing such crimes and protecting victims, and submission of a report regarding campus sexual assaults by the Attorney General to Congress;<sup>82</sup> (7) a report on battered women’s syndrome;<sup>83</sup> (8) a report regarding the protection of confidential addresses or locations of abused spouses;<sup>84</sup> and (9) a report and recommendations on the problems of record-keeping of criminal complaints related to domestic violence.<sup>85</sup>

#### 6. *National Stalker and Domestic Violence Reduction*

Subtitle F of the VAWA is the most significant section that discussed stalking and domestic violence reduction at the national level.<sup>86</sup> First, this section authorized access to national criminal information databases by civil or criminal courts for use in stalking or domestic violence cases.<sup>87</sup> Second, this section authorized the awarding of grants to “States and units of local government to improve processes for entering data regarding stalking and domestic violence into local, State, and national crime information databases.”<sup>88</sup> Regarding eligibility of grant funding under this section, a state or unit of local government had to “certify” that it currently had or intended to create a program that entered into the National Crime Information Center’s database “records of (1) warrants for the arrest of persons violating protection orders intended to protect victims from stalking or domestic violence; (2) arrests or convictions of persons violating protection [sic] or domestic violence; and (3) protection orders for the protection of persons from stalking or domestic violence.”<sup>89</sup> Third, this section authorized the appropriation of funds for the grant programs in the following amounts: “(1) \$1,500,000 for fiscal year 1996; (2) \$1,750,000

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79. *Id.* § 40503.

80. *Id.* § 40504.

81. *Id.* § 40505.

82. § 40506, 108 Stat. at 1948–49.

83. *Id.* § 40507.

84. *Id.* § 40508.

85. *Id.* § 40509.

86. *Id.* §§ 40601–40611.

87. *Id.* § 40601(a). The term “national crime information databases” referred to “the National Crime Information Center and its incorporated criminal history databases, including the Interstate Identification Index.” *Id.*

88. § 40602(a), 108 Stat. at 1951.

89. *Id.* § 40602(b).



for fiscal year 1997; and (3) \$2,750,000 for fiscal year 1998.”<sup>90</sup> Fourth, this section delineated the application requirements to receive grant funds.<sup>91</sup> Fifth, this section required the Attorney General, within 90 days of receiving grant applications, to either disburse grant funds or to notify the grant applicant as to why funds were not provided.<sup>92</sup> Moreover, this section allowed for technical assistance, training, and evaluation of programs receiving grant funds.<sup>93</sup>

Additionally, this section of the VAWA mandated that the State Justice Institute

after consultation with nationally recognized nonprofit organizations with expertise in stalking and domestic violence cases shall conduct training programs for State . . . and Indian tribal judges to ensure that a judge issuing an order in a stalking or domestic violence case has all available criminal history and other information, whether from State or Federal sources.<sup>94</sup>

The State Justice Institute was also directed, “after consultation with nationally recognized nonprofit associations with expertise in data sharing among criminal justice agencies and familiarity with the issues raised in stalking and domestic violence cases,” to make recommendations regarding increasing intrastate communication between state civil and criminal courts.<sup>95</sup>

Furthermore, within two years after the date of enactment of the VAWA, the Attorney General was required to “compile data regarding domestic violence and intimidation (including stalking) as part of the National Incident-Based Reporting System (NIBRS).”<sup>96</sup> Another main provision of this section required the Attorney General to submit an annual report to Congress with data related to the incidences of stalking and domestic violence and that assessed the effectiveness of anti-stalking efforts and legislation at the state level.<sup>97</sup>

### *7. Protections for Battered Immigrant Women and Children*

Lastly, the final subtitle of the VAWA, Subtitle G, delineated protections for battered immigrant women and children.<sup>98</sup> Such

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90. *Id.* § 40603.

91. *Id.* § 40604.

92. *Id.* § 40605.

93. *Id.* § 40606.

94. § 40607, 108 Stat. at 1952.

95. *Id.* § 40608.

96. *Id.* § 40609.

97. *Id.* § 40610.

98. *Id.* §§ 40701–40703; see *The History of the Violence Against Women Act*, *supra* note 17 (noting that the 1994 Violence Against Women Act “[c]reates legal relief for



protections included allowing an alien (1) who was the spouse and/or child of a citizen of the United States; (2) who was of “good moral character”; (3) who was eligible to be classified as an immediate relative; (4) who had resided in the United States with the alien’s spouse and/or citizen parent; and (5) who had been battered by or subjected to “extreme cruelty” perpetrated by the alien’s spouse and/or citizen parent to file a petition with the Attorney General, who could determine that deportation of the alien spouse and/or child would result in extreme hardship to the alien or a child of the alien.<sup>99</sup> Moreover, this section provided for the “use of credible evidence in spousal waiver applications” and gave the determination of credible evidence and the weight to be given such evidence to fall “within the sole discretion of the Attorney General.”<sup>100</sup> The last provision of this section allowed the Attorney General discretion regarding suspending the deportation of a battered spouse or child.<sup>101</sup>

### *C. Amendments and Reauthorization of the VAWA from 1994–2014*

The VAWA of 1994 has been amended by both the United States Congress and the United States Supreme Court since its original passage in 1994.<sup>102</sup> There have been moderate updates to the VAWA since 1994 as well as challenges from men.<sup>103</sup> In addition, since 1994, the VAWA has been reauthorized three times: in 2000, in 2005, and in 2013.<sup>104</sup>

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*battered immigrants* that made it more difficult for abusers to use immigration law to prevent victims from calling the police or seeking safety”).

99. § 40701(a), 108 Stat. at 1953.

100. *Id.* § 40702(a).

101. *Id.* §§ 40703(a)–(b). Section 40703(a)(3) required a battered spouse or child to prove that he or she

has been physically present in the United States for a continuous period of not less than 3 years immediately preceding the date of such application; has been battered or subjected to extreme cruelty in the United States by a spouse or parent who is a United States citizen or lawful permanent resident (or is the parent of a child of a United States citizen or lawful permanent resident and the child has been battered or subjected to extreme cruelty in the United States by such citizen or permanent resident parent); and proves that during all of such time in the United States the alien was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or the alien’s parent or child.

*Id.*

102. LISA N. SACCO, CONG. RESEARCH SERV., R42499, THE VIOLENCE AGAINST WOMEN ACT: OVERVIEW, LEGISLATION, AND FEDERAL FUNDING 2, 3 n.9 (2015), <https://fas.org/sgp/crs/misc/R42499.pdf> [<http://perma.cc/YH3J-4DH4>].

103. *Id.* at 9.

104. *Id.*



### 1. *Reauthorization of the VAWA in 2000*

In 2000, the United States Supreme Court held part of the VAWA unconstitutional in the case of *United States v. Morrison*.<sup>105</sup> Specifically, the Supreme Court held that Subtitle C of the VAWA, known as the “Civil Rights Remedies for Gender-Motivated Violence Act,” which permitted victims of domestic violence to request civil rights remedies for gender-motivated violent crimes, was unconstitutional.<sup>106</sup>

On October 28, 2000, President Bill Clinton signed the “Violence Against Women Act of 2000” (“VAWA of 2000”) into law as part of “Division B of the Victims of Trafficking and Violence Protection Act of 2000.”<sup>107</sup> The VAWA of 2000 “reauthorize[d] critical grant programs, establishe[d] new programs, and strengthen[ed] federal laws.”<sup>108</sup> The VAWA of 2000 also “emphasize[d] assisting immigrant victims, elderly victims, victims with disabilities, and victims of dating violence.”<sup>109</sup> Specifically, the VAWA of 2000 did the following:

- *Fund[ed] new VAWO programs*: legal assistance for victims; grants to state coalitions; grants to tribal coalitions; grants to train law enforcement, prosecutors and courts on elder abuse, neglect, exploitation and violence against individuals with disabilities; grants to provide supervised visitation and safe visitation exchange; and grants to address the need for services that are accessible to victims with disabilities.
- *Add[ed] “dating violence” to the purpose areas* of four VAWO grant programs.
- *Encourage[d] the enforcement of protection orders and [made] state and local courts eligible to receive Arrest grants*. Grants recipients (under the Arrest program and STOP State Formula program) must certify that their laws, practices, and policies do not require victims to pay filing or service costs related to criminal domestic violence cases or protection orders.
- *Allow[ed] STOP funds to be used to train sexual assault forensic medical personnel examiners*.

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105. 529 U.S. 598, 627 (2000).

106. *Id.* at 601–02; see *The History of the Violence Against Women Act*, *supra* note 17 (stating in reference to victims seeking “civil rights remedies” for gender-related offenses that “[t]he U.S. Supreme Court, in *United States v. Morrison*, held this provision unconstitutional” (citation omitted)).

107. *The History of the Violence Against Women Act*, *supra* note 17 (emphasis omitted).

108. *Id.*

109. *Id.*



- *Expand[ed] interstate stalking laws* to include interstate cyberstalking and added entering or leaving Indian country to the interstate domestic violence and stalking crimes created by VAWA.
- *Expand[ed] battered immigrants' access to immigration relief.*<sup>110</sup>

### 2. Reauthorization of the VAWA in 2005

On January 5, 2006, "President George W. Bush sign[ed] the Violence Against Women Act of 2005" ("VAWA of 2005") into law.<sup>111</sup> The VAWA of 2005 "authorize[d] numerous new programs, with an increased emphasis on violence against Indian women, sexual assault, and youth victims."<sup>112</sup> The new programs included the following: "Court Training and Improvements, Children Exposed to Violence, Service to Respond and Advocate on Behalf of Youth, Engaging Men and Youth, Culturally and Linguistically Specific Services, and the Sexual Assault Services Programs."<sup>113</sup> This reauthorization in 2005 also "extended the Federal interstate stalking statute to include cyberstalking."<sup>114</sup> Moreover, besides just reauthorizing the programs under VAWA, the 2005 legislation heightened penalties for repeat stalking offenders, included more protections for battered and/or trafficked foreign nationals, and developed "programs designed to improve the public health response to domestic violence."<sup>115</sup>

### 3. Reauthorization of the VAWA in 2013

The former VAWA authorization expired in 2011.<sup>116</sup> The American Bar Association (ABA) supported the VAWA of 2013, which was introduced by Democratic Senator Leahy of Vermont and Republican Senator Crapo of Idaho.<sup>117</sup> In fact, the ABA "sent numerous letters to

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110. *Id.* "VAWO" referred to the "Violence Against Women Office." *Id.* "STOP" referred to the "Services, Training, Officers, and Prosecutors . . . Violence Against Women Formula Grant Program . . ." OFF. ON VIOLENCE AGAINST WOMEN, THE OFFICE ON VIOLENCE AGAINST WOMEN'S GRANT FUNDS USED TO ADDRESS STALKING: 2012 REPORT TO CONGRESS 8 (2012), <http://www.justice.gov/sites/default/files/ovw/legacy/2013/04/22/2012-stalking-rpt.pdf> [<http://perma.cc/UU3U-9AAH>].

111. *The History of the Violence Against Women Act*, *supra* note 17 (emphasis omitted).

112. *Id.*

113. *Id.*

114. OFF. ON VIOLENCE AGAINST WOMEN, *supra* note 110, at 5.

115. SACCO, *supra* note 102, at 2.

116. Kirra L. Jarratt, *Violence Against Women Act*, GOVERNMENTAL AFF. OFF., AM. BAR ASS'N (Apr. 8, 2013).

117. *Id.*



the House and Senate urging its prompt passage.”<sup>118</sup> The VAWA of 2013 focused on the following:

nine specific areas of intervention . . . enhancing judicial and law enforcement tools to combat violence against women (Title I); improving services for victims (Title II); services, protection, and justice for young victims of violence (Title III); strengthening America’s families by preventing violence (Title IV); strengthening the healthcare system’s response (Title V); housing opportunities and safety for battered women and children (Title VI); providing economic security for victims (Title VII); protection of battered and trafficked immigrants (Title VIII); and safety for Indian women (Title IX).<sup>119</sup>

There was a big battle in Congress prior to the VAWA being reauthorized in 2013.<sup>120</sup> On March 7, 2013, however, President Barack Obama “signed a bill reauthorizing the Violence Against Women Act for another 5 years.”<sup>121</sup>

## II. STALKING, STATE AND FEDERAL ANTI-STALKING LAWS, AND THE MODEL ANTI-STALKING CODE

### A. *Stalking*

#### 1. *Definitions of Stalking*

*Black’s Law Dictionary* defines “stalking” as “[t]he act or an instance of following another by stealth” or “[t]he offense of following

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118. *Id.*

119. *Id.*

120. Laura Bassett & Jennifer Bendery, *House GOP Lets Violence Against Women Act Passed By Senate Die Without A Vote*, HUFFINGTON POST (Jan. 23, 2014, 6:58 PM), [http://www.huffingtonpost.com/2013/01/02/violence-against-women-act-\\_n\\_2398553.html](http://www.huffingtonpost.com/2013/01/02/violence-against-women-act-_n_2398553.html) [<http://perma.cc/9UA8-6DEU>]. (“House Majority Leader Eric Cantor (R-Va.) had been guiding House negotiations on the matter, huddling with Republican congresswomen . . . and even working directly with [Vice President] Biden to try to get a deal. House-Senate talks appeared to have broken down over House Republicans’ refusal to accept a key protection for Native American women that was included in the Senate bill.”).

121. Jarratt, *supra* note 116; see SACCO, *supra* note 102, at 2 (“Congress passed and President Obama signed the Violence Against Women Reauthorization Act of 2013 (P.L. 113-4) that reauthorized most of the programs under VAWA, among other things. The VAWA reauthorization also amended and authorized appropriations for the Trafficking Victims Protection Act of 2000, enhanced measures to combat trafficking in persons, and amended VAWA grant purpose areas to include sex trafficking. Moreover, P.L. 113-4 gave Indian tribes authority to enforce domestic violence laws and related crimes against non-Indian individuals, and established a nondiscrimination provision for VAWA grant programs. The reauthorization also included new provisions to address the rape kit backlog in states.”).



or loitering near another, often surreptitiously, to annoy or harass that person or to commit a further crime such as assault or battery.”<sup>122</sup> Moreover, the term “stalking” is defined within the Violence Against Women Act as “engaging in a course of conduct directed at a specific person that would cause a reasonable person to—(A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.”<sup>123</sup> Because “[s]talking statutes vary from state to state,”<sup>124</sup> the “legal definition of stalking varies across jurisdictions.”<sup>125</sup> However, “a good working definition of stalking is *a course of conduct directed at a specific person that would cause a reasonable person to feel fear*.”<sup>126</sup> In sum, stalking occurs when harassing or unwanted behavior is repeated, is purposefully directed at a specific person, and would cause a reasonable person to fear for their own safety or their family member’s safety as a result of the behavior or when the victim has been subjected to additional threatening conduct that would cause a reasonable person to feel fearful.<sup>127</sup>

## 2. Stalking Statistics

### a. National Studies on Stalking

Very “[f]ew national studies have measured the extent and nature of stalking in the United States.”<sup>128</sup> However, the Department of Justice’s Office on Violence Against Women funded a survey “to

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122. BLACK’S LAW DICTIONARY 1534 (9th ed. 2009) (The dictionary further points out that “[s]ome statutory definitions include an element that the person being stalked must reasonably feel harassed, alarmed, or distressed about personal safety or the safety of one or more persons for whom that person is responsible. And some definitions include acts such as telephoning another and remaining silent during the call.”).

123. 42 U.S.C. § 13925 (2012).

124. STALKING VICTIMIZATION, *supra* note 3.

125. SHANNAN CATALANO, U.S. DEP’T OF JUSTICE, NCJ 224527, STALKING VICTIMS IN THE UNITED STATES—REVISED 3 (2012), [http://www.bjs.gov/content/pub/pdf/svus\\_rev.pdf](http://www.bjs.gov/content/pub/pdf/svus_rev.pdf) [<http://perma.cc/8F4U-LUBA>]; see *Stalking Fact Sheet*, STALKING RES. CTR., [http://www.victimsofcrime.org/docs/src/stalking-fact-sheet\\_english.pdf?sfvrsn=4](http://www.victimsofcrime.org/docs/src/stalking-fact-sheet_english.pdf?sfvrsn=4) [<http://perma.cc/WF7M-JPRV>] (last updated Aug. 2012).

126. *Stalking Fact Sheet*, *supra* note 125.

