St. John's Law Review

Volume 67
Number 2 *Volume 67, Spring 1993, Number 2*

Article 4

April 2012

Stopping Stalkers: A Critical Examination of Anti-Stalking Statutes

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STOPPING STALKERS: A CRITICAL EXAMINATION OF ANTI-STALKING STATUTES

For the last few months of her life, Regina Butkowski's days were filled with fear.[1] An acquaintance from a health club, Pernell Jefferson, had become obsessed with her. Jefferson repeatedly called, threatening to kill her if she did not date him.[2] At one point she was abducted, but then released.[3] Finally, Jefferson kidnapped Regina, shot her in the head, and abandoned her dead body in a river bed, after dousing it with gasoline and setting it on fire.[4]

For Regina Butkowski, and thousands like her,[5] the justice system in America has been wholly inadequate in protecting victims' rights to life and privacy.[6] In too many cases, law enforcement agencies and the judicial system have lacked legal mechanisms for stopping potential wrongdoers before they cause serious harm.[7] However, in response to increased media attention and public awareness of what is commonly referred to as "stalking,"[8] lawmakers in thirty-nine states[9] have recently enacted legislation

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[1] *See* John W. Anderson, *Virginia Targets Stalkers: Bills Would Outlaw Repeated, Fear-Inducing Harassment*, WASH. POST, Feb. 10, 1992, at D1.

[2] *See id.*

[3] *See id.*

[4] *Id.* Ms. Butkowski's body was not found for eight months. *Id.*

[5] *See infra* notes 19-22 and accompanying text (stalking occurs with alarming frequency).

[6] *See* Mimi Hall, *States Take Aim at Stopping Stalkers*, USA TODAY, Feb. 24, 1992, at 3A (reporting that restraining orders generally fail in deterring stalkers); Constance L. Hays, *If That Man Is Following Her, Connecticut Is Going to Follow Him*, N.Y. TIMES, June 5, 1992, at B1 (stating that stalker terrorized victim, yet did nothing illegal).

[7] *See infra* note 55 and accompanying text (describing failed attempts by stalking victims to secure legal assistance).

[8] *See* Elizabeth Ross, *Problem of Men Stalking Women Spurs New Laws*, CHRISTIAN SCI. MONITOR, June 11, 1992, Section: The U.S., at 6 (asserting that stalking laws are in response to growing awareness of domestic abuse). *But see* Cheryl Laird, *Stalking; Laws Confront Obsession That Turns Fear into Terror and Brings Nightmares to Life*, HOUSTON CHRONICLE, May 17, 1992, Lifestyle Section, at 1 (noting that some experts claim growing interest in stalking is due to increase in actual incidents, while others claim society is merely discussing it more).

[9] *See infra* Table 1 (identifying each state stalking statute and its constituent elements); *see also* 1992 Ala. Acts 92-675; 1993 Ark. Act 379; CAL. PENAL CODE § 646.9 (West 1992); COLO. REV. STAT. ANN. § 18-9-111 (West 1992); 1992 Conn. Acts 92-237 (Reg. Sess.);

aimed at breaking this pattern of violence.[10]

The birth of these new laws has not been without controversy.[11] Anti-stalking statutes play host to a litany of competing rights and policies.[12] Questions as to the scope and nature of the problem, the proper response, and the necessity of such laws are issues that cannot easily be resolved. In order to effectively protect victims, stalking laws must be broad in scope and have substantial penalties.[13] On the other hand, such laws must also be sufficiently narrow to pass constitutional muster.[14] The amorphous nature of the problem, however, creates difficulty in reaching an appropriate