127. CATALANO, *supra* note 125, at 1; see STALKING VICTIMIZATION, *supra* note 3 (“Virtually any unwanted contact between two people that directly or indirectly communicates a threat or places the victim in fear can be considered stalking.”); *Stalking Fact Sheet*, *supra* note 125 (providing a succinct definition of stalking); *Stalking Information & Resources*, AARDVARC.ORG, <http://www.aardvarc.org/stalking/main.shtml> [<http://perma.cc/FNR5-LLKT>] (last updated Mar. 16, 2011) (“[Stalking] cause[s] a reasonable person to fear *bodily injury or death* for themselves or a family member.” (emphasis added)).

128. CATALANO, *supra* note 125, at 1. For information from earlier studies published from 1997–2000 that contain statistics related to stalking, see *Stalking Statistics: Commonly Quoted*, AARDVARC.ORG, <http://www.aardvarc.org/stalking/statistics.shtml> [<http://perma.cc/TCM5-746D>] (last updated May 12, 2011).



enhance empirical knowledge about stalking.”<sup>129</sup> The resulting report, issued in 2009, “represent[ed] the largest study of stalking conducted to date, incorporat[ing] elements contained in federal and state laws to construct a working definition of stalking.”<sup>130</sup> Key findings of the report included the following:

- (1) during a twelve-month period, “[a]n estimated 3.3 million persons age [eighteen] or older were victims of stalking;”
- (2) the highest percentage of stalking victims were divorced or separated, as opposed to those individuals who were married, never married, or widowed;
- (3) almost seventy percent of victims of stalking knew their offender;
- (4) the highest percentage of stalking victims were females;
- (5) unwanted phone calls and messages were the most prevalent behaviors experienced by stalking victims;
- (6) individuals ages eighteen to twenty-four experienced the highest incidences of stalking;
- (7) for persons age eighteen or older, Asians and Pacific Islanders (0.6%) experienced stalking less than Whites (1.5%), Blacks (1.4%), and Hispanics (1.3%);
- (8) persons residing in households with higher incomes (i.e., annual incomes at or above \$25,000) experienced stalking less than persons with lower incomes;
- (9) many stalking victims were stalked for months or years; and
- (10) 11% of stalking victims were stalked for five years or more.<sup>131</sup>

Additionally, in 2011, the Centers for Disease Control and Prevention, based upon the National Intimate Partner and Sexual Violence Survey, reported the following:

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129. CATALANO, *supra* note 125, at 1. The original report *Stalking Victimization in the United States*, using data from 2006, was released in January 2009. See KATRINA BAUM ET AL., U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATS., *STALKING VICTIMIZATION IN THE UNITED STATES* (2009), <http://www.victimsofcrime.org/docs/src/baum-k-catalano-s-rand-m-rose-k-2009.pdf?sfvrsn=0> [<http://perma.cc/XSW4-Z6ZX>].

130. CATALANO, *supra* note 125, at 1. Approximately 65,270 persons participated in the survey, with an 83% response rate for eligible individuals. *Id.* at 6.

131. *Id.* at 1, 3–5.



- (1) 6.6 million people were victims of stalking during a twelve-month period;
- (2) 66.2% of female stalking victims and 41.4% of male stalking victims were stalked by a current or former intimate partner in their lifetime;
- (3) 16.2% of females (1 in 6) and 5.2% of males (1 in 19) have been the victims of stalking “at some point during their lifetime in which they felt very fearful or believed that they or someone close to them would be harmed or killed;”
- (4) 78.8% of female stalking victims and 75.9% of male stalking victims reported that “[r]epeatedly receiving unwanted telephone calls, voice, or text messages was the most commonly experienced stalking tactic;”
- (5) more than 50% of female stalking victims and more than 33% of male stalking victims reported being stalked before the age of twenty-five; and
- (6) approximately 20% of female stalking victims (1 in 5) and 7.1% of male stalking victims (1 in 14) experienced stalking between the ages of eleven and seventeen.<sup>132</sup>

Moreover, a recent 2014 publication from the Centers for Disease Control reported the following:

- (1) an estimated 15.2% of women (18.3 million) and 5.7% of men (nearly 6.5 million), totaling approximately 24.8 million persons, have been a victim of stalking during their lifetimes;

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132. MICHELE C. BLACK ET AL., CTNS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT 2, 29, 31 (2011), [http://www.cdc.gov/ViolencePrevention/pdf/NISVS\\_Report2010-a.pdf](http://www.cdc.gov/ViolencePrevention/pdf/NISVS_Report2010-a.pdf) [<http://perma.cc/T365-VKYG>]. The findings in the report were from data collected in a 2010 survey and included completed interviews from 16,507 adults (9,086 women and 7,421 men). *Id.* at 1; see *Commemorating a Decade of Progress*, *supra* note 11 (noting that the 2010 *National Intimate Partner and Sexual Violence Survey*’s findings “also confirmed what law enforcement, prosecutors, victim service providers, and other professionals have been hearing from victims for years—that most stalking cases involve some form of technology. More than three-quarters of victims reported having received unwanted phone calls, voice and text messages; and roughly one-third of victims were watched, followed, or tracked with a listening or other device. These findings underscore how critical it is that professionals who respond to and work with stalking victims understand the dynamics of stalking and particularly how stalkers use technology.”); *Stalking Fact Sheet*, *supra* note 125 (providing a summary of the findings in the National Intimate Partner and Sexual Violence Survey).



- (2) an estimated 4.2% of women (5.1 million) and an estimated 2.1% of men (2.4 million), totaling 7.5 million persons, were stalked in the twelve months before taking the survey;
- (3) an estimated 53.8% of female stalking victims and 47.7% of male stalking victims were first stalked before age twenty-five, with 16.3% of females and 20.5% of males becoming stalking victims before age eighteen;
- (4) American Indian/Alaska Native women (24.5%) experienced stalking more during their lifetimes when compared to White women (15.9%), Hispanic women (14.2%), Black women (13.9%), and Asian or Pacific Islander women (—), with estimates for Asian or Pacific Islander women not being reported “because the case count was too small to produce a reliable estimate;”
- (5) an estimated 9.1% of Black men, 8.2% of Hispanic men, and 4.7% of White men were stalked during their lifetimes, and “estimates for the other racial/ethnic groups of men [were] not reported because case counts were too small to produce a reliable estimate;”
- (6) an estimated 61.7% of female stalking victims and an estimated 47.7% of male stalking victims were approached by their perpetrator, such as at their home or work;
- (7) an estimated 55.3% of female stalking victims and an estimated 56.7% of male stalking victims received unwanted messages, such as text and voice messages;
- (8) an estimated 54.5% of female stalking victims and an estimated 58.2% of male stalking victims received unwanted telephone calls, including hang-ups; and
- (9) an estimated 49.7% of female stalking victims and an estimated 32.2% of male stalking victims were watched, followed, or spied on with a listening device or other device such as a camera or global positioning system (GPS) device.<sup>133</sup>

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133. CTRS. FOR DISEASE CONTROL & PREVENTION, MORBIDITY AND MORTALITY WEEKLY REPORT, PREVALENCE AND CHARACTERISTICS OF SEXUAL VIOLENCE, STALKING, AND INTIMATE PARTNER VIOLENCE VICTIMIZATION—NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY, UNITED STATES, 2011, at 6–8 (Sept. 5, 2014), <http://www.cdc.gov/mmwr>



*b. Characteristics and Categories of Stalkers*

Trying to determine specific characteristics or the “typology” of a stalker is often difficult because stalkers come from every race, gender, socioeconomic status, geographic location, sexual orientation, and educational background.<sup>134</sup> The common denominator amongst all stalkers, however, is the fear they cause.<sup>135</sup> In addition, most stalking victims are women, the vast majority of stalkers are men, and almost sixty percent of women and thirty percent of men stalking victims are stalked by a current partner.<sup>136</sup>

Moreover, most stalkers share common characteristics, which appear in stalkers at a higher rate than amongst the general population.<sup>137</sup> First, individuals with “attachment difficulties and a history of failed relationships” have a higher tendency of becoming stalkers.<sup>138</sup> Individuals with a violent history, violent criminals, and individuals “who threaten former partners are also more likely to become stalkers.”<sup>139</sup> In addition, “[m]ost stalkers are also emotionally or mentally disturbed, and a majority of stalkers suffer from personality disorders such as histrionic, antisocial, or borderline personalities.”<sup>140</sup>

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/pdf/ss/ss6308.pdf [http://perma.cc/GL48-LM6F]. A total of 12,727 interviews were completed with 6,879 women and 5,848 men participating in the study that examined “sexual violence, stalking, and intimate partner violence victimization using data from 2011. The report describe[d] the overall prevalence of sexual violence, stalking, and intimate partner violence victimization; racial/ethnic variation in prevalence; how types of perpetrators vary by violence type; and the age at which victimization typically begins” and concluded that “the public health burden of sexual violence, stalking, and intimate partner violence is substantial.” *Id.* at 1–3. Moreover, the data from this report supports current statistics citing there being 7.5 million victims of stalking in the United States each year (i.e., during a twelve-month period). See *Stalking Statistics and Data*, *supra* note 5.

134. See *Stalking*, BROWN U. HEALTH PROMOTION, [http://brown.edu/Student\\_Services/Health\\_Services/Health\\_Education/sexual\\_assault\\_&\\_dating\\_violence/stalking.php](http://brown.edu/Student_Services/Health_Services/Health_Education/sexual_assault_&_dating_violence/stalking.php) [http://perma.cc/U2WH-BDAZ]; see also *Stalking Information & Resources*, *supra* note 127.

135. *Stalking Information & Resources*, *supra* note 127.

136. See *Stalking*, *supra* note 134.

137. Ashley N. B. Beagle, Comment, *Modern Stalking Laws: A Survey of State Anti-Stalking Statutes Considering Modern Mediums and Constitutional Challenges*, 14 CHAP. L. REV. 457, 462 (2011).

138. *Id.* “Additional common ‘stalker’ characteristics include ‘difficulty in establishing an identity, and a desire for attention.’” *Id.* at 462 n.36 (quoting Jennifer L. Bradfield, *Anti-Stalking Laws: Do They Adequately Protect Stalking Victims?*, 21 HARV. WOMEN’S L.J. 229, 235 (1998)).

139. *Id.* at 462.

140. *Id.* “Histrionic personality disorder is a disorder where the afflicted person shows a continuing pattern of dramatic and attention-seeking behaviors.” *Id.* at 462 n.38 (citation omitted). “Antisocial personality disorder is ‘a pervasive pattern of disregard for, and violation of, the rights of others.’” *Id.* (quoting AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM-IV-TR 701 (2000)). “Borderline personality disorder is ‘a pervasive pattern of instability of interpersonal relationships, self-image, and affects, and marked impulsivity.’” *Id.* (quoting DSM-IV-TR at 706).



Furthermore, despite there not being a single profile for stalkers, stalkers have been classified based upon their underlying motives,<sup>141</sup> and based upon their relationship to the victim.<sup>142</sup> Likewise, some general categories of stalkers have been developed.<sup>143</sup> A stalker can be categorized as follows: (1) simple obsession stalker; (2) love obsession stalker; and (3) erotomania stalker.<sup>144</sup> Additionally, stalkers have been categorized as vengeance/terrorism stalkers,<sup>145</sup> as well as false victimization stalkers.<sup>146</sup>

First, simple obsession stalking, including all cases arising from previous personal or romantic relationships, is the most common form of stalking and represents approximately 75% of all stalking cases.<sup>147</sup> In addition, “[m]any simple obsession cases are actually extensions of a previous pattern of domestic violence and psychological abuse.”<sup>148</sup> Of the four categories of stalkers, simple obsession stalkers are the

141. *Categories of Stalking*, U. OF N.M., JUDICIAL EDUC. CENTER, <http://jec.unm.edu/education/online-training/stalking-tutorial/categories-of-stalking> [<http://perma.cc/6D7H-AK8G>] [hereinafter *Categories of Stalking*, U. OF N.M.] (“Social science researchers have developed various ways of classifying or categorizing stalkers. . . . One widely-accepted typology of stalkers is based on the stalker’s underlying motives. These types of stalkers are essentially general classifications. Therefore, individual stalkers may not exactly fit in one single category, but instead may exhibit characteristics associated with more than one category. The categories are as follows: *Simple Obsessional . . . Love Obsessional . . . Erotomania . . . False Victimization Syndrome . . .*”) (emphasis added); see *Stalking Information & Resources*, *supra* note 127 (noting that forensic psychologists have categorized stalkers as falling under two forms of “motivation:” love obsession and simple obsession); see also *Stalking*, *supra* note 134 (also dividing stalking behavior into simple obsession and love obsession categories).

142. *Categories of Stalking*, U. OF N.M., *supra* note 141 (“Another method used to classify stalkers defines them according to their relationship to the victim. This typology divides stalkers into two basic categories: *Intimate* [and] *Nonintimate . . .*”) (emphasis added).

143. See *Categories of Stalking*, U. OF OKLA., <http://www.ou.edu/judicial/pae/pdf/i/c/IciCategoriesofStalking.pdf> [<http://perma.cc/C5C6-RHL4>] [hereinafter *Categories of Stalking*, U. OF OKLA.] (quoting David Beatty, *Stalking*, in 1999 NATIONAL VICTIM ASSISTANCE ACADEMY (Grace Coleman et. al., eds.), [https://www.ncjrs.gov/ovc\\_archives/nvaa99/chap21-2.htm](https://www.ncjrs.gov/ovc_archives/nvaa99/chap21-2.htm) [<http://perma.cc/6YWS-KDEC>]); *Categories of Stalking*, U. OF N.M., *supra* note 141.

144. *Categories of Stalking*, U. OF OKLA., *supra* note 143; *Categories of Stalking*, U. OF N.M., *supra* note 141; see Jarret, *supra* note 4, at 97 (noting that Michael Zond and his research team studied stalkers, “categoriz[ed] them by behavior characteristics,” and then classified stalkers into the three categories cited above); Beagle, *supra* note 137, at 460–62.

145. *Categories of Stalking*, U. OF OKLA., *supra* note 143.

146. *Categories of Stalking*, U. OF N.M., *supra* note 141.

147. *Stalking Information & Resources*, *supra* note 127; see *Stalking*, *supra* note 134; *Categories of Stalking*, U. OF N.M., *supra* note 141 (noting that the simple obsessional stalker (1) “is the most common type of stalker;” (2) is generally a male whose victim is “an ex-wife, ex-lover, or former boss;” (3) often starts stalking prior to an intimate relationship ending; and (4) sometimes starts stalking because “the stalker feel[s] that he or she has been mistreated by the victim”). But see *Categories of Stalking*, U. OF OKLA., *supra* note 143 (citing that “60% of all stalking cases” fall under simple obsession, “i.e., those between husbands/wives, girlfriends/boyfriends, domestic partners, etc.”).

148. *Categories of Stalking*, U. OF OKLA., *supra* note 143.



most likely to commit murder.<sup>149</sup> In fact, 30% of all female homicides are from intimate relationships, and domestic violence victims are 75% more likely to be murdered by their partners.<sup>150</sup> In these cases, “If I can’t have you, nobody will” is the common mentality of such stalkers, who often commit suicide after murdering their victim.<sup>151</sup>

Second, love obsession stalkers “are casual acquaintances (neighbors, co-workers) or even complete strangers (fan/celebrity)” to their victims.<sup>152</sup> Largely, these stalkers “seek to establish a personal relationship with the object of their obsession—contrary to the wishes of their victims.”<sup>153</sup> Moreover, “[l]ove obsession stalkers tend to have low self-esteem and often target victims who they perceive to have exceptional qualities and high social standing.”<sup>154</sup> Generally, these types of stalkers “seek to raise their own self-esteem by associating with those whom they hold in high regard.”<sup>155</sup> Although “‘star stalking’ [cases] often receive the most media attention, a greater number of love obsession stalkers develop fixations on ‘regular’ people—noncelebrities.”<sup>156</sup>

Third, erotomania stalkers are delusional and almost all of them suffer from mental disorders, mostly schizophrenia.<sup>157</sup> In contrast to simple obsession stalkers and love obsession stalkers who are trying to establish or reestablish personal relationships with their victims, “erotomaniacs delude themselves into believing that such a relationship *already exists* between themselves and the objects of their obsession.”<sup>158</sup> Erotomania stalking is generally rare and constitutes less than 10% of all stalking cases, but such stalking cases “often draw public attention because the target is usually a public figure or celebrity.”<sup>159</sup>

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149. *Id.*

150. *Id.*

151. *Id.* (internal quotation marks omitted).

152. *Id.*; see *Categories of Stalking*, U. OF N.M., *supra* note 141.

153. *Categories of Stalking*, U. OF OKLA., *supra* note 143; see *Categories of Stalking*, U. OF N.M., *supra* note 141 (noting that a love obsessional stalker is either “a stranger or a casual acquaintance to the victim” who “becomes obsessed and begins a pattern of behavior as a means of making the victim aware of his or her existence”).