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68 Del. Laws 250 (1992); 1992 Fla. Laws ch. 92-208; 1993 Ga. Laws 560; 1992 Haw. Sess. Laws 292; IDAHO CODE § 18-7905 (1992); 1992 Ill. Laws 871 (West); 1993 Ind. Legis. Serv. 97 (West); 1992 Iowa Legis. Serv. H.F. 2025 (West); 1992 Kan. Sess. Laws ch. 298; 1992 Ky. Rev. Stat. & R. Serv. ch. 443 (Baldwin); 1992 La. Acts 80; 1993 Md. Laws Ch. 206; MASS. ANN. LAWS ch. 265, § 43 (Law. Co-op. 1992); MICH. COMP. LAWS ANN. § 750.411 h & i (West 1993); 1992 Miss. Laws Ch. 532; 1993 Mont. Laws Ch. 292; 1992 Neb. Laws L.B. 1098; 1992 N.J. S.B. 256, 205th Legis., 1st Reg. Sess. (enacted); 1993 N.M. Laws Ch. 86; 1992 N.Y. Laws 345; N.C. GEN. STAT. § 14-277.3 (1992); 1992 Ohio Laws 234; OKLA. STAT. tit. 21, § 1173 (West 1993); 1992 R.I. Pub. Laws ch. 92-201; 1992 S.C. Acts 417; S.D. CODIFIED LAWS ANN. § 22-19A (1992); TENN. CODE ANN. § 39-17-315 (1992); 1993 Tex. Sess. Law Serv. Ch. 10 (Vernon); UTAH CODE ANN. § 76-5-106.5 (1992); VA. CODE ANN. § 18.2-60.3 (Michie 1992); 1992 Wash. Legis. Serv. ch. 186 (West); W. VA. CODE § 61-2-9a (1992); 1992 Wis. A.B. 668, 90th Legis. Sess. (enacted); 1993 Wyo. Sess. Laws Ch. 92.

[10] *See Anti-Stalking Laws Top List of New Legislation*, WASH. POST, June 29, 1992 (asserting that stalking statutes are part of rapidly spreading movement to protect women from obsessed men); *World News Tonight with Peter Jennings* (ABC News television broadcast, Aug. 11, 1992) (stating that stalking laws are "an unprecedented effort," sweeping country, to prevent violence).

[11] *See* Hall, *supra* note 6, at 3A (stalking laws are too vague and could possibly criminalize proper conduct); Hays, *supra* note 6, at B1 (anti-stalking statutes are finding support among victims' rights advocates, but are criticized by civil libertarians); Maria Puente, *Legislators Tackling the Terror of Stalking: But Some Experts Say Measures Are Vague*, USA TODAY, July 21, 1992, at 9A (claiming Florida's statute is too broad, while West Virginia's is too narrow; other laws may be either unconstitutional or so cautious they are ineffective).

[12] *See infra* notes 80-97 and accompanying text (discussing merits and possible drawbacks of stalking statutes).

[13] *See* Puente, *supra* note 11.

[14] *See* Puente, *supra* note 11 ("In their haste to respond, the states may adopt something so broad as to be unconstitutional, or so narrow as to be virtually meaningless . . . ." (quoting United States Senator William Cohen of Maine)); *see also* 138 CONG. REC. S9527 (daily ed. July 1, 1992) (statement of Sen. Cohen) (pending federal legislation addressing stalking). Senator Cohen is the sponsor of a bill calling for the Attorney General and the Director of the National Institute of Justice to: first, evaluate anti-stalking legislation and proposed anti-stalking legislation in the states; second, develop model anti-stalking legislation that is constitutional and enforceable; third, prepare and disseminate their findings to state authorities; and fourth, within a year of enactment of the act, report to Congress the findings and the need for further action by the federal government. *Id.* The bill is currently before the Senate Judiciary Committee. 138 CONG. REC. D1226 (1992).

balance.[15]

This Note will focus on the policy underpinnings, constitutionality, and effectiveness of the stalking statutes and how to best balance these concerns. Part One reviews the policy considerations underlying stalking legislation. Part Two discusses the constitutionality of these statutes, while Part Three analyzes their relative effectiveness. Finally, Part Four of this Note will conclude with a model statute that draws from the best features of the various anti-stalking laws.

I. QUESTIONS OF POLICY

A variety of policy issues surround the stalking enigma. Issues such as defining the proscribed conduct, deciding which persons should be protected, why previous remedies have been ineffective, and whether stalking legislation will be any more effective must be resolved if such legislation is to have the desired result.

A. *Defining the Problem*

Although stalking has received widespread media attention,[16] no comprehensive study of the phenomenon has yet been completed, and, consequently, no one knows the full dimensions of the

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[15] *See infra* notes 16-39 and accompanying text (discussing uncertainty as to extent of stalking and what conduct should be defined as stalking).

[16] Stalking has been featured on several television programs. *See, e.g.*, *48 Hours* (CBS News television broadcast, Mar. 4, 1992); *Larry King Live* (CNN television broadcast, Mar. 2, 1992); *Nightline* (ABC News television broadcast, Sept. 3, 1992). The topic has also been widely covered in print. *See, e.g.*, Melinda Beck et al., *Murderous Obsession*, NEWSWEEK, July 13, 1992, at 60; Puente, *supra* note 11; Mike Tharp, *In the Mind of a Stalker*, U.S. NEWS & WORLD REP., Feb. 17, 1992, at 28. There have also been numerous articles in regional and local newspapers on the subject of stalking. In the first six months of 1992 the Boston Globe ran six stories that described stalking incidents. *See, e.g.*, John Ellement, *Police Arrest Boston Man, 18, for Violating State Stalking Law*, BOSTON GLOBE, May 28, 1992, Metro/Region, at 75; Patricia Nealon, *Terrors of Stalking Relived; Women Accuse Ex-boyfriends*, BOSTON GLOBE, June 7, 1992, Metro/Region, at 1. The Houston Chronicle ran two during the same time period, *see* Rene Lynch, *"Stalking Law" Adds Punishment Muscle in Harassment Cases*, HOUS. CHRON., Jan. 5, 1992, at 2; Kristin N. Sullivan, *Woman's Case Illustrates Need for State Stalking Law, Some Say*, HOUS. CHRON., Apr. 19, 1992, at 26, while the Los Angeles Times ran eight. *See, e.g.*, Josh Meyer, *Man Held in Stalking of Pop Singer Janet Jackson*, L.A. TIMES, June 25, 1992, at B3; Janet Rae-Dupree, *Man Sentenced to 3 Years Under 'Stalking' Law*, L.A. TIMES, Jan. 17, 1992, at B5. Stalking has also been a convenient vehicle for Hollywood. Recent motion pictures such as CAPE FEAR, FATAL ATTRACTION, and SLEEPING WITH THE ENEMY have all centered around a stalking. *See* Beck et al., *supra*.

problem.[17] Some projections have, however, been made as to the prevalence of stalking in America. A leading forensic psychiatrist and expert on behavioral sciences, Dr. Parker Dietz,[18] conservatively estimates that there are 200,000 stalkers on the streets today[19] and that one in every twenty women in the United States will be stalked at some point in her life.[20] In addition, United Press International reports that an estimated 4,600 cases were reported in 1991.[21] Notwithstanding the paucity of significant studies, stalking is widely perceived to be a common problem.[22]

Stalkers, as a group, have been found to manifest a variety of

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[17] *See* Beck et al., *supra* note 16 ("[N]o one can say how widespread a problem stalking is—mainly because it has never been a crime category before."); John W. Fountain & Joseph Kirby, *Stalking Victims Find Laws Are Little Help*, CHI. TRIB., Aug. 5, 1992, at D1 ("[T]here are apparently no statistics on the number of women who become stalking victims."); Hall, *supra* note 6 ("Although no statistics track how many people are stalked, victims' groups say enormous numbers of people, mostly women, are harassed.").