154. *Categories of Stalking*, U. OF OKLA., *supra* note 143.

155. *Id.*

156. *Id.*; see *Categories of Stalking*, U. OF N.M., *supra* note 141 (“High profile examples of this type of stalking include when celebrities or public figures become the target. However, this type of stalking can be focused on an ‘average’ citizen as well.”).

157. *Categories of Stalking*, U. OF OKLA., *supra* note 143; see *Categories of Stalking*, U. OF N.M., *supra* note 141 (discussing other aspects of erotomania stalkers).

158. *Categories of Stalking*, U. OF OKLA., *supra* note 143 (emphasis in original); see *Categories of Stalking*, U. OF N.M., *supra* note 141 (“[An erotomania stalker] incorrectly believes that the victim is in love with him or her, and that, but for some external barrier or interference, the two of them would be together. Given that perceived ‘love’ between the stalker and the victim, the stalker can also pose a risk to those persons close to the victim since they may be viewed as ‘being in the way.’”).

159. *Categories of Stalking*, U. OF OKLA., *supra* note 143.



Vengeance/terrorism stalkers are considered “fundamentally different from the other three” categories because such “stalkers *do not* seek a personal relationship” with their victims.<sup>160</sup> Instead, “vengeance/terrorism stalkers attempt to elicit a particular response or a change of behavior from their victims.”<sup>161</sup> Basically, when vengeance is the primary motive, vengeance/terrorism “stalkers seek only to punish their victims for some wrong they perceive the victim” has caused them.<sup>162</sup>

Moreover, an alleged stalker could suffer from “false victimization syndrome.”<sup>163</sup> This syndrome occurs when a person either consciously or subconsciously tries to play the “victim” role by fabricating a detailed story claiming to be a stalking victim.<sup>164</sup> In actuality, however, the “would-be victim is sometimes the actual stalker and the alleged stalker is actually the real victim.”<sup>165</sup> This form of stalking is “extremely rare.”<sup>166</sup>

### *B. Anti-Stalking Laws*

The 1989 “California stalker murder of actress Rebecca Schaffer of the television series ‘My Sister Sam’” is what “prompted the nation’s first anti-stalking law in 1990.”<sup>167</sup> Other celebrities have also been the victims of stalking,<sup>168</sup> but research shows that over 80% of stalking victims are not celebrities but “‘ordinary’ people.”<sup>169</sup> Below is a summary and comprehensive analysis of state and federal anti-stalking laws in effect in 2014.

#### *1. State Anti-Stalking Laws*

In 1990, California became the first state to enact anti-stalking legislation making stalking a crime.<sup>170</sup> Florida was the second state

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160. *Id.* (emphasis in original).

161. *Id.*

162. *Id.*

163. *Categories of Stalking*, U. OF N.M., *supra* note 141.

164. *Id.*

165. *Id.*

166. *Id.*

167. *Stalking Information & Resources*, *supra* note 127; see Jarret, *supra* note 4, at 97 (discussing California’s anti-stalking law).

168. *Stalking Information & Resources*, *supra* note 127 (stating that Jodie Foster, David Letterman, and Madonna are just a few examples of celebrities who have been the victims of stalking).

169. *Id.*

170. *Id.*; Jarret, *supra* note 4 (“California was not only the first state to enact anti-stalking legislation, but it was arguably the first state to boast a criminal justice system that appreciates the full scope of the stalking phenomenon. In July 1990, the Los Angeles Police Department established a Threat Management Unit (TMU) to investigate long-term,



that enacted similar legislation.<sup>171</sup> Today, stalking is a crime in “all 50 states, the District of Columbia, and [within] U.S. territories,” although state laws vary regarding what constitutes stalking in their respective states.<sup>172</sup> Before its common usage and designation as a crime, however, “stalking was referred to as harassment, obsession, or in some cases, domestic violence.”<sup>173</sup>

In general, state laws differ regarding “the element of victim fear and emotional distress, as well as the requisite intent of the stalker.”<sup>174</sup> Whereas some state laws require the victim to “have been frightened by the stalking,” other state laws only require “that the stalking would have caused a reasonable person to experience fear.”<sup>175</sup> Additionally, state laws vary regarding the degree of fear that is required.<sup>176</sup> In some states, prosecutors are required to establish that the stalking victim experienced “fear of death or serious bodily harm.”<sup>177</sup> Other state laws, however, simply require prosecutors to establish that the stalking “victim suffered emotional distress.”<sup>178</sup> Based upon a review of all fifty states’ anti-stalking statutes in effect in 2014, states have been summarized below based upon (1) the number of categories of stalking in 2014 and (2) the levels of punishment that states imposed for stalking in 2014.<sup>179</sup>

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abnormal patterns of threat and/or harassment directed toward a specific individual. Since its inception, TMU personnel have developed expertise in both the assessment and management of stalking cases. One method utilized to assist the stalking victim is the creation of a suspect intervention program.” (footnotes omitted)).

171. Jarret, *supra* note 4; NAT’L CRIMINAL JUSTICE ASS’N, U.S. DEP’T OF JUSTICE, NCJ 144477, PROJECT TO DEVELOP A MODEL ANTI-STALKING CODE FOR STATES 5, 12 (1993), <https://www.ncjrs.gov/pdffiles1/Digitization/144477NCJRS.pdf> [<http://perma.cc/SN44-W9CH>] [hereinafter NAT’L CRIMINAL JUSTICE ASS’N] (discussing that following California’s enactment of the first anti-stalking legislation in 1990, forty-seven additional states had passed similar legislation as of 1993).

172. CATALANO, *supra* note 125, at 1, 3; *Stalking Fact Sheet*, *supra* note 125; see *Criminal Stalking Laws*, STALKING RES. CTR., <http://www.victimsofcrime.org/our-programs/stalking-resource-center/stalking-laws/criminal-stalking-laws-by-state> [<http://perma.cc/H9MV-U5MR>] (last updated July 20, 2015) (providing a link to each state’s criminal stalking laws by listing “the most applicable state crimes addressing stalking,” but noting that “depending on the facts of the case, a stalker might also be charged with other crimes, such as trespassing, intimidation of a witness, breaking and entering, etc. Check your state code or consult with your local prosecutor about other charges that might apply in a particular case.”).

173. NAT’L CTR. FOR VICTIMS OF CRIME, THE MODEL STALKING CODE REVISITED: RESPONDING TO THE NEW REALITIES OF STALKING 10 (2007), [http://www.ncdsv.org/images/NCVC-SRC\\_ModelStalkingCodeRevisitedRespondingToNewRealitiesOfStalking\\_1-2007.pdf](http://www.ncdsv.org/images/NCVC-SRC_ModelStalkingCodeRevisitedRespondingToNewRealitiesOfStalking_1-2007.pdf) [<http://perma.cc/72ET-S787>].

174. CATALANO, *supra* note 125, at 3.

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. All fifty states’ anti-stalking statutes were reviewed by the author as of 2014, the year commemorating the twentieth anniversary of the passage of the federal Violence



*a. State Summary Based Upon the Number of Categories of Stalking in 2014*

*i. One Category*

There are thirty-one states that refer to the overall crime of “stalking,” and these states’ anti-stalking statutes do not subdivide the crime of stalking into separate categories of stalking. These states are Arizona, California, Colorado, Delaware, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Montana, Nebraska, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.<sup>180</sup>

*ii. Two Categories*

There are fourteen states that have two categories of stalking. These states are Alaska, Florida, Georgia, Hawaii, Idaho, Illinois, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Mexico, and Vermont.<sup>181</sup>

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Against Women Act of 1994, and were in effect in 2014 prior to the states convening for their 2015 regular legislative sessions.

180. ARIZ. REV. STAT. ANN. § 13-2923 (2015); CAL. PENAL CODE § 646.9 (West 2015); COLO. REV. STAT. ANN. § 18-3-602 (West 2015); DEL. CODE ANN. tit. 11, § 1312 (West 2015); IND. CODE ANN. § 35-45-10-5 (West 2015); IOWA CODE ANN. § 708.11 (West 2015); KAN. STAT. ANN. § 21-5427 (West 2015); LA. REV. STAT. ANN. § 14:40.2 (2014) (amended 2015); ME. REV. STAT. ANN. tit. 17-A, § 210-A (2015) (amended 2015); MD. CODE ANN., CRIM. LAW § 3-802 (West 2015); MASS. GEN. LAWS ANN. ch. 265, § 43 (West 2014); MONT. CODE ANN. § 45-5-220 (West 2015); NEB. REV. STAT. ANN. §§ 28-311.03–28-311.04 (West 2015); N.H. REV. STAT. ANN. § 633:3-a (2014); N.J. STAT. ANN. § 2C:12-10 (West 2015); N.C. GEN. STAT. ANN. § 14-277.3A (West 2015); N.D. CENT. CODE ANN. § 12.1-17-07.1 (West 2013) (amended 2015); OHIO REV. CODE ANN. § 2903.211 (West 2015) (Menacing by stalking); OKLA. STAT. ANN. tit. 21, § 1173 (West 2015) (amended 2015); OR. REV. STAT. ANN. § 163.732 (West 2015); 18 PA. CONS. STAT. ANN. § 2709.1 (West 2015); R.I. GEN. LAWS ANN. § 11-59-2 (West 2015); S.C. CODE ANN. § 16-3-1730 (2015); S.D. CODIFIED LAWS § 22-19A-1 (2015); TEX. PENAL CODE ANN. § 42.072 (West 2015); UTAH CODE ANN. § 76-5-106.5 (West 2015); VA. CODE ANN. § 18.2-60.3 (West 2015); WASH. REV. CODE ANN. § 9A.46.110 (West 2015); W. VA. CODE ANN. § 61-2-9a (West 2015); WIS. STAT. ANN. § 940.32 (West 2015); WYO. STAT. ANN. § 6-2-506 (West 2015).

181. ALASKA STAT. ANN. § 11.41.260 (West 2015) (stalking in the first degree); ALASKA STAT. ANN. § 11.41.270 (West 2015) (stalking in the second degree); FLA. STAT. ANN. § 784.048 (West 2014) (discussing stalking and aggravated stalking); GA. CODE ANN. § 16-5-90 (West 2015) (stalking); GA. CODE ANN. § 16-5-91 (West 2015) (aggravated stalking); HAW. REV. STAT. § 711-1106.4 (West 2015) (aggravated harassment by stalking); HAW. REV. STAT. § 711-1106.5 (West 2015) (harassment by stalking); IDAHO CODE ANN. § 18-7905 (West 2015) (stalking in the first degree); IDAHO CODE ANN. § 18-7906 (West 2015) (stalking in the second degree); 720 ILL. COMP. STAT. ANN. 5/12-7.3 (West 2015)



### *iii. Three Categories*

There are three states that have three categories of stalking. These states are Arkansas, Connecticut, and Tennessee.<sup>182</sup>

### *iv. Four Categories*

There are only two states that have four categories of stalking. These states are Alabama and New York.<sup>183</sup>

### *b. State Summary Based Upon the Levels of Punishment for Stalking in 2014*

A crime is generally categorized as either a misdemeanor or a felony in almost every state in the United States, with a few minor exceptions.<sup>184</sup> In some states, there are subclassifications of misdemeanors as well as felonies. As summarized below, numerous states have both misdemeanor and felony classifications for the crime of stalking, but the levels of punishment and penalties for stalking varied among the fifty states in 2014 depending upon the classification.

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(stalking); 720 ILL. COMP. STAT. ANN. 5/12-7.4 (West 2015) (aggravated stalking); KY. REV. STAT. ANN. § 508.140 (West 2015) (stalking in the first degree); KY. REV. STAT. ANN. § 508.150 (West 2015) (stalking in the second degree); MICH. COMP. LAWS ANN. § 750.411h (West 2015) (stalking); MICH. COMP. LAWS ANN. § 750.411i (West 2015) (aggravated stalking); MINN. STAT. ANN. § 609.749(2)–(3) (West 2015) (although Minnesota’s stalking statute does not specifically list the crime of “aggravated stalking,” the statute does use the term “aggravated violations” as a separate subdivision within its stalking statute. Therefore, it is included within this category.); MISS. CODE ANN. § 97-3-107 (West 2015) (stalking and aggravated stalking); MO. ANN. STAT. § 565.225 (West 2015) (discussing the crimes of stalking and aggravated stalking); NEV. REV. STAT. ANN. § 200.575 (West 2015) (discussing the crimes of stalking and aggravating stalking); N.M. STAT. ANN. § 30-3A-3 (West 2015) (Stalking); N.M. STAT. ANN. § 30-3A-3.1 (West 2015) (aggravated stalking); VT. STAT. ANN. tit. 13, § 1062 (West 2015) (stalking); VT. STAT. ANN. tit. 13, § 1063 (West 2015) (aggravated stalking).

182. ARK. CODE ANN. § 5-71-229 (West 2015) (Stalking) (discussing stalking in the first degree, stalking in the second degree, and stalking in the third degree); CONN. GEN. STAT. ANN. § 53a-181c (West 2015) (stalking in the first degree); CONN. GEN. STAT. ANN. § 53a-181d (West 2015) (stalking in the second degree); CONN. GEN. STAT. ANN. § 53a-181e (West 2015) (stalking in the third degree); TENN. CODE ANN. § 39-17-315 (West 2015) (discussing stalking, aggravated stalking, and especially aggravated stalking).

183. ALA. CODE § 13A-6-90 (2015) (stalking in the first degree); ALA. CODE § 13A-6-90.1 (2015) (stalking in the second degree); ALA. CODE § 13A-6-91 (2015) (aggravated stalking in the first degree); ALA. CODE § 13A-6-91.1 (2015) (aggravated stalking in the second degree); N.Y. PENAL LAW § 120.45 (McKinney 2015) (stalking in the fourth degree); N.Y. PENAL LAW § 120.50 (McKinney 2015) (stalking in the third degree); N.Y. PENAL LAW § 120.55 (McKinney 2015) (stalking in the second degree); N.Y. PENAL LAW § 120.60 (McKinney 2015) (stalking in the first degree).

184. See *infra* note 198 and accompanying text.



*i. Misdemeanors*

There are fourteen states where the penalty for certain stalking conduct is specifically designated in the anti-stalking statute as a “misdemeanor” and/or the level of punishment for stalking as stated in the statute is imprisonment for not more than one year. Misdemeanors for stalking are not specified according to any particular class or by degrees in these states, however. These states are California, Georgia, Hawaii, Idaho, Louisiana, Maryland, Michigan, Mississippi, Montana, Nevada, New Mexico, Oklahoma, West Virginia, and Wyoming.<sup>185</sup>

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185. CAL. PENAL CODE § 646.9(a) (West 2015) (noting that stalking is “punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison”). However, a stalker can also be charged and convicted of a felony under subsection (a), as opposed to a misdemeanor, for stalking in California. *See id.* § 646.9(c)(2); *see also California Stalking Laws, Penal Code 646.9 PC*, SHOUSE CAL. L. GROUP, <http://www.shouselaw.com/stalking.html> [<http://perma.cc/FE45-X2VB>] (“[The crime of stalking] is usually a wobbler . . . which means that a prosecutor has discretion to try it as either a misdemeanor or a more serious felony. And, when certain special circumstances (like a prior stalking conviction) apply, it must be charged as a felony.”) (footnotes omitted)); GA. CODE ANN. § 16-5-90 (West 2015) (noting that this is the punishment for the first offense of stalking); HAW. REV. STAT. § 711-1106.5 (West 2015) (stating that the offense of harassment by stalking is a misdemeanor); IDAHO CODE ANN. § 18-7906(3) (West 2015) (“Stalking in the second degree is punishable by imprisonment in the county jail for not more than one (1) year or by a fine of not more than one thousand dollars (\$1,000), or by both such fine and imprisonment.”); LA. REV. STAT. ANN. § 14:40.2(B) (2014) (amended 2015) (noting that the punishment for the first offense of stalking is a fine between \$500–\$1,000 and imprisonment ranging from thirty days up to one year, unless certain exceptions apply which would increase the penalty, such as the victim being under eighteen years old or the stalker using or being in possession of a dangerous weapon during the crime); MD. CODE ANN., CRIM. LAW § 3-802 (West 2015) (stating that a person who engages in stalking “is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both”); MICH. COMP. LAWS ANN. § 750.411h (West 2015) (noting that stalking is “a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both” unless “the victim was less than 18 years of age at any time during the individual’s course of conduct and the individual is 5 or more years older than the victim,” in which case the punishment becomes a felony); MISS. CODE ANN. § 97-3-107(1)(b) (West 2015) (noting that the punishment for the first offense of stalking is “imprisonment in the county jail for not more than one (1) year or by a fine of not more than One Thousand Dollars (\$1,000. 00) [sic], or by both such fine and imprisonment”); MONT. CODE ANN. § 45-5-220(3) (West 2015) (noting that the punishment for the first offense of stalking is imprisonment “in the county jail for a term not to exceed 1 year or [a fine in] an amount not to exceed \$1,000, or both”); NEV. REV. STAT. ANN. § 200.575(1)(a) (West 2015) (noting that this is the punishment for the first offense of stalking); N.M. STAT. ANN. § 30-3A-3 (West 2015) (noting that this is the punishment for the first offense of stalking); OKLA. STAT. ANN. tit. 21, § 1173(A)(2) (West 2015) (amended 2015) (discussing that the first offense of stalking “is a misdemeanor punishable by imprisonment in a county jail for not more than one (1) year or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment”); W. VA. CODE ANN. § 61-2-9a(a)–(b) (West 2015) (discussing that the punishment for the first offense of stalking by repeatedly following, repeatedly harassing, or repeatedly making



In addition, there are certain states where misdemeanors for stalking are subdivided into classes. There are sixteen states where certain stalker conduct is punishable as a Class A misdemeanor, which is also referred to as a “Class 1 misdemeanor” in certain states. These states are Alaska, Arkansas, Connecticut, Kansas, Kentucky, Missouri, Nebraska, New Hampshire, New York, North Carolina, North Dakota, Oregon, South Dakota, Tennessee, Utah, and Virginia.<sup>186</sup> This level of punishment often applies to first-time stalking offenders in these states.<sup>187</sup> Also, there are three states where certain stalker conduct is punishable as a Class B misdemeanor. These states are Alabama, Connecticut, and New York.<sup>188</sup>

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credible threats against another person is “a misdemeanor and, upon conviction thereof, [the stalker] shall be incarcerated in the county or regional jail for not more than six months or fined not more than one thousand dollars, or both”); WYO. STAT. ANN. § 6-2-506(d) (West 2015) (noting that for the first offense of stalking, “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”).