[18] Dr. Dietz has written extensively on stalking and stalking-related topics. *See, e.g.*, Parker E. Dietz et al., *Threatening and Otherwise Inappropriate Letters to Hollywood Celebrities*, J. OF FORENSIC SCI., Jan. 1991, at 185 [hereinafter *Letters to Celebrities*]; Parker E. Dietz et al., *Threatening and Otherwise Inappropriate Letters to Members of the United States Congress*, J. OF FORENSIC SCI., Sept. 1991, at 1445 [hereinafter *Letters to Members of Congress*]; *see also* Scott Hays, *Stalking Fame; Psychology: A Seven-Year Study of Letters from Obsessed Fans Gives a Newport Beach Expert Some Clues into Troubled Minds*, L.A. TIMES, Oct. 17, 1990, at E1 (stating that purpose of Dietz's study was to identify characteristics that could predict "approach"). As of this writing, Dr. Dietz has completed the only reliable studies of behavior relating to stalking in two widely-cited works, *Letters to Celebrities* and *Letters to Members of Congress*. In both, letters to individual members of each group were analyzed primarily to determine the risks that the writer posed to the recipient and to identify the indicators that predict approach. *See generally* Judith Colp, *Hinckley to Dahmer, Celebrity Expert Jets from Case to Famous Case*, WASH. TIMES, Mar. 4, 1992, at E2 (stating that Dr. Dietz has also testified as psychiatric expert in several widely publicized cases including trials of John Hinckley, Jr., Jeffrey Dahmer, and socialite Betty Broderick).

[19] Telephone Interview with Parker E. Dietz (Oct. 6, 1992) [hereinafter Interview with Dietz]. In a telephone interview with the author, Dr. Dietz explained that the number of stalkers will vary widely according to the definition applied. Dr. Dietz stated that this estimate of 200,000 was based on a definition of stalking as an "unwanted pursuit of a person to whom one is not related . . . , extending over a period of time greater than six months, but not necessarily involving an approach and not necessarily involving malicious intent."

[20] *See* Puente, *supra* note 11 (quoting Dr. Dietz).

[21] *Stalker*, UPI, July 13, 1992, *available in* LEXIS, Nexis Library, UPI File.

[22] *See generally* Hall, *supra* note 6 ("[E]normous numbers of people, mostly women, are harassed."); Sue Horton, *Secret Admirer: Stalking as a Hate Crime*, L.A. WKLY., Sept. 18-24, 1992 (stalking occurs frequently, and most commonly to ordinary, non-celebrity members of society); *Ill. Senator Sponsors "Stalker" Bill*, CRIME VICTIMS DIG., Nov. 1991, at 8 ("Police and women's groups say it's a common problem: a woman is fearful because an angry ex-husband or boyfriend is shadowing her at home or at work, sometimes threatening to kill her."); Puente, *supra* note 11 ("It's an incredibly prevalent problem.").

psychological disorders including erotomania,[23] schizophrenia,[24] and others.[25] There is, however, no discernible pattern of stalking or of the stalker "type."[26] Stalking also occurs in a wide variety of contexts,[27] from situations in which the victim and stalker formerly had an intimate, personal relationship, to cases in which the stalker was a complete stranger to the victim. The common thread is that the offenders, in most cases, use similar techniques to terrorize their prey.[28] Consequently, stalking can be described as a type of anti-social behavior, occurring in several contexts and perpetrated by individuals with a variety of behavioral types featuring some similarities, but not otherwise following a common pattern.[29]

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[23] *See* Puente, *supra* note 11 (citing study by Los Angeles Police Department's Threat Management Unit); *see also* Stuart Cosgrove, *Erotomania*, NEW STATESMAN & SOC'Y, July 27, 1990, at 31 (erotomaniacal stalking of celebrities is by-product of media exposure). Erotomania, or De Clerembaut's Syndrome, was first studied in G.G. De Clerembaut's seminal work, *Les Psychoses Passionelles* (1942). According to De Clerembaut, erotomania victims share five basic characteristics: "[a] difficult and psychologically troubled domestic environment . . . a domineering parent; a transference of love and devotional interest to a person who is unobtainable; a history of dramatic demonstrations of love, including threats of suicide, dangerous and very public stunts and sometimes physical attacks . . . " and, in extreme conditions, an inversion of rejection into gestures of love. *See* Cosgrove, *supra*.

[24] *See Letters to Celebrities*, *supra* note 18 (stating that high percentage of subjects could be diagnosed as schizophrenic); Interview with Dietz, *supra* note 19 (same). In a telephone interview with the author, Dr. Dietz stated that, based on his studies of inappropriate letters, it was estimated that approximately 50% of the subjects were schizophrenic. Dr. Dietz also pointed out that, whereas celebrity stalkers generally suffer from some serious mental illness, stalkers of private citizens usually exhibit lesser personality disorders. In brief, Dr. Dietz believed that it is "sicker to persist in the belief that a star loves you than [to think] that an ex-spouse still loves you." *Id.*

[25] *See* Tharp, *supra* note 16 ("Stalkers range from coldblooded killers to lovesick teens, huddled beneath an umbrella of psychological syndromes: paranoia, erotomania, manic depression and schizophrenia."); John C. Lane, *Threat Management Fills Void in Police Services*, THE POLICE CHIEF, August 1992, at 27 (describing stalkers of celebrities as love-obsessed, obsessive-compulsive, erotomaniacal, and schizophrenic).

[26] *See* Tharp, *supra* note 16 (citing one study that identified indicators, but could discern no specific type).

[27] *See* Puente, *supra* note 11. The Los Angeles Police Department's Threat Management Unit has categorized the victims of stalking into four distinct groups: 38% of stalking victims are ordinary citizens; 32% are lesser-known entertainment figures; 17% are highly recognizable celebrities; and 13% are former employers or other professionals. It should be pointed out, however, that these statistics are based on data from the Los Angeles area and that, because of a high concentration of celebrities and entertainment figures, they may not reflect nation-wide figures.

[28] *See, e.g.*, Horton, *supra* note 22; Puente, *supra* note 11; Tharp, *supra* note 16.

[29] *See* Tharp, *supra* note 16. The research of Gavin de Becker, an expert in anti-stalking security, has identified several characteristics common to stalkers. Culled from letters and behavioral records, these characteristics include "references to obsessive love, weapons, death, suicide, religious themes and a common destiny with the [victim]." *Id.* at xx. Never-

Designing one law to protect all victims, cover all offenders, yet still remain constitutional[30] is an ambitious undertaking.

Another aspect of the definitional problem is that anti-stalking legislation criminalizes conduct that has, until now, never been expressly proscribed.[31] The common law, with its emphasis on individual liberty and autonomy,[32] provides no useful paradigm for deciding the contours of the crime. Stalking, though it has long been observed,[33] has only recently been perceived as sufficiently serious to warrant proscription.[34] The law is now seeking to fill this gap, but the task is complicated by the difficulty in defining the problem.[35]

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theless, there is no stalker profile. *Id.* Many stalkers share certain behavioral traits: an interest in the media, an inability to develop meaningful relationships, and a desire for recognition and attention. *Id.*

[30] *Cf.* 138 CONG. REC. S9527 (daily ed. July 1, 1992) (statements of Sen. Cohen) (describing stalking of former intimates, complete strangers, and celebrities, and expressing concern about whether current stalking legislation is constitutional).

[31] *See, e.g.*, Hays, *supra* note 6 (stating that stalking victim in Connecticut had no legal recourse to stop her pursuer); Laird, *supra* note 8 (Texas; same); *see also* Andrea King, *Obsessed Fans and Stalkers: How the System Fought Back*, HOLLYWOOD REP., Jan. 22, 1991 (explaining that prior to passage of anti-stalking law in 1990, California used variety of laws in stop-gap approach to combating stalking).

[32] *Cf.* Caitlin E. Borgmann, *Battered Women's Substantive Due Process Claims: Can Orders of Protection Deflect Deshaney?*, 65 N.Y.U. L. REV. 1280, 1320-22 (1990) (positing that framework of traditional jurisprudence, based upon idea that state government is potential threat to individualism, is irrelevant in context of victimization, which requires greater state involvement and protection).