186. ALASKA STAT. ANN. § 11.41.270 (West 2015) (stalking in the second degree); ARK. CODE ANN. § 5-71-229 (West 2015) (stalking in the third degree); CONN. GEN. STAT. ANN. § 53a-181d (West 2015) (stalking in the second degree); KAN. STAT. ANN. § 21-5427 (West 2015) (referring to the punishment for stalking as a “Class A person misdemeanor,” and noting that this is generally the punishment for the first offense of stalking, unless the stalker engages in certain conduct after being served or provided with notice of a protective order and then the penalty for such stalking becomes a “[s]everity level 9, person felony”); KY. REV. STAT. ANN. § 508.150 (West 2015) (stalking in the second degree); MO. ANN. STAT. § 565.225 (West 2015) (stating that the punishment for stalking is a class A misdemeanor unless certain other conditions apply, including a prior stalking offense); NEB. REV. STAT. ANN. § 28-311.04 (West 2015) (noting that the punishment for the first offense of stalking is a Class 1 misdemeanor, but the statute uses roman numeral I); N.H. REV. STAT. ANN. § 633:3-a (2014) (noting that this is the punishment for the first offense of stalking); N.Y. PENAL LAW § 120.50 (McKinney 2015) (Stalking in the third degree); N.C. GEN. STAT. ANN. § 14-277.3A (West 2015) (referring to the punishment for the first offense of stalking as a “Class A1 misdemeanor”); N.D. CENT. CODE ANN. § 12.1-17-07.1 (West 2013) (amended 2015) (noting that this is the punishment for the first offense of stalking); OR. REV. STAT. ANN. § 163.732 (West 2015) (noting that this is the punishment for the first offense of stalking); S.D. CODIFIED LAWS § 22-19A-1 (2015) (noting that this is the punishment for the first offense of stalking); TENN. CODE ANN. § 39-17-315 (West 2015) (noting that this is the general punishment for the first offense of stalking, unless the stalker “was required to or was registered . . . as a sexual offender, violent sexual offender or violent juvenile sexual offender,” in which case the penalty for stalking becomes a Class E felony); UTAH CODE ANN. § 76-5-106.5 (West 2015) (noting that this is the punishment for the first offense of stalking); VA. CODE ANN. § 18.2-60.3 (West 2015) (noting that this is the punishment for the first offense of stalking).

187. See KAN. STAT. ANN. § 21-5427 (West 2015); MO. ANN. STAT. § 565.225 (West 2015); NEB. REV. STAT. ANN. § 28-311.04 (West 2015); N.H. REV. STAT. ANN. § 633:3-a (2014); N.C. GEN. STAT. ANN. § 14-277.3A (West 2015); N.D. CENT. CODE ANN. § 12.1-17-07.1 (West 2013) (amended 2015); OR. REV. STAT. ANN. § 163.732 (West 2015); S.D. CODIFIED LAWS § 22-19A-1 (2015); TENN. CODE ANN. § 39-17-315 (West 2015) (heightening the charge of stalking as a Class A misdemeanor to aggravated stalking, a class E felony, where a person has been convicted of stalking within seven years); UTAH CODE ANN. § 76-5-106.5 (West 2015); VA. CODE ANN. § 18.2-60.3 (West 2015).

188. ALA. CODE § 13A-6-90.1 (2015) (stalking in the second degree); CONN. GEN. STAT.



Moreover, certain states subdivide misdemeanors into degrees. There are three states where certain stalker conduct is punishable as a misdemeanor of the first degree. These states are Florida, Ohio, and Pennsylvania.<sup>189</sup>

Finally, four states have slightly different misdemeanor designations as the penalty for certain stalking conduct (e.g., aggravated misdemeanor or gross misdemeanor). These states are Iowa, Minnesota, Nevada, and Washington.<sup>190</sup>

## *ii. Felonies*

There are sixteen states where the penalty for certain stalking conduct is specifically designated in the anti-stalking statute as a “felony” and/or the level of punishment for stalking as stated in the statute is imprisonment for more than a year. Felonies for stalking are not specified according to any particular class, level, or degree in these states, however. These states are California, Georgia, Idaho, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Oklahoma, Rhode Island, South Carolina, Vermont, West Virginia, Wisconsin, and Wyoming.<sup>191</sup>

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ANN. § 53a-181e (West 2015) (stalking in the third degree); N.Y. PENAL LAW § 120.45 (McKinney 2015) (stalking in the fourth degree).

189. FLA. STAT. ANN. § 784.048 (West 2015) (stating that this is the penalty for the offense of stalking); OHIO REV. CODE ANN. § 2903.211(B)(1) (West 2015) (noting that this is the penalty for the first offense of “Menacing by stalking” with a few exceptions); 18 PA. CONS. STAT. ANN. § 2709.1(c)(1) (West 2015) (referring to this as the penalty for the first offense of stalking in general).

190. IOWA CODE ANN. § 708.11(3)(c) (West 2015) (noting that a stalker “commits an aggravated misdemeanor” if it is the stalker’s first offense and if the conduct does not fall under another section within this statute); MINN. STAT. ANN. § 609.749(2) (West 2015) (noting that a stalker who commits certain acts as listed in the statute “is guilty of a gross misdemeanor”); NEV. REV. STAT. ANN. § 200.575(1)(b) (West 2015) (noting that any subsequent offense after the first offense of stalking becomes “a gross misdemeanor”); WASH. REV. CODE ANN. § 9A.46.110(5)(a) (West 2015) (noting that a stalker who commits the first offense of stalking is “guilty of a gross misdemeanor”).

191. CAL. PENAL CODE § 646.9(b)–(c) (West 2015) (“(b) Any person who violates subdivision (a) when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior described in subdivision (a) against the same party, shall be punished by imprisonment in the state prison for two, three, or four years . . . (c)(2) Every person who, after having been convicted of a felony under subdivision (a), commits a violation of this section shall be punished by imprisonment in the state prison for two, three, or five years.”); GA. CODE ANN. § 16-5-90(c) (West 2015) (“Upon the second conviction, and all subsequent convictions, for stalking, the defendant shall be guilty of a felony and shall be punished by imprisonment for not less than one year nor more than ten years.”); GA. CODE ANN. § 16-5-91(b) (West 2015) (noting that a person found guilty of aggravated stalking is “guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than ten years and by a fine of not more than \$10,000.00”); IDAHO CODE ANN. § 18-7905(4) (West 2015) (“Stalking in the first degree is a felony punishable by a fine not exceeding ten thousand dollars (\$10,000) or imprisonment in the state prison for not less than one (1) year nor more than five (5) years,



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or by both such fine and imprisonment.”); LA. REV. STAT. ANN. § 14:40.2(B)(4)–(5) (2014) (amended 2015) (“Upon a second conviction occurring within seven years of a prior conviction for stalking, the offender shall be imprisoned with or without hard labor for not less than five years nor more than twenty years, without benefit of probation, parole, or suspension of sentence, and may be fined not more than five thousand dollars, or both. (5) Upon a third or subsequent conviction, the offender shall be imprisoned with or without hard labor for not less than [sic] ten years and not more than forty years and may be fined not more than five thousand dollars, or both.”); MASS. GEN. LAWS ANN. ch. 265 § 43(a), (c) (West 2015) (“[A stalker] shall be punished by imprisonment in the state prison for not more than 5 years or by a fine of not more than \$1,000, or imprisonment in the house of correction for not more than 2 ½ years or by both such fine and imprisonment . . . . (c) Whoever, after having been convicted of the crime of stalking, commits a second or subsequent such crime shall be punished by imprisonment in a jail or the state prison for not less than two years and not more than ten years.”); MICH. COMP. LAWS ANN. § 750.411h(2)(b) (West 2015) (noting that certain stalking conduct becomes a felony depending upon the age of the stalking victim and the stalker); MICH. COMP. LAWS ANN. § 750.411i(3) (West 2015) (noting that “[a]ggravated stalking is a felony”); MINN. STAT. ANN. § 609.749(3)–(5) (West 2015) (referring to aggravated violations, second or subsequent stalking violations, and a pattern of stalking conduct rising to the level of a felony, and stating in subdivision 5 that “[any] person who engages in a pattern of stalking conduct . . . is guilty of a felony and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.”); MISS. CODE ANN. § 97-3-107(2)(b) (West 2015) (noting that aggravated stalking is a felony that is punishable “by imprisonment in the custody of the Department of Corrections for not more than five (5) years and a fine of not more than Three Thousand Dollars (\$3,000.00),” except as provided otherwise in the statute and absent certain exceptions); MONT. CODE ANN. § 45-5-220(3) (West 2015) (“For a second or subsequent offense or for a first offense against a victim who was under the protection of a restraining order directed at the offender, the offender shall be imprisoned in the state prison for a term not to exceed 5 years or fined an amount not to exceed \$10,000, or both.”); OKLA. STAT. ANN. tit. 21, § 1173(C) (West 2015) (amended 2015) (“[A] second [offense] of stalking within ten (10) years of the completion of sentence for a prior conviction . . . [is] a felony punishable by imprisonment in the State Penitentiary for a term not exceeding five (5) years, or by a fine of not more than Two Thousand Five Hundred Dollars (\$2,500.00), or by both such fine and imprisonment.”); R.I. GEN. LAWS ANN. § 11-59-2(b) (West 2015) (noting that stalking is “a felony punishable by imprisonment for not more than five (5) years, by a fine of not more than ten thousand dollars (\$10,000), or both”); S.C. CODE ANN. § 16-3-1730(A), (C) (2015) (“A person who engages in stalking is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars, imprisoned not more than five years, or both . . . . (c) A person who engages in stalking and who has a prior conviction of . . . stalking within the preceding ten years is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars, imprisoned not more than fifteen years, or both.”); VT. STAT. ANN. tit. 13, § 1062 (West 2015) (stating that any person who is guilty of stalking “shall be imprisoned not more than two years or fined not more than \$5,000.00, or both”); VT. STAT. ANN. tit. 13, § 1063(b) (West 2015) (stating that anyone “who commits the crime of aggravated stalking shall be imprisoned not more than five years or be fined not more than \$25,000.00, or both”); W. VA. CODE ANN. § 61-2-9a(d) (West 2015) (noting that a second or subsequent conviction for stalking “within five years of a prior conviction is a felony punishable by incarceration in a state correctional facility for not less than one year nor more than five years or fined not less than three thousand dollars nor more than ten thousand dollars, or both”); WIS. STAT. ANN. § 940.32(2)–(3) (West 2015) (noting that a first stalking offense is a Class I felony; a second offense after a prior stalking conviction is a Class H felony; and if the stalker engages in bodily harm to the victim or a member of the victim’s family or household, the stalker has a prior stalking conviction against the same victim of the present stalking violation, and if the present stalking violation occurs within 7 years after the prior conviction, the stalker is guilty of a Class F felony. It is also a Class F felony



In addition, there are certain states where felonies for stalking are subdivided into classes. There are no states where a stalker's conduct is punishable as a Class A Felony or Level 1 Felony. There are five states, however, where certain stalker conduct is punishable as a Class B Felony or Level 2 Felony. These states are Alabama, Illinois, Nevada, New Hampshire, and Washington.<sup>192</sup> Also, there are eleven states where certain stalker conduct is punishable as a Class C Felony or Level 3 Felony. These states are Alabama, Alaska, Arizona, Arkansas, Delaware, Hawaii, Illinois, Iowa, Missouri, North Dakota, and Oregon.<sup>193</sup> There are seventeen states where certain stalker conduct is punishable as a Class D Felony or Level 4 Felony or lower. These states are Arizona, Arkansas, Colorado, Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Missouri, Nebraska, New York, North Carolina, South Dakota, Tennessee, and Virginia.<sup>194</sup>

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if the stalker uses a dangerous weapon during commission of the stalking.); WYO. STAT. ANN. § 6-2-506(e) (West 2015) (noting that a stalker "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" for stalking).

192. ALA. CODE § 13A-6-91 (2015) (aggravated stalking in the first degree); 720 ILL. COMP. STAT. ANN. 5/12-7.4(b) (West 2015) ("[A] second or subsequent conviction [for aggravated stalking] is a Class 2 felony."); NEV. REV. STAT. ANN. § 200.575(2) (West 2015) (noting that aggravated stalking is a category B felony punishable by "imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years, and [that one convicted of aggravated stalking] may be further punished by a fine of not more than \$5,000"); N.H. REV. STAT. ANN. § 633:3-a(VI)(a) (2014) ("Any person . . . who has one or more prior stalking convictions in this state or another state when the second or subsequent offense occurs within 7 years following the date of the first or prior offense shall be guilty of a class B felony."); WASH. REV. CODE ANN. § 9A.46.110(5)(b) (West 2015) (penalty for a stalker with a prior conviction "of a gross misdemeanor or felony stalking offense" or if "the stalker was armed with a deadly weapon" during commission of the stalking).

193. ALA. CODE § 13A-6-90 (2015) (stalking in the first degree); ALA. CODE § 13A-6-91.1 (2015) (Aggravated stalking in the second degree); ALASKA STAT. ANN. § 11.41.260 (West 2015) (stalking in the first degree); ARIZ. REV. STAT. ANN. § 13-2923 (2015) (discussing that certain stalking conduct is a class 3 felony); ARK. CODE ANN. § 5-71-229(a) (West 2015) (stalking in the first degree); DEL. CODE ANN. tit. 11, § 1312(d) (West 2015) (discussing that certain stalking conduct is a class C felony); HAW. REV. STAT. § 711-1106.4 (West 2015) (aggravated harassment by stalking); 720 ILL. COMP. STAT. 5/12-7.3(b) (West 2015) (noting that any "second or subsequent conviction [for stalking] is a Class 3 felony"); 720 ILL. COMP. STAT. ANN. 5/12-7.4(b) (West 2015) (noting that the first offense of "[a]ggravated stalking is a Class 3 felony"); IOWA CODE ANN. § 708.11(3)(a) (West 2015) (noting that a third or subsequent offense of stalking is a class C felony); MO. ANN. STAT. § 565.225(5) (West 2015) (discussing that any second or subsequent conviction for aggravated stalking is a class C felony); N.D. CENT. CODE ANN. § 12.1-17-07.1(6) (West 2013) (amended 2015) (noting that certain offenses are class C felonies); OR. REV. STAT. ANN. § 163.732(2)(b) (West 2015) (noting that a second or subsequent conviction for stalking is a class C felony).

194. ARIZ. REV. STAT. ANN. § 13-2923 (2015) (discussing that certain stalking conduct is a class 5 felony); ARK. CODE ANN. § 5-71-229(b)(3) (West 2015) ("Stalking in the second degree is a Class D felony."); COLO. REV. STAT. ANN. § 18-3-602(3) (West 2015) (noting that a person commits a class 5 felony for the first stalking offense and a class 4 felony for a second or subsequent offense); CONN. GEN. STAT. ANN. § 53a-181c(b) (West 2015) ("Stalking



Moreover, certain states subdivide felonies into degrees. There are no states where a stalker's conduct is punishable as a felony of the first degree. There are two states where certain stalker conduct is punishable as a felony of the second degree, however. These states are Texas and Utah.<sup>195</sup> Also, there are five states where certain stalker conduct is punishable as a felony of the third degree. These states are Florida, New Mexico, Pennsylvania, Texas, and Utah.<sup>196</sup> There are two states where certain stalker conduct is punishable as a felony of the fourth degree. These states are New Mexico and Ohio.<sup>197</sup>

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in the first degree is a Class D felony.”); DEL. CODE ANN. tit. 11, § 1312(a)–(c) (West 2015) (discussing that certain stalking conduct is a class F felony and other stalking conduct is a class G felony); 720 ILL. COMP. STAT. ANN. 5/12-7.3(b) (West 2015) (noting that the first offense of stalking is a class 4 felony); IND. CODE ANN. § 35-45-10-5 (West 2015) (noting that stalking is “a Level 6 felony,” but that stalking is also punishable at a higher level, including as a Level 5 felony if certain conditions are met, and as a Level 4 felony if the stalking occurs while the stalker is armed with a deadly weapon or if the stalker has an unrelated stalking conviction against the same victim(s)); IOWA CODE ANN. § 708.11(3)(b) (West 2015) (noting that stalking is a class D felony if certain conditions apply, including if the stalker commits the stalking while in possession of a dangerous weapon or if it is the stalker's second offense); KAN. STAT. ANN. § 21-5427(b)(1)–(3) (West 2015) (listing the classification of penalties as either a “severity level 7, person felony” or a “severity level 5, person felony” upon a second or subsequent stalking conviction, depending upon the specific conduct engaged in by the stalker); KY. REV. STAT. ANN. § 508.140 (West 2015) (stalking in the first degree); MO. ANN. STAT. § 565.225(4)–(5) (West 2015) (discussing that any second or subsequent violation for stalking is a class D felony and the first offense for aggravated stalking is a class D felony); NEB. REV. STAT. ANN. § 28-311.04 (West 2015) (noting that the punishment for the second and subsequent offenses of stalking is a class 4 felony, but the statute uses roman numeral IV); N.Y. PENAL LAW § 120.55 (McKinney 2015) (“Stalking in the second degree is a class E felony.”); N.Y. PENAL LAW § 120.60 (McKinney 2015) (“Stalking in the first degree is a class D felony.”); N.C. GEN. STAT. ANN. § 14-277.3A(d) (West 2015) (noting that a second or subsequent offense of stalking is a class F felony); S.D. CODIFIED LAWS § 22-19A-1 (2015) (“[A]ny second or subsequent conviction occurring within ten years of a prior conviction [for stalking] is a Class 6 felony.”); TENN. CODE ANN. § 39-17-315(b)(3), (c)(2) (West 2015) (noting that a stalker who “was required to or was registered . . . as a sexual offender, violent sexual offender or violent juvenile sexual offender” who commits the offense of stalking is guilty of a class E felony and that “[a]ggravated stalking is a Class E felony.”); VA. CODE ANN. § 18.2-60.3(B)–(C) (West 2015) (noting that any second or subsequent conviction for stalking against the same victim occurring within five years of a prior conviction for stalking is a class 6 felony, and that any third or subsequent conviction for stalking regardless of the victim's identity within five years of a prior conviction for stalking is a class 6 felony).

195. TEX. PENAL CODE ANN. § 42.072(b) (West 2015) (penalty after a prior conviction for stalking); UTAH CODE ANN. § 76-5-106.5(8) (West 2015) (penalty if the stalker used a dangerous weapon during the stalking or if the stalker has two or more prior convictions for stalking).

196. FLA. STAT. ANN. § 784.048(3) (West 2014) (penalty for the offense of aggravated stalking); N.M. STAT. ANN. § 30-3A-3.1(B) (West 2015) (penalty for a second or subsequent conviction for aggravated stalking); 18 PA. CONS. STAT. ANN. § 2709.1(c)(2) (West 2015) (penalty for a second or subsequent offense of stalking); TEX. PENAL CODE ANN. § 42.072(b) (West 2015) (penalty for the first offense of stalking); UTAH CODE ANN. § 76-5-106.5(7) (West 2015) (penalty after one prior conviction for stalking).

197. N.M. STAT. ANN. § 30-3A-3.1(B) (West 2015) (penalty for the first offense of aggravated stalking); N.M. STAT. ANN. § 30-3A-3(C) (West 2015) (penalty for a second or



### iii. Other Crime Designations

There are a couple of state statutory systems that do not classify crimes as misdemeanors or felonies, including the crime of stalking. Instead, these states use the term “crime.” However, they do subdivide their crimes into certain classes or degrees (e.g., “Class C crime” or “a crime of the third degree”). These states are Maine and New Jersey.<sup>198</sup>

### 2. Federal Anti-Stalking Laws in 2014

The federal government has also enacted legislation relating to stalking, in addition to those anti-stalking laws passed by the states.<sup>199</sup> The specific federal anti-stalking law is 18 U.S.C. § 2261A.<sup>200</sup> Section 2261A states the following:

Whoever—

(1) travels in interstate or foreign commerce or is present within the special maritime and territorial jurisdiction of the United States, or enters or leaves Indian country, with the intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person, and in the

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subsequent conviction for stalking); OHIO REV. CODE ANN. § 2903.211(B)(2) (West 2015) (penalty after prior conviction for “menacing by stalking”).

198. ME. REV. STAT. ANN. tit. 17-A, § 210-A(1)(A), (C) (West 2015) (noting that the first offense of stalking is “a Class D crime,” but that a stalker who has two or more prior convictions of stalking in Maine or another jurisdiction commits “a Class C crime”). In Maine, in general, a class D crime is “punishable by up to 364 days incarceration and a \$2,000 fine” (which is similar to a misdemeanor in most states) and a class C crime is “punishable by up to 5 years incarceration and a \$5,000 fine” (which is similar to a felony in most states). *Criminal Justice System*, OFF. OF THE ME. ATTY GEN., [http://www.maine.gov/ag/crime/criminal\\_justice\\_system.shtml](http://www.maine.gov/ag/crime/criminal_justice_system.shtml) [<http://perma.cc/DJ3F-7LN3>]; see N.J. STAT. ANN. § 2C:12-10(b), (d) (West 2015) (noting that the first offense of stalking is “a crime of the fourth degree,” but that any stalker “who commits a second or subsequent offense of stalking against the same victim is guilty of a crime of the third degree”). In New Jersey, crimes of the fourth degree “carry a potential penalty of up to 18 months in jail,” and a crime of the third degree “may result in 3–5 years [in prison] if convicted.” *Overview of the Judicial Process*, N.J. CTS., <http://www.judiciary.state.nj.us/atlantic/criminal/overview.htm> [<http://perma.cc/L2LZ-N4QU>]; see also *Stalking Law*, WOMANSPACE, <http://www.womanspace.org/get-educated/the-law/stalking-law> [<http://perma.cc/S5GA-XAEH>] (stating that if a person is found guilty of stalking in New Jersey, “[a] first-time offender can be sentenced to a term of up to 18 months in prison and/or a fine up to \$7,500 . . . . A second-time offender (or subsequent offender) can be sentenced to a term of between 3 and 5 years in prison and/or up to a \$7,500 fine.”).

199. CATALANO, *supra* note 125, at 1, 3; *Stalking Fact Sheet*, *supra* note 125; *Federal Stalking Laws*, STALKING RES. CTR., <http://www.victimsofcrime.org/our-programs/stalking-resource-center/stalking-laws/federal-stalking-laws> [<http://perma.cc/UPC5-T985>] (listing the various federal laws related to stalking).

200. 18 U.S.C. § 2261A (Supp. 2014); see CATALANO, *supra* note 125, at 3.



course of, or as a result of, such travel or presence engages in conduct that—

(A) places that person in reasonable fear of the death of, or serious bodily injury to—

- (i) that person;
  - (ii) an immediate family member (as defined in section 115) of that person; or
  - (iii) a spouse or intimate partner of that person;
- or

(B) causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to a person described in clause (i), (ii), or (iii) of subparagraph (A); or

(2) with the intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person, uses the mail, any interactive computer service or electronic communication service or electronic communication system of interstate commerce, or any other facility of interstate or foreign commerce to engage in a course of conduct that—

(A) places that person in reasonable fear of the death of or serious bodily injury to a person described in clause (i), (ii), or (iii) of paragraph (1)(A); or

(B) causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to a person described in clause (i), (ii), or (iii) of paragraph (1)(A),

shall be punished as provided in section 2261(b) of this title.<sup>201</sup>

In sum, § 2261A provides the elements of what constitutes stalking under federal law, and the law as it relates to interstate stalking.<sup>202</sup>

There are also other federal provisions related to domestic violence and stalking.<sup>203</sup> The amount of imprisonment for violating

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201. 18 U.S.C. § 2261A (The 2013 amendment to the Violence Against Women Act had an impact on the federal anti-stalking legislation. The amendment changed § 2261A, but the language quoted above is the federal anti-stalking law in its most up-to-date form as approved on December 19, 2014.).

202. CATALANO, *supra* note 125, at 3 (“Interstate stalking is defined by federal law 18 U.S.C. § 2261A.”).

203. *See* 18 U.S.C. § 922 (2012) (unlawful acts with a focus on domestic violence and stalking firearm prohibitions); 18 U.S.C. § 2261 (2012 & Supp. 2014) (interstate domestic



§ 2261A under federal law varies depending upon whether the stalking victim dies, suffers permanent disfigurement or a life threatening bodily injury, suffers a serious bodily injury, or if the stalker uses a dangerous weapon during the commission of the stalking offense.<sup>204</sup> Specifically, the punishment for stalking is up to life in prison if the stalking victim dies.<sup>205</sup> A stalker's punishment is up to a maximum of twenty years in prison, however, if a stalking victim is permanently disfigured or if such victim suffers a life threatening bodily injury.<sup>206</sup> A stalker's punishment is up to a maximum of ten years in prison if a stalking victim suffers from serious bodily injury or if the stalker uses a dangerous weapon while stalking the victim.<sup>207</sup> A stalker is subject to imprisonment for up to a maximum of five years in all other cases.<sup>208</sup> Furthermore, any stalker who violates "a temporary or permanent civil or criminal injunction, restraining order, no-contact order, or other order described in section 2266 of title 18, United States Code, shall be punished by imprisonment for not less than 1 year."<sup>209</sup>

### C. *The Model Anti-Stalking Code*

In 1993, the U.S. Congress charged the National Institute of Justice, under the purview of the Department of Justice, with the task of developing "a model anti-stalking code to encourage states to adopt anti-stalking measures and to provide them with direction in formulating such laws."<sup>210</sup> Specifically, Public Law 102-395, section 109(b) required the following:

The Attorney General, acting through the Director of the National Institute of Justice, shall: (1) evaluate existing and proposed anti-stalking legislation in the States, (2) develop model anti-stalking

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violence); 18 U.S.C. § 2262 (2012 & Supp. 2014) (interstate violation of protection orders); 18 U.S.C. § 2263 (2012) (pretrial release of a defendant accused of stalking); 18 U.S.C. § 2264 (2012) (restitution); 18 U.S.C. § 2265 (2012 & Supp. 2014) (full faith and credit given to protection orders); *see also Federal Stalking Laws*, *supra* note 199. Other statutory provisions that are not solely stalking related include 18 U.S.C. § 875 (interstate communications) and 47 U.S.C. § 223 (obscene or harassing telephone calls made in the District of Columbia or in interstate or foreign communications).

204. 18 U.S.C. § 2261(b)(1)–(5) (2012).

205. *Id.* § 2261(b)(1) (stating that a stalker shall be imprisoned "for life or any term of years, if death of the victim results").

206. *Id.* § 2261(b)(2).

207. *Id.* § 2261(b)(3).

208. *Id.* § 2261(b)(5).

209. *Id.* § 2261(b)(6).

210. NAT'L CRIMINAL JUSTICE ASS'N, *supra* note 171, at 5 (footnote omitted).



legislation that is constitutional and enforceable, (3) prepare and disseminate to State authorities the findings made as a result of such evaluation, and (4) report to the Congress the findings and the need or appropriateness of further action by the Federal Government by September 30, 1993.<sup>211</sup>

The development of the 1993 Model Anti-Stalking Code was completed by the National Criminal Justice Association through a cooperative agreement with the National Institute of Justice.<sup>212</sup> The Code was created under the direction and oversight of a National Institute of Justice project director and in collaboration with a project resource group consisting of individuals representing the National Governors' Association, the National Conference of State Legislatures, the American Bar Association, the Police Executive Research Forum, the American Civil Liberties Union, and numerous other public, private, and special interests groups.<sup>213</sup>

Moreover, the development of the 1993 Model Anti-Stalking Code was completed after many states began enacting anti-stalking legislation. In fact, California's enactment of the first state anti-stalking law in 1990 was quickly followed by numerous other states enacting similar legislation.<sup>214</sup> Therefore, when the 1993 Model Anti-Stalking Code was created, forty-eight states had already enacted some form of anti-stalking legislation.<sup>215</sup>

The National Institute of Justice's Research Report regarding the 1993 Model Anti-Stalking Code included the following: (1) proposed language for the code provisions for states to use and related analysis and commentary on issues that arose during drafting of the model code; (2) "a profile of existing state [anti-]stalking statutes; (3) an overview of police agencies' current management of stalking incidents; and (4) discussion and recommendations for states' consideration

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211. *Id.*

212. *Id.*

213. *Id.* at 5–6. In addition to the groups listed above, other project resource group members included individuals from the National Association of Attorneys General, the National District Attorneys' Association, the National Center for State Courts, the National Organization for Victim Assistance, the Los Angeles Police Department, the National Victim Center, Mobil Corporation, the U.S. Department of Justice's Office for Victims of Crime, and the U.S. Department of the Treasury's U.S. Secret Service. *Id.* Development of the code also included assistance and input from other project staff, consultants, and numerous state, local, and federal officials. *Id.* at v.

214. See NAT'L CRIMINAL JUSTICE ASS'N, *supra* note 171, at 5 (discussing that following California's enactment of the first anti-stalking legislation in 1990, 47 additional states had passed similar legislation as of 1993).

215. *Id.*



concerning bail and sentencing [issues],” implementation strategies for anti-stalking statutes and protocols, and additional stalking-related research.<sup>216</sup>

Many states included provisions of the 1993 Model Anti-Stalking Code in their state anti-stalking statutes, and some courts even referred to the Model Anti-Stalking Code when interpreting certain state anti-stalking law provisions.<sup>217</sup> However, the 1993 Model Anti-Stalking Code was reviewed and updated in 2007 by the National Center for Victims of Crime.<sup>218</sup> The revised 2007 Model Stalking Code was designed to assist states desiring to strengthen their existing anti-stalking laws and recommended statutory language that could be used by states to better define and combat the realities of stalking, hold stalkers more accountable, and improve stalking victims’ safety.<sup>219</sup> When updating the 1993 Model Anti-Stalking Code, the National Center for Victims of Crime examined several elements in each state’s anti-stalking law, including the following: (1) prohibited acts; (2) level of intent (e.g., general or specific); (3) type of fear required (e.g., reasonable person standard, actual fear, or both); (4) degree of fear required (e.g., serious bodily injury or emotional distress); (5) target of the stalker’s acts (e.g., victim, victim’s family, or other third parties); (6) threat requirements; (7) coverage of technology and surveillance; and (8) other miscellaneous or innovative provisions.<sup>220</sup>

Moreover, the 2007 Model Stalking Code provided alternatives that states could consider when reviewing and amending their anti-stalking legislation.<sup>221</sup> However, the drafters of the revised code “recognize[d] that states have different statutory limitations, guidelines, and political climates that may dictate the use of language other than that recommended in [the code].”<sup>222</sup> Additionally, the goal of updating the 1993 Model Anti-Stalking Code was “not necessarily to produce uniformity among the states on all of the reviewed elements, but rather to highlight common issues for states to consider in modifying existing or developing new [anti-stalking] laws.”<sup>223</sup> Moreover, updates were needed to the 1993 Model Anti-Stalking Code to reflect “the current realities of stalking,” including the “alarming rise in

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216. NAT’L CRIMINAL JUSTICE ASS’N, *supra* note 171, at iii (Gwen A. Holden, *Preface*).