[33] *See* Horton, *supra* note 22 (case of 53-year-old French woman who became convinced she was the inamorata of King George V of England and persisted by waiting outside Buckingham Palace for signs of King's affection) (citing De Clerembaut's *Les Psychoses Passionelles*).

[34] *See* Rosalind Resnick, *States Enact 'Stalking' Laws; California Takes Lead*, NAT'L L.J., May 11, 1992, at 3. Deborah P. Kelly, the chair of the American Bar Association's Committee on Victims, stated that "within the last decade, legislators' attention to the plight of crime victims has been heightened." *Id.* "Before, there wasn't anything illegal about stalking and yet people were being murdered." *Id.*

[35] *Cf.* M. Sean Royall, *Constitutionally Regulating Telephone Harassment; An exercise in Statutory Precision*, 56 U. CHI. L. REV. 1403, 1405 (1989) (explaining difficulties inherent in drafting telephone harassment statutes).

> A legislator preparing to draft a law regulating expression naturally looks to the courts for guidance, seeking to avoid categories of speech already determined by the courts to be constitutionally-protected. He knows that a law capable of intruding on one of those categories may be held overbroad. Yet in the telephonic expression context, no court has defined the parameters of such a category; consequently, the legislator does not know the limits placed on his proscriptive powers by the First Amendment. He must beware of crossing a border whose existence the courts have posited, but whose location they have not yet identified.

Id. It is suggested that similar constraints will restrict stalking legislation.

Moreover, the conduct associated with the crime—the act of following another person—is often indistinguishable from perfectly legal conduct.[36] Proscription of such conduct validly raises concerns about misapplication of the law or abusive and discriminatory enforcement.[37] One way of minimizing such abuses is to nar-

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An enlightening example of the problems associated with drafting broad and inclusive statutes to fill an indeterminate gap in the law is MODEL PENAL CODE § 250.4 (Proposed Official Draft 1962) concerning harassment:

> § 250.4. Harassment. A person commits a petty misdemeanor if, with purpose to harass another, he: (1) makes a telephone call without purpose of legitimate communication; or (2) insults, taunts or challenges another in a manner likely to provoke violent or disorderly response; or (3) makes repeated communications anonymously or at extremely inconvenient hours, or in offensively coarse language; or (4) subjects another to an offensive touching; or (5) engages in any other course of alarming conduct serving no legitimate purpose of the actor.
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> Comment
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> 1. *Background.* Section 250.4 deals with a variety of behavior that may harass another but that otherwise does not constitute a criminal offense. The section declares that one who engages in designated misconduct with purpose to harass another is guilty of a petty misdemeanor. . . . 5. *Subsection (5); Other Harassment.* Subsection (5) reaches one who, with purpose to harass another, "engages in any other course of alarming conduct serving no legitimate purpose of the actor." This provision acts as a hedge against the ingenuity of human beings in finding ways to bedevil their fellows. . . . In line with its purpose to proscribe forms of harassment that cannot be anticipated and precisely stated in advance, Subsection (5) is worded in a designedly general way.

Id.

As is evident, the statute, as a whole, and subsection (5) in particular, is remarkably broad. This statute ambitiously undertook to proscribe a wide variety of anti-social behavior that, with possible exceptions of subsections (2) and (4), had not previously been considered illegal, but merely socially distasteful. As opposed to the rest of the model statute, subsection (5), not surprisingly, was not accepted by the states as favorably as other sections of the statute. MODEL PENAL CODE § 250.4 cmt. 5 (asserting that although other sections of model code received "overwhelming support," section has not). It is submitted that the drafters' uncertainty with respect to the specific conduct to be barred, and the resultant general and vague wording, may have represented a contributing factor in the states' failure to enact the model in its entirety. *See id.*

[36] *Cf.* Pamela Sirking, *The Evanescent Actus Reus Requirement: California Penal Code § 647(D)—Criminal Liability for "Loitering with Intent . . ." Is Punishment for Merely Thinking Certain Thoughts While Loitering Constitutional?*, 19 SW. U. L. REV. 165 (1990) (stating that loitering statutes fail to specify prohibited conduct; prosecuting on presence of concurring mens rea, therefore, impermissibly creates thought crime). Sirking's observation seems to apply to stalking statutes. If the prohibited conduct is identical to legal behavior, the determinate factor of the crime is the mental state of the criminal, and this, it is suggested, creates a "thought" crime.