217. NAT’L CTR. FOR VICTIMS OF CRIME, *supra* note 173, at 12.

218. *Id.* at 9.

219. *Id.* The terms “stalking laws” and “anti-stalking laws” are used interchangeably in the United States. *See id.* at 12 n.7.

220. *Id.* at 19.

221. *Id.* at 27.

222. NAT’L CTR. FOR VICTIMS OF CRIME, *supra* note 173, at 27.

223. *Id.* at 19.



the use by stalkers of sophisticated—yet widely available—tracking and monitoring technology.”<sup>224</sup>

In sum, the updated 2007 Model Stalking Code recommended that states review and amend their existing anti-stalking laws, as necessary, in the following ways:

- Include a legislative intent section that emphasizes the strong connections between stalking and domestic violence and between stalking and sexual assault, and underscores the importance of early intervention by law enforcement;
- Incorporate a general intent requirement instead of a specific intent requirement;
- Use a reasonable person standard of fear instead of an actual fear standard, intending that this standard be interpreted to mean a reasonable person in the victim’s circumstances;
- Include two statutory prongs that establish the level of fear required to constitute stalking: (1) that a reasonable person would fear for his or her safety or the safety of a third person; or (2) that a reasonable person would suffer other emotional distress;
- Eliminate any credible threat requirement;
- Expand the standard of fear to include fear for the safety of a third person in addition to fear for the victim’s own safety;
- Define “course of conduct” to include guidance regarding the range of acts contemplated and to encompass stalking behavior accomplished by or through the use of any action, method, device, or means to ensure that current and other forms of technology or surveillance that stalkers may use are covered;
- Specifically exempt two defenses typically claimed by stalkers: (1) that the perpetrator was not given actual notice by the victim that his or her conduct was not wanted; or (2) that the stalker did not intend to cause the victim fear or to suffer other emotional distress;
- Classify stalking as a felony and/or consider a two-tiered system whereby enhanced penalties can be imposed in cases that involve aggravating factors [i.e., the defendant violated a no-contact order with the victim,

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224. *Id.* at 12.



had a stalking conviction within ten years of the current stalking offense, used force or a weapon or threatened to use force or a weapon, or the stalking victim is a minor]; and

- Allow prosecution of the crime of stalking in any jurisdiction where any of the acts constituting the requisite course of conduct was initiated or had an effect on the victim.<sup>225</sup>

Over eight years have passed since the Model Anti-Stalking Code was last updated in January 2007.<sup>226</sup> Many states have amended their anti-stalking laws since that time, however.<sup>227</sup>

### III. CONSTITUTIONAL CHALLENGES TO ANTI-STALKING LEGISLATION

Following California enacting the first state anti-stalking law in 1990, there have been numerous constitutional challenges to both federal legislation as well as state anti-stalking laws.<sup>228</sup> In fact, as previously noted, Public Law 102-395, section 109(b)(2) mandated that the U.S. Attorney General, through the National Institute of Justice, develop for states a Model Anti-Stalking Code that was “constitutional and enforceable.”<sup>229</sup>

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225. *Id.* at 61–62. The recommended Legislative Intent language was as follows:

The Legislature finds that stalking is a serious problem in this state and nationwide. Stalking involves severe intrusions on the victim’s personal privacy and autonomy. It is a crime that causes a long-lasting impact on the victim’s quality of life, and creates risks to the security and safety of the victim and others, even in the absence of express threats of physical harm. Stalking conduct often becomes increasingly violent over time. The Legislature recognizes the dangerous nature of stalking as well as the strong connections between stalking and domestic violence and between stalking and sexual assault. Therefore, the Legislature enacts this law to encourage effective intervention by the criminal justice system before stalking escalates into behavior that has serious or lethal consequences. The Legislature intends to enact a stalking statute that permits the criminal justice system to hold stalkers accountable for a wide range of acts, communications, and conduct. The Legislature recognizes that stalking includes, but is not limited to, a pattern of following, observing, or monitoring the victim, or committing violent or intimidating acts against the victim, regardless of the means.

*Id.* at 24.

226. *See id.* at 3.

227. OFF. FOR VICTIMS OF CRIME, U.S. DEP’T OF JUSTICE, STRENGTHENING ANTISTALKING STATUTES, *reprinted in* NAT’L CTR. FOR VICTIMS OF CRIME, *supra* note 173, at app. C.

228. *See* NAT’L CTR. FOR VICTIMS OF CRIME, *supra* note 173, at 18.

229. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. No. 102-395, § 109(b)(2), 106 Stat. 1828, 1842 (1993); NAT’L CRIMINAL JUSTICE ASS’N, *supra* note 171, at 5. The U.S. Congress directed that development of the code had to be completed by no later than September 30, 1993. NAT’L CRIMINAL JUSTICE ASS’N, *supra* note 171, at iii (Gwen A. Holden, *Preface*).



Congress enacted § 109(b)(2) because various states were facing constitutional challenges to their anti-stalking legislation.<sup>230</sup> For example, in 1993, courts were applying anti-stalking laws to proscribe expressive activity by anti-abortion protestors and holding such protestors criminally responsible for stalking.<sup>231</sup> Because of the First Amendment's protection of freedom of expression, such application of anti-stalking laws by state courts raised constitutional concerns.<sup>232</sup> Critics, including scholars and defense attorneys, argued that state anti-stalking statutes were unconstitutional for several reasons.<sup>233</sup> In fact, a majority of constitutional challenges and arguments against anti-stalking laws fall within two categories: (1) such statutes are overbroad, and (2) such statutes are unconstitutionally vague.<sup>234</sup> Critics arguing that anti-stalking statutes are overbroad assert that such statutes punish constitutionally protected First Amendment rights, such as expressive activity.<sup>235</sup> The U.S. Supreme Court has held, however, that "a government may criminalize true threats without violating the First Amendment's protections against overly broad statutes."<sup>236</sup> Consequently, "most stalking behavior can be interpreted as creating a violent threat," and therefore, it is permissible to penalize such conduct under anti-stalking statutes without violating the U.S. Constitution.<sup>237</sup>

Moreover, critics asserting that anti-stalking statutes are unconstitutionally vague,<sup>238</sup> argue that anti-stalking statutes fail to notify the public "of what conduct is illegal and that such laws can lead to arbitrary, discriminatory enforcement."<sup>239</sup> Specifically, the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution,<sup>240</sup> requires that a penal statute must "define the criminal offense with

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230. See Suzanne L. Karbarz, Note, *The First Amendment Implications of Anti-stalking Statutes*, 21 J. LEGIS. 333, 333 n.1 (1995) ("Congress created a model stalking statute because the states have begun to do so in large numbers and are facing constitutional challenges.").

231. *Id.* at 333.

232. *Id.*

233. *Id.* at 333 n.8 ("Scholars arguing that stalking statutes are unconstitutional assert the laws as written are unconstitutionally vague and have various unconstitutional bail and warrantless arrest provisions.").

234. Beagle, *supra* note 137, at 469; see Karbarz, *supra* note 230, at 333–34.

235. Beagle, *supra* note 137, at 469; see Karbarz, *supra* note 230, at 333–34.

236. Joseph C. Merschman, Note, *The Dark Side of the Web: Cyberstalking and the Need for Contemporary Legislation*, 24 HARV. WOMEN'S L.J. 255, 272 (2001) (citing *Watts v. United States*, 394 U.S. 705, 707 (1969)); Beagle, *supra* note 137, at 470.

237. Beagle, *supra* note 137, at 470; see Merschman, *supra* note 236, at 272.

238. See Beagle, *supra* note 137, at 469–71 (internal footnotes omitted); Merschman, *supra* note 236, at 271, 273–74 (internal footnotes omitted); Karbarz, *supra* note 230, at 333 n.8 (citation omitted).

239. Beagle, *supra* note 137, at 469; see Merschman, *supra* note 236, at 273.

240. See U.S. CONST. amend. XIV, § 1.



sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.”<sup>241</sup> Despite many defendants raising vagueness and other constitutional challenges during the past two decades, courts mostly have upheld state anti-stalking statutes as constitutional.<sup>242</sup> For example, *Johnson v. State* is an earlier case from 1994 challenging Georgia’s anti-stalking statutes.<sup>243</sup> Georgia’s Supreme Court held that the state’s anti-stalking statutes were “not unconstitutionally vague because a person of ordinary intelligence can readily appreciate what action, in a given context, will constitute ‘harassing and intimidating’ conduct on his part sufficient to provoke a ‘reasonable fear of death or bodily harm’ in another person.”<sup>244</sup> Moreover, the court concluded that the statutes were “not unconstitutionally overbroad, since they do ‘not reach a substantial amount of constitutionally protected conduct.’”<sup>245</sup>

Additionally, in recent years, courts have considered and have upheld the constitutionality of the federal interstate stalking statute

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241. *Kolender v. Lawson*, 461 U.S. 352, 357 (1983) (citations omitted); see *Beagle*, *supra* note 137, at 470 (discussing this definition); *Merschman*, *supra* note 236, at 273 (discussing this definition).

242. *Merschman*, *supra* note 236, at 273; *Beagle*, *supra* note 137, at 470; see, e.g., *Johnson v. State*, 449 S.E.2d 94, 96–97 (Ga. 1994) (finding Georgia’s anti-stalking statute not unconstitutionally vague); *Constitutional Issues*, STALKING RES. CTR., <http://www.victimsofcrime.org/our-programs/stalking-resource-center/stalking-laws/stalking-case-summaries/constitutional-issues> [<http://perma.cc/YD9H-9HB8>] (referencing *Muhammad v. Martel*, 2012 U.S. Dist. LEXIS 76445 (finding that petitioner’s stalking conviction under the California Penal Code did not violate his First Amendment right to freedom of speech)); see also NAT’L INST. OF JUSTICE, NCJ 160943, DOMESTIC VIOLENCE, STALKING, AND ANTI-STALKING LEGISLATION: AN ANNUAL REPORT TO CONGRESS UNDER THE VIOLENCE AGAINST WOMEN ACTA-1–A-11 (1996), <http://www.ncjrs.gov/pdffiles/stlkbook.pdf> [<http://perma.cc/4QS9-8FVD>]. Appendix A shows a chart of lawsuits on a state-by-state basis that raised constitutional challenges to anti-stalking statutes between 1993 and 1996. In fact, when the 1993 Model Anti-Stalking Code:

was published in fall 1993, no appellate court decisions had been rendered.

By January 1996, the Justice Department had identified 53 constitutional challenges to stalking statutes in 19 States. Generally, the courts [were] upholding the laws. Defendants seeking to challenge antistalking laws usually argue[d] that these statutes [were] constitutionally defective because they [were] ‘void for vagueness’ under due process principles or [were] so overly broad that they infringe[d] upon constitutionally protected speech or activity.

*Id.* at 6. Compare Brenda K. Harmon, Comment, *Illinois’ Newly Amended Stalking Law: Are All the Problems Solved?*, 19 S. ILL. U. L.J. 165, 166 n.9, 176 (1994) (commenting that some states’ anti-stalking statutes, including Illinois’ and Florida’s, were found to be unconstitutional at the trial level; however, four District Courts of Appeal judges in Florida subsequently found Florida’s anti-stalking statute constitutional), with *Long v. State*, 931 S.W.2d 285, 297 (Tex. Crim. App. 1996) (holding that Texas’ 1993 anti-stalking statute was unconstitutional because it was “vague on its face”).

243. *Johnson*, 449 S.E.2d at 95.

244. *Id.* at 96 (quoting GA. CODE ANN. § 16-5-90 (1994)).

245. *Id.* at 96–97 (quoting *State v. Miller*, 398 S.E.2d 547 (Ga. 1990)).



18 U.S.C. § 2261A.<sup>246</sup> The latest constitutional challenge to § 2261A was decided in 2014 in the case of *United States v. Osinger*.<sup>247</sup> The issue before the United States Court of Appeals in the Ninth Circuit was whether 18 U.S.C. § 2261A was unconstitutionally vague on its face and as applied to the defendant stalker's conduct (i.e., a First Amendment challenge).<sup>248</sup> In terms of facial vagueness challenges, statutes are often invalidated and ruled unconstitutional for three reasons: (1) to avoid penalizing people for behavior when they had no knowledge that such conduct was illegal; (2) "to avoid subjective enforcement of laws based on arbitrary and discriminatory enforcement" by government officials; and (3) "to avoid any chilling effect" on the exercise of First Amendment rights.<sup>249</sup> In general, "[t]he First Amendment prohibits any law abridging the freedom of speech. However, the Supreme Court has carved out some limited categories of unprotected speech, including obscenity, defamation, fraud, incitement, and speech integral to criminal conduct."<sup>250</sup>

In the *Osinger* case, the court dismissed the First Amendment challenge "because 18 U.S.C. § 2261A proscribes harassing and intimidating conduct, [so] the statute is not facially invalid under the First Amendment."<sup>251</sup> The court also noted that the statute "specifically criminalizes 'a course of *conduct* that . . . causes . . . substantial emotional distress'" to the stalking victim.<sup>252</sup> Moreover, the court noted that "'course of conduct' means a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose."<sup>253</sup> Thus, the stalker's conduct must have occurred on two or more occasions prior to the stalker being penalized for violating the federal statute.<sup>254</sup> The court ruled that "the proscribed acts" in 18 U.S.C. § 2261A were tied to the stalker's underlying criminal conduct and not to the stalker's speech.<sup>255</sup> In addition, the *Osinger* court noted that several other

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246. 18 U.S.C. § 2261A (Supp. 2014); see, e.g., *United States v. Sayer*, 748 F.3d 425, 433–34 (1st Cir. 2014) (finding that the defendant's criminal stalking conduct was not protected speech and § 2261A as a criminal cyberstalking statute did not violate the defendant's First Amendment rights as applied to the defendant's conduct); *United States v. Petrovic*, 701 F.3d 849, 856 (8th Cir. 2012) (holding that the federal interstate stalking statute § 2261A was not unconstitutional as applied to the defendant stalker); *United States v. Al-Zubaidy*, 283 F.3d 804, 806 (6th Cir. 2002) (finding that the federal interstate stalking statute fell within Congress' power under the Commerce Clause).

247. 753 F.3d 939 (9th Cir. 2014).

248. *Id.* at 940.

249. *Id.* at 945.

250. *Id.* at 946 (citing *United States v. Meredith*, 685 F.3d 814, 819 (9th Cir. 2012)).

251. *Id.* at 944.

252. *Id.* (alteration in original) (citing 18 U.S.C. § 2261A(2)(B)).

253. *Osinger*, 753 F.3d at 944.

254. See *id.*

255. *Id.*



circuits had specifically rejected constitutional challenges to 18 U.S.C. § 2261A in recent decisions rendered in their respective circuits.<sup>256</sup>

The Ninth Circuit in *Osinger* ruled that because “Osinger engaged in a course of conduct ‘with the intent . . . to . . . harass, or intimidate, or cause substantial emotional distress to’” his stalking victim, his conduct was not entitled to First Amendment protection because it was speech “integral to criminal conduct.”<sup>257</sup> The court ultimately held that the interstate stalking statute (i.e., 18 U.S.C. § 2261A) was not facially invalid in violation of the First Amendment, and such statute was not unconstitutionally vague.<sup>258</sup> Moreover, the court ruled that the statute was directed toward “a course of *conduct*” as opposed to speech, that the stalking conduct it prohibited was not necessarily associated with speech, and that the statute required both malicious intent on the defendant’s part and substantial harm to the victim.<sup>259</sup> In sum, there have been various constitutional challenges at the state and federal levels to anti-stalking laws.<sup>260</sup> These statutes have been upheld, however, and should be upheld in order to ensure that stalking victims are legally protected.

#### IV. THE EFFECTIVENESS OF ANTI-STALKING EFFORTS AND LAWS AT THE LOCAL, STATE, AND FEDERAL LEVELS AS WELL AS “MODEL” STATE ANTI-STALKING LAWS

##### *A. The Effectiveness of Anti-Stalking Efforts at the Local, State, and Federal Levels*

Efforts are continuously being made across the United States to combat the issue of stalking. On December 31, 2012, President Barack Obama issued the first-ever Presidential Proclamation

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256. *Id.* at 944, 946–47. The *Osinger* court cited *United States v. Petrovic*, 701 F.3d 849 (8th Cir. 2012) and *United States v. Sayer*, 748 F.3d 425, 434–36 (1st Cir. 2014) as rejecting facial challenges to 18 U.S.C. § 2261A(2)(A) on similar grounds as those raised in the *Osinger* case. *Osinger*, 753 F.3d at 944. Also, the *Osinger* court cited *United States v. Meredith*, 685 F.3d 814 (9th Cir. 2012) as “implicitly undermin[ing] *Osinger*’s argument that he engaged in protected speech” and then discussed “other circuits [that] have explicitly rejected as-applied challenges to 18 U.S.C. § 2261A(2)(A).” *Osinger*, 753 F.3d at 946–47 (citing *Petrovic*, 701 F.3d at 854–55 and *United States v. Shrader*, 675 F.3d 300, 312 (4th Cir. 2012)).

257. *Osinger*, 753 F.3d at 947 (alteration in original) (citing 18 U.S.C. § 2261(A)(2)(A) and *Meredith*, 685 F.3d at 819–20).

258. *Id.* at 944–45.

259. *Id.* at 944 (first citing § 2261A; and then citing *Petrovic*, 701 F.3d at 856).

260. See *supra* notes 242–59 and accompanying text; see also OFF. FOR VICTIMS OF CRIME, U.S. DEP’T OF JUSTICE, STRENGTHENING ANTISTALKING STATUTES 3 (2002), [https://www.ncjrs.gov/ovc\\_archives/bulletins/legalseries/bulletin1/ncj189192.pdf](https://www.ncjrs.gov/ovc_archives/bulletins/legalseries/bulletin1/ncj189192.pdf) [http://perma.cc/UB59-FW8J].



declaring “January 2013 as National Stalking Awareness Month.”<sup>261</sup> In his Proclamation, President Obama stated, in relevant part, the following:

My Administration remains committed to building a robust criminal justice response to stalking—one that holds offenders accountable, offers protection and support to all victims of violence, and empowers them to break the cycle of abuse. In January 2012, we held the first-ever White House stalking roundtable with survivors, law enforcement officers, victim advocates, and researchers. We have built partnerships with communities across the Nation to implement anti-stalking efforts. And we continue to support nonprofit organizations and local, State, and tribal governments as they develop more effective responses to violence against women—including direct services, crisis intervention, transitional housing, legal assistance to victims, court improvement, and training for law enforcement and courts.

We are also working to address the threat of cyberstalking. While advances in technology are making this crime more prevalent, they can also pose unique opportunities to address it. Communities are developing new tools that help connect victims to local services, and State governments are updating statutes to further protect people from cyberstalking. Through our Apps Against Abuse challenge, my Administration recognized mobile applications that are empowering people to defend themselves against dating violence, sexual assault, and stalking.

Thanks to the dedicated work of law enforcement officials, community leaders, advocates, organizations, and survivors, our country has made great strides in combating stalking. During National Stalking Awareness Month, we resolve to keep building on this momentum until no American lives in fear of this crime.<sup>262</sup>

In addition to President Obama declaring his support at the national level to combating stalking, there have also been in recent years “remarkable efforts and marked progress in communities that are tackling this issue.”<sup>263</sup> In fact, the Office on Violence Against

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261. Barack Obama, *Presidential Proclamation—National Stalking Awareness Month, 2013*, THE WHITE HOUSE (Dec. 31, 2012), <https://www.whitehouse.gov/the-press-office/2012/12/31/presidential-proclamation-national-stalking-awareness-month-2013> [http://perma.cc/DA7C-W8U4]; see *supra* note 8.

262. Obama, *supra* note 261.

263. *January is National Stalking Awareness Month*, U.S. DEPT OF JUSTICE OFF. OF VIOLENCE AGAINST WOMEN (Jan. 29, 2013), <http://www.justice.gov/ovw/blog/january-national-stalking-awareness-month> [http://perma.cc/F3DS-5G49].



Women has “recognize[d] some of the exceptional work that is taking place nationwide.”<sup>264</sup> That office cited the following examples of exceptional work that has been done in recent years to combat stalking:

- In Palm Beach County, Florida, victim service and criminal justice professionals formed an Anti-Stalking Multidisciplinary Collaborative. They received national and state training on stalking issues and developed an anti-stalking toolkit as a resource for all victim service professionals throughout Palm Beach County.
- The Idaho Coalition Against Sexual and Domestic Violence secured a grant to develop kits to help victims document stalking. The kits include logs, digital recorders, and other resources to assist victims in substantiating the stalking behaviors they experience.
- The University of Iowa organized a group of stakeholders to enhance campus policies that address stalking, including the student code of conduct, anti-violence policies and anti-sexual harassment policies.
- The Iowa Attorney General’s Crime Victim Assistance Division along with other agencies including the Law Enforcement Academy, Medical Examiner’s Office, Coalition Against Domestic Violence, Coalition Against Sexual Assault, and the Departments of Public Health and Public Safety teamed up to conduct a series of multi-disciplinary conferences on responding to victims of stalking.
- The University of Kentucky Louie B. Nunn Center for Oral History and OutrageUs launched “The Stalking Project,” a series of videos and other resources designed to educate and shine a spotlight on one of the nation’s most misunderstood areas of partner violence. The Stalking Project hopes to give voice to the often silent victims of stalking.
- Florida and Arizona strengthened their stalking statutes by amending their laws to include any contacts or threats made by electronic communication.<sup>265</sup>

The Office on Violence Against Women “has played an active role in educating and raising awareness about the crime of stalking,” including “fund[ing] both formula and discretionary grant programs

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<sup>264</sup>. *Id.*

<sup>265</sup>. *Id.*



that address the crime of stalking.”<sup>266</sup> Also, the National Center for Victims of Crime’s Stalking Resource Center, which is supported by the Office on Violence Against Women, “has provided training to tens of thousands of victim service providers and criminal justice professionals throughout the United States on stalking dynamics, legal remedies, multidisciplinary efforts, practitioner-specific practices, and the use of technology to stalk.”<sup>267</sup>

Research has shown that stalking survivors often experience fear and “[t]he [l]asting [e]motional [t]rauma [o]f [s]talking” can be felt by survivors for years.<sup>268</sup> Therefore, it is not helpful when the media “glamorizes” stalking for entertainment purposes. In fact, the Stalking Resource Center was recently involved in a strong advocacy campaign against such activity.<sup>269</sup> There has been criticism about a new television program in the United States called *Stalker*.<sup>270</sup> The show’s creator Kevin Williamson tried “to sell reporters on the idea that his most recent crime drama has social significance.”<sup>271</sup> Regarding *Stalker*, Williamson informed critics at the Television Critics Association press tour that:

[w]hat we’re doing is making an entertaining show, but at the same time, I’m hoping to raise a little bit of awareness to this crime that has sort of escalated to—because of social media, to such a degree that I think it could be kind of a timely piece, hopefully.<sup>272</sup>

Reviews of *Stalker*, however, especially by stalking victims and victim’s advocates, have not been positive.<sup>273</sup> In fact, Michelle Garcia,

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266. *Id.*; see OFF. ON VIOLENCE AGAINST WOMEN, *supra* note 110 at 8–14, 24–27 (reporting on the discretionary grantees who were addressing stalking, criminal justice activities including a snapshot of the arrest program from January to June 2010, STOP Program subgrantees’ activities from January to December 2010, technical assistance provided to grantees, and areas of remaining needs relating to addressing stalking as reported by grantees).

267. *January is National Stalking Awareness Month*, *supra* note 263.

268. Redd, *supra* note 6.

269. See Alyssa Rosenberg, ‘*Stalker*’ Creator Says the Show is Meant to Raise Awareness. *It’s Really, Really Not.*, WASH. POST (Oct. 3, 2014), <https://www.washingtonpost.com/news/act-four/wp/2014/10/03/stalker-creator-says-the-show-is-meant-to-raise-awareness-its-really-really-not> [http://perma.cc/E3K3-E69T] (discussing the Stalking Resource Center’s response to the television program *Stalker*).

270. *See id.*

271. *Id.*

272. *Id.*

273. *See id.*; Kelsey McKinney, *Victims of Stalking Do Not Like CBS’s New Show Stalker*, VOX (Oct. 3, 2014, 9:00 AM), <http://www.vox.com/xpress/2014/10/3/6895895/cbs-stalker-victims-call-for-cancellation> [http://perma.cc/XM4Q-95NK] (citing Garcia’s letter, discussed *infra* notes 274–75, that not only condemned the show *Stalker* but also reminded CBS that “stalking, more than any other crime, is routinely misidentified, dismissed,



Director of the National Center for Victims of Crime's Stalking Resource Center, "was so outraged by the show" that she emailed a letter to CBS President and CEO Leslie Moonves "to express her dismay."<sup>274</sup> Ms. Garcia stated, in relevant part, the following:

I am writing to express my grave disappointment and concern after viewing last night's premier of *Stalker*. In glorifying and normalizing a serious crime, the program demonstrates extremely poor judgment disrespecting the 7.5 million individuals who are victims of stalking each year in the U.S.

We understand CBS's quest for large audiences and high ratings, however not by glorifying a crime with very real consequences. Stalking is a serious and terrifying crime that is too frequently minimized, romanticized, and medicized.

....

... One of our greatest challenges in keeping victims safe and holding offenders accountable is the minimization and normalization of stalking behaviors. This show only makes our work more difficult by framing stalking as entertainment. Would CBS air a show called *Rapist* and justify it as a way to raise awareness about sexual violence?

The show's creator, Kevin Williamson, has responded to critics by telling them to "change the channel." We are calling on television viewers to do exactly that. We are asking national advertisers whose commercials aired during the show to pull their spots and we are asking that you immediately remove *Stalker* from the schedule.<sup>275</sup>

Additionally, a successful anti-stalking pilot program named "The Coordinated Approach to Preventing Stalking (CAPS)" that was launched in June 2014 in the North Shore area of Staten Island has

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or downplayed. The show further contributes to the glorification and normalization of the crime.").

274. Rosenberg, *supra* note 269; see McKinney, *supra* note 273.

275. Letter from Michelle M. Garcia, Director, Stalking Resource Center, to Leslie Moonves, President and Chief Executive Officer, CBS Corporation (Oct. 2, 2014), <http://www.victimsofcrime.org/media/full-story/2014/10/02/stalking-resource-center%27s-letter-to-CBS-in-response-to-the-premier-of-stalker> [<http://perma.cc/5RBL-5PCG>]. Notably, "CBS recently dropped *Stalker* from their schedule and . . . [a]fter airing 17 of the show's first season episodes, CBS took *Stalker* off the air. . . . *Stalker*'s unlikely to be renewed for a second season." Stalker: *CBS TV Show Returning Soon?*, TV SERIES FINALE (Mar. 18, 2015), <http://tvseriesfinale.com/tv-show/stalker-cbs-tv-show-returning-soon-35956> [<http://perma.cc/4V4H-X4FJ>].



now been expanded to include all Staten Island precincts.<sup>276</sup> Expansion of the program was announced by Commissioner Rosemonde Pierre-Louis of the Mayor's Office to Combat Domestic Violence, along with District Attorney Daniel Donovan's office and the New York Police Department.<sup>277</sup> The CAPS program "aims to enhance the identification, reporting and prosecution of stalking incidents and bring awareness to the seriousness of such actions."<sup>278</sup> In fact, "[s]ince the program's launch, there has been a significant increase in the number of stalking offenses reported to and identified by police."<sup>279</sup> There are new Domestic Violence Prevention Officers in the precincts who "have been trained to identify stalking behavior, understand the criminal stalking statute, obtain and preserve evidence and plan safety with victims."<sup>280</sup> Also, an assistant district attorney has been assigned to specifically "review all intimate-partner stalking arrests resulting from the CAPS program. That prosecutor will also scour pending criminal cases for stalking behavior and add stalking charges where appropriate."<sup>281</sup> The District Attorney's office "has already added stalking charges to a number of criminal complaints during the program's initial phase. In addition, prosecutors will work with complainants and refer them to DVRT [Staten Island's Domestic Violence Response Team], whose case managers will help them get necessary services and enhance their safety."<sup>282</sup>

### *B. The Effectiveness of Anti-Stalking Laws in Combating Stalking*

A lot has been done in this country over the past twenty-five years since the passage of the first criminal anti-stalking law in California in 1990. Most importantly, all fifty states, the District of Columbia, U.S. territories, and the federal government have made stalking a criminal offense.<sup>283</sup> Additionally, "[i]n 2000, the National Center for Victims of Crime partnered with the U.S. Department of Justice Office on Violence Against Women to create the Stalking Resource Center (SRC)."<sup>284</sup> The Stalking Resource Center is an invaluable

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276. Frank Donnelly, *Successful Anti-Stalking Pilot Program Expanded to Include All of Staten Island*, STATEN ISLAND ADVANCE (Sept. 16, 2014, 6:05 PM), [http://www.silive.com/news/index.ssf/2014/09/successful\\_anti-stalking\\_pilot.html](http://www.silive.com/news/index.ssf/2014/09/successful_anti-stalking_pilot.html) [<http://perma.cc/8PDW-YW5Y>].

277. *Id.*

278. *Id.*

279. *Id.*

280. *Id.*

281. *Id.*

282. Donnelly, *supra* note 276.

283. See CATALANO, *supra* note 125, at 1.

284. *About Us*, STALKING RES. CTR., <http://www.victimsofcrime.org/our-programs/stalking-resource-center/about-us> [<http://perma.cc/AQ4T-BVTP>].



resource and provides various services related to stalking.<sup>285</sup> Moreover, the National Center for Victims of Crime through its Stalking Resource Center has “extensive stalking policy and training experience” and regularly interacts with law enforcement professionals and victim service providers, as well as victims of crime.<sup>286</sup> Based upon those experiences and interactions, however, the National Center for Victims of Crime commented on some of “the inadequacies of the nation’s current body of stalking laws.”<sup>287</sup> The Center stated the following problems:

- Stalkers often can “get away” with their criminal behavior and continue to wreak havoc on a victim’s life with little or no risk of intervention by law enforcement.
- The burden of proof is so high under many stalking laws that it is extremely difficult to secure convictions.
- In most jurisdictions, stalking is only a misdemeanor crime, and sentences longer than a few days or weeks

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285. *Id.* The Stalking Resource Center provides a multitude of services which include training, technical assistance, a website, and an information clearinghouse. *Id.*

The Stalking Resource Center provides training that is victim-centered, research informed, and practice based . . . often partners with local and nationally recognized law enforcement officers, prosecutors, and other criminal justice professionals in providing training . . . [and] . . . provides direct assistance to build the capacity of criminal justice and victim services organizations to respond effectively to stalking. Topics include: developing a coordinated community response to stalking, developing and implementing effective stalking protocols and policies, accessing civil and criminal remedies for stalking victims, developing and enhancing services for victims of stalking, [and] case specific questions.

*Id.*

It also provides a website that is a “continually growing resource for practitioners and victims . . . [and] provides diverse resources, including information about federal, state, tribal, and military stalking statutes, compilations of state and federal legislation and protection order statutes, a guide to online resources, practitioner profiles, and more,” and an information clearinghouse that “provides a wide range of useful information for practitioners. Materials include: statistics on the prevalence of stalking; practitioner-specific educational tools; multidisciplinary curricula; promising practices and innovative strategies, model protocols, forms, and procedures; [and] research articles on stalking and related issues.” *Id.*

286. NAT’L CTR. FOR VICTIMS OF CRIME, *supra* note 173, at 17. In fact, “[s]ince its inception, the SRC has trained over 100,000 professionals who work with victims in all 50 states, two US Territories, the District of Columbia, the United Kingdom, and Germany and provided technical assistance to hundreds of communities seeking to enhance their response to stalking.” *About Us*, *supra* note 284.

287. NAT’L CTR. FOR VICTIMS OF CRIME, *supra* note 173, at 17. When referring to “current,” the National Center for Victims of Crime was looking at state stalking laws in effect in 2007. For earlier research related to the effectiveness of anti-stalking laws, see NEAL MILLER, INST. OF LAW & JUSTICE, STALKING LAWS AND IMPLEMENTATION PRACTICES: A NATIONAL REVIEW FOR POLICYMAKERS AND PRACTITIONERS 57 (2001), <https://www.ncjrs.gov/pdffiles1/nij/grants/197066.pdf> [<http://perma.cc/MK3C-LJF7>].



are rare. Most stalkers spend a remarkably short time in custody if and when they are arrested, prosecuted, and convicted.

- Statutory provisions written with the “stranger” stalker in mind restrict the types of stalking behavior that can be prosecuted when the stalker and victim are in a relationship.
- Without a full appreciation of the role of *context* in a stalking situation—the private meaning of certain behaviors that would not necessarily be evident to an outside observer—many stalking behaviors can be viewed as harmless, when in fact the behaviors may terrify the victim. A love letter left on the doorstep of a victim’s apartment, for example, might seem benign to a law enforcement officer. Without knowing the context, the officer cannot fully appreciate how terrifying that apparently harmless gesture is for a victim who believed her stalker did not know where she was.
- Current state laws do not address the full range of stalking behaviors, making it virtually impossible to arrest and prosecute an offender for many of those behaviors. Consider, for example, a situation in which a stalker is constantly watching and monitoring a victim’s daily activities and has posted information about the victim on the Internet, but has never communicated directly with the victim or threatened the victim in any way. If, as is often the case, the applicable statute requires proof of some type of communication or threatening contact by the stalker, it is unlikely that a stalking charge could be brought. Many state stalking laws simply do not address surveillance by stalkers with newer forms of technology that do not require proximity to or communication with the victim.<sup>288</sup>

Despite the deficiencies mentioned above, “[s]talking laws have made tremendous strides over the past two decades.”<sup>289</sup> However,

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288. NAT’L CTR. FOR VICTIMS OF CRIME, *supra* note 173, at 17–18. *But see State Cyberstalking and Cyberharassment Laws*, NAT’L CONF. OF STATE LEGISLATURES (Jan. 12, 2015), <http://www.ncsl.org/research/telecommunications-and-information-technology/cyberstalking-and-cyberharassment-laws.aspx> [<http://perma.cc/D972-YQ54>] (providing a chart of various state statutes that have been enacted to address the online behaviors of “cyberstalking” and/or “cyberharassment”).

289. OFF. ON VIOLENCE AGAINST WOMEN, *supra* note 110, at 7.



“[i]n order to protect victims of stalking and bring stalking perpetrators to justice, legislatures must continue to strengthen stalking laws and address the technological realities of our time.”<sup>290</sup>

### C. “Model” State Anti-Stalking Laws

Because California was the trailblazer in passing anti-stalking legislation in 1990,<sup>291</sup> it was obviously a “model” state at that time. Today, California is still recognized as having “among the toughest and most comprehensive” anti-stalking laws in the United States.<sup>292</sup> Although stalking is a crime in all fifty states,

[l]ess than 1/3 of states classify stalking as a felony upon first offense. More than 1/2 of states classify stalking as a felony upon second or subsequent offense or when the crime involves aggravating factors . . . [which] may include: possession of a deadly weapon, violation of a court order or condition of probation/parole, victim under 16 years, or same victim as prior occasions.<sup>293</sup>

In contrast to Maryland where all stalking crimes are classified as misdemeanors,<sup>294</sup> states such as Massachusetts, Rhode Island, and Vermont classify all stalking crimes as felonies.<sup>295</sup> Therefore, these three states’ anti-stalking statutes could be “models” for other states to follow solely on this basis—to raise the bar by categorizing all stalking offenses as felonies, even first offenses.

In addition, Alabama has one of the best anti-stalking statutes in effect as of 2014, even though it classifies stalking as a misdemeanor. First, Alabama’s stalking law is divided into four separate subparts for stalking (e.g., stalking in the first degree, stalking in the second degree, aggravated stalking in the first degree, and aggravated stalking in the second degree),<sup>296</sup> which provides for an easier understanding of the law. Various other states put all crimes of stalking within a single statute.<sup>297</sup> Theoretically, this should make

290. *Id.*

291. *California Stalking Laws, Penal Code 646.9 PC*, *supra* note 185.

292. *Id.*; see CAL. PENAL CODE § 646.9 (West 2015).

293. *Stalking Fact Sheet*, *supra* note 125; see *supra* notes 185–98 (listing all state anti-stalking statutes).

294. MD. CODE ANN., CRIM. LAW § 3-802 (West 2015).

295. MASS. GEN. LAWS ANN. ch. 265, § 43(a) (West 2015); R.I. GEN. LAWS ANN. § 11-59-2 (West 2015); VT. STAT. ANN. tit. 13, § 1062; see *supra* note 191 (listing all state statutes that classify stalking as a felony).

296. ALA. CODE § 13A-6-90 (2015) (stalking in the first degree); § 13A-6-90.1 (2015) (stalking in the second degree); § 13A-6-91 (2015) (aggravated stalking in the first degree); § 13A-6-91.1 (2015) (aggravated stalking in the second degree).

297. See *supra* note 180 (listing thirty-one states that do not subdivide their anti-stalking statutes into categories).



an anti-stalking law less complicated because all of the information related to stalking in that state is located within one statute. Some of these states' anti-stalking statutes are difficult to understand, however. Moreover, Alabama has a stringent penalty for stalking. Out of the four subparts for stalking in the state, three are classified as felonies.<sup>298</sup> In fact, Alabama provides some of the highest penalties for stalking. Stalking in the second degree is a class B misdemeanor.<sup>299</sup> Aggravated stalking in the first degree is a class B felony,<sup>300</sup> however, and stalking in the first degree as well as aggravated stalking in the second degree each carries a penalty of a class C felony.<sup>301</sup>

There are also other "model" states that have enacted civil stalking laws over the years, which provide stalking victims with an additional option: the right to file civil lawsuits for monetary damages against their stalkers.<sup>302</sup> These states include Arkansas, California, Kentucky, Michigan, Nebraska, Oregon, Rhode Island, South Dakota, Tennessee, Texas, Virginia, Washington, and Wyoming.<sup>303</sup>

## CONCLUSION

Since 1995, the Office on Violence Against Women, through implementation of key provisions of the Violence Against Women Act, has provided substantial federal resources for police, prosecutors, prevention programs, and victim service initiatives in order to combat the crime of stalking.<sup>304</sup> Many states have taken advantage of these resources.<sup>305</sup> Overall, anti-stalking laws are effective on their face.

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298. § 13A-6-90 (stalking in the first degree); § 13A-6-91 (aggravated stalking in the first degree); § 13A-91.1 (aggravated stalking in the second degree).

299. § 13A-6-90.1.

300. § 13A-6-91.

301. § 13A-6-90; § 13A-6-91.1.

302. Jennifer St. Clair, *Stalking Victims Can Seek Justice in Civil Court*, THE SOURCE (Stalking Res. Ctr.), Fall 2004, at 1, 6, <http://www.victimsofcrime.org/docs/src/source-fall-2004.pdf> [<http://perma.cc/WN7V-NWYL>]; see *Civil Stalking Laws by State*, STALKING RES. CTR., <http://www.victimsofcrime.org/our-programs/stalking-resource-center/stalking-laws/civil-stalking-laws-by-state> [<http://perma.cc/Z29P-TWLL>] (last updated Oct. 2012) (listing states with civil suit provisions).

303. *Civil Stalking Laws by State*, *supra* note 302.

304. See OFF. ON VIOLENCE AGAINST WOMEN, *supra* note 110, at 7. The office has "awarded over \$5 billion in grants and cooperative agreements and launched a multifaceted approach to implementing VAWA" and has "forg[ed] state, local, and tribal partnerships among police, prosecutors, victim advocates, health care providers, and others." *Id.*

305. See *id.* For example, in 2010, various grantees (1) trained "professionals (e.g., attorneys, court personnel, advocacy organization personnel, law enforcement, mental health professionals, prosecutors) on stalking issues, focusing on stalking statutes and codes, dynamics, and services"; (2) provided stalking awareness education efforts including campus program grantees; (3) used grant funds for law enforcement activities, including investigations of stalking related cases and subsequent arrests; and (4) used grant funding



However, although there are criminal anti-stalking laws in every U.S. state as well as the federal interstate anti-stalking statute,<sup>306</sup> intervention programs, prevention efforts, and law enforcement practices must continue to demonstrate a strong commitment to enforcement of anti-stalking laws. In fact, in order to make anti-stalking laws the most effective, there should be better identification of stalking offenses as well as increases in arrests, prosecutions, convictions, and sanctions imposed upon stalkers to exhibit that stalkers will be held accountable for their conduct.<sup>307</sup>

The Coordinated Approach to Preventing Stalking (CAPS) mentioned in this Article is one positive approach that can be duplicated across the country.<sup>308</sup> It shows what can be achieved when (1) police officers are properly “trained to identify stalking behavior, understand the criminal stalking statute, obtain and preserve evidence and plan safety with victims”; (2) district attorneys’ offices are diligent about prosecuting stalking behavior; and (3) conscious efforts are made by the legal system to help stalking victims “get necessary services and enhance their safety.”<sup>309</sup>

The above examples related to the Office on Violence Against Women grant awards as well as Staten Island’s expanded CAPS program are just a few examples of current interventions, prevention efforts, and law enforcement practices that are being successfully utilized in different jurisdictions in our country to better serve as well as protect stalking victims. The Stalking Resource Center has also made pertinent information readily available regarding other successful programs throughout the United States, and key local and state stakeholders can consider implementing such programs in their own jurisdictions in order to combat the problem of stalking.<sup>310</sup>

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for prosecuting stalking-related cases, which led to a 50% conviction rate in all stalking ordinance cases, a 54% conviction rate in all misdemeanor stalking cases, and an 81% conviction rate in all felony stalking cases. *Id.* at 15–18.

306. CATALANO, *supra* note 125, at 1.

307. See ANDREW KLEIN ET AL., NCJ 228354, A STATEWIDE STUDY OF STALKING AND ITS CRIMINAL JUSTICE RESPONSE 1 (2009), <https://www.ncjrs.gov/pdffiles1/nij/grants/228354.pdf> [<http://perma.cc/3UET-VRMJ>] (“Despite the enactment of anti-stalking laws in every state, relatively few stalkers are cited or arrested by law enforcement; even fewer are prosecuted.”).

308. See *supra* text accompanying notes 276–82.

309. Donnelly, *supra* note 276.

310. *For Practitioners*, STALKING RES. CTR., <http://www.victimsofcrime.org/our-programs/stalking-resource-center/resources/for-practitioners> [<http://perma.cc/U28T-D68W>]. The “Practitioner Perspectives” series is a key informational resource on the website that provides insight on successful efforts that have been working in various jurisdictions throughout the country to combat stalking. The website also provides links to educational materials and resources for victims, victim services providers, criminal justice professionals including law enforcement and prosecutors, as well as other community stakeholders. *Id.*



Additionally, stalkers should undergo a professional mental health evaluation. Some state anti-stalking statutes specifically address this issue.<sup>311</sup> Considering the mindset of most stalkers, however, professional counseling should be mandated.<sup>312</sup> It serves no purpose if a stalker simply serves jail time or prison time, but does not deal with his or her underlying psychological issues at the same time.

Although it has now been thirty years since United States Surgeon General C. Everett Koop in 1985 “identifie[d] domestic violence as a public health issue that cannot be dealt [with] by the police alone,”<sup>313</sup> stalking is a national, public health issue that cannot be dealt with by the legal system alone. Research shows that 30% of female stalking victims and 20% of male stalking victims seek some form of psychological counseling, and approximately 25% of stalking victims consider suicide due to being stalked.<sup>314</sup> Also, “[o]ne expert estimates that as many as 70% of victims suffer from a form of post-traumatic stress disorder marked by chronic anxiety, depression, and sleep disturbances.”<sup>315</sup>

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311. See, e.g., LA. REV. STAT. ANN. 14:40.2(B)(1)(a) (2014) (amended 2015) (“[All convicted stalkers] shall undergo a psychiatric evaluation. Imposition of the sentence shall not be suspended unless the offender is placed on probation and participates in a court-approved counseling which could include but shall not be limited to anger management, abusive behavior intervention groups, or any other type of counseling deemed appropriate by the courts.”); MINN. STAT. ANN. § 609.749(6)(a) (West 2015) (requiring the court to order any stalker convicted of a felony stalking offense to submit to “an independent professional mental health assessment of the offender’s need for mental health treatment,” unless an adequate assessment was done prior to the conviction). Georgia, Michigan, Mississippi, New Mexico, Tennessee, and West Virginia mention some form of professional counseling (e.g., psychological or psychiatric counseling at the stalker’s expense) in their respective anti-stalking statutes. GA CODE ANN. § 16-5-90(d) (West 2015); MICH. COMP. LAWS ANN. § 750.411h(3)(c) (West 2015); MISS. CODE ANN. § 97-3-107(4) (West 2015); N.M. STAT. ANN. § 30-3A-3(D) (West 2015); TENN. CODE ANN. § 39-17-315(g)(1) (West 2015); W. VA. CODE ANN. § 61-2-9a(h) (West 2015).

312. See Gina Vergel, *Psychologist Seeks to Develop Treatment Program for Stalkers*, INSIDE FORDHAM ONLINE (Fordham Univ.), Jan. 20, 2009, [http://legacy.fordham.edu/campus\\_resources/enewsroom/inside\\_fordham/january\\_20\\_2009/in\\_focus\\_faculty\\_and/psychologist\\_seeks\\_t\\_33203.asp](http://legacy.fordham.edu/campus_resources/enewsroom/inside_fordham/january_20_2009/in_focus_faculty_and/psychologist_seeks_t_33203.asp) [<http://perma.cc/8DJ6-VFPV>]; see also Robert T. Muller, *In the Mind of a Stalker*, PSYCHOLOGY TODAY (June 22, 2013), <https://www.psychologytoday.com/blog/talking-about-trauma/201306/in-the-mind-stalker> [<http://perma.cc/DFN9-8NCA>] (“[R]esearch suggests that professionals should focus not on the stalkers as criminals but as vulnerable, distressed individuals whose behaviors reflect, at least in part, the influence of a serious underlying mental disorder. The most important step in the management of stalkers is to see them as individuals in need of psychological help.”).

313. *The History of the Violence Against Women Act*, *supra* note 17.

314. Merschman, *supra* note 236, at 265. Moreover, stalking causes victims to suffer great psychological and social consequences, even if no actual violence occurs. Stalking can cause victims to suffer acute emotional distress and can seriously disrupt their lives. Some victims lose their jobs when they are stalked at work, and others are forced to change their appearance, move to a different city or state, and maintain anonymity.

*Id.* (footnotes omitted).

315. *Id.*



Part of the problem with current anti-stalking laws is that although similar elements (e.g., intent, fear, and threats) are included in almost every anti-stalking law, the language and standards adopted by states vary greatly.<sup>316</sup> Therefore, what is considered stalking in one state may be entirely legal in another state.<sup>317</sup> Such legal elements define what prosecutors must prove to hold stalkers accountable in addition to delineating what stalking victims must suffer before the criminal justice system is able to intervene.<sup>318</sup>

It requires the collective efforts of all citizens to combat and reduce the prevalence of stalking in the United States. As noted by the Office on Violence Against Women, “[s]ince 1994, we have made tremendous strides in enhancing the criminal justice system’s response to stalking. Yet more is left to be done.”<sup>319</sup> With the Centers for Disease Control and Prevention recently reporting that 7.5 million adults are stalked in the United States every year,<sup>320</sup> these statistics related to the prevalence of stalking are “staggering and indicate that stalking remains a serious issue for every community across the United States.”<sup>321</sup> These astonishing statistics also “demonstrat[e] that working to raise awareness about the realities of stalking is as critical as ever.”<sup>322</sup> Moreover,

[The] state’s interest in criminalizing stalking behavior . . . is compelling . . . . Providing protection from stalking conduct is at the heart of the state’s social contract with its citizens, who should be able to go about their daily business free of the concern that they may be the targets of systematic surveillance by predators who wish them ill. The freedom to go about one’s daily business is hollow, indeed, if one’s peace of mind is being destroyed, and safety endangered, by the threatening presence of an unwanted pursuer.<sup>323</sup>

Therefore, “legislators and other policy makers [must] [] remain vigilant in their efforts to address the crime of stalking.”<sup>324</sup> In sum, ensuring offender accountability as well as a victim’s safety requires a continuing commitment by both legislators and policy makers (1) to

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316. NAT’L CTR. FOR VICTIMS OF CRIME, *supra* note 173, at 19.

317. *Id.*

318. *Id.*

319. *Commemorating a Decade of Progress*, *supra* note 11.

320. *Welcome*, *supra* note 5.

321. *Commemorating a Decade of Progress*, *supra* note 11.

322. *Welcome*, *supra* note 5.

323. NAT’L CTR. FOR VICTIMS OF CRIME, *supra* note 173, at 41 (alteration in original) (footnote omitted) (citing *State v. Culmo*, 642 A.2d 90, 101–02 (Conn. Super. Ct. 1993)).

324. *Id.* at 64.



review and revise anti-stalking laws as needed; (2) to monitor law enforcement officers, prosecutors, judges, and other criminal justice professionals to ensure that anti-stalking laws are enforced to the fullest extent of the law; and (3) to raise public awareness about the crime of stalking as well as the services that are available to help stalking victims.<sup>325</sup> Local, state, and federal responses to the stalking epidemic as well as research on this problem must continue. Additionally, with the numerous resources available from the Stalking Resource Center as well as with increased public awareness about stalking, American citizens can become better equipped to combat stalking in their respective communities because no one is immune from the possibility of having to deal with stalking at some point in their lifetime.

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325. *Id.*