[37] *See infra* notes 93-94 and accompanying text (criticizing stalking laws as highly susceptible to abuse). It is submitted that stalking and loitering statutes are similar in this regard. *See generally* Jordan Berns, Comment, *Is There Something Suspicious About the Constitutionality of Loitering Laws?*, 50 OHIO ST. L.J. 717 (1989) (stating that Constitution mandates that courts limit police discretion in enforcing loitering laws); Kevin G. Lauri,

row the scope of the statute.[38] But narrowing the scope will, in turn, exclude offenders.[39] A careful balance must thus be achieved: stalking statutes must be defined as broadly as possible to maximize victim protection, but narrowly enough to prevent serious abuse.

B. *Primary Focus—Curbing Domestic Violence*

Stalking is largely defined by the relationship between the victim and the offender. Stalking victims can be separated into four general categories:[40] victims who are celebrities,[41] victims who do not know their stalkers,[42] victims who are co-workers or acquaintances of their stalkers,[43] and victims who are former spouses or

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Comment, *Loitering Permitted: A Valid Weapon Is Taken from the Arsenal that Combats Crime in Transportation Facilities*, 55 BROOK. L. REV. 1033 (1989) (positing that New York courts were correct in striking down state's loitering statute because it granted police "unfettered discretion" in their response).

[38] *See supra* notes 145-49, 171-74 (various provisions have been employed to narrow scope of stalking statutes).

[39] *See supra* notes 150-51, 171-74 (additional elements in crime have effect of excluding stalkers).

[40] *See infra* notes 41-44 and accompanying text (description of four categories). *But see* Ross, *supra* note 8 (alternate analysis). A Los Angeles city attorney, Alana Bowman, states that most stalking cases fall into one of three categories: domestic violence, work-place harassment, or stalking of a famous person such as a movie star. *Id.* It is submitted that Bowman's analysis omits another significant group, victims who are noncelebrities and are total strangers to their pursuers. *See infra* note 41 and accompanying text (discussing stalking by strangers).

[41] *See* Daniel Goleman, *Dangerous Delusions: When Fans Are a Threat*, N.Y. TIMES, Oct. 31, 1989, at C1. " 'Since 1968 there have been as many injurious attacks on public figures by mentally disordered people who gave some sort of warning as there were in the preceding 175 years.' " *Id.* (quoting Dr. Dietz). Cases of celebrity stalking have recently been the subject of considerable media coverage. *See, e.g., Guns and Roses: The Whole Chilling Truth Behind the Deadly Stalking of Rebecca Schaeffer and Some of Hollywood's Biggest Stars*, L.A. MAG., Feb. 1990 [hereinafter *Guns and Roses*] (describing stalking of Schaeffer, Michael J. Fox, Olivia Newton-John, and others); Fred Leeson, *Inside the Mind of a Star Stalker*, CRIMEBEAT, Apr. 1992, at 21 (chronicling stalking and murder of actress Rebecca Schaeffer); Tharp, *supra* note 16 (same). Numerous celebrities have been the targets of stalkers; Michael J. Fox, Michael Landon, David Letterman, Olivia Newton-John, Cher, Sheena Easton, Justine Bateman, Tiffany, and Johnny Carson are some of the more publicized cases. *Guns and Roses*, *supra*. Actress Theresa Saldana survived a knife attack by a stalker in 1982. Leeson, *supra*. Actress Rebecca Schaeffer was killed by a schizophrenic stalker in 1989. *Id.* In April 1991, a female stalker, armed with a semiautomatic rifle, broke into the home of actress Sharon Gless and then proceeded to keep police at bay for seven hours. *Id.* Gless, who fortunately was not at home at the time, had met the stalker on several occasions. *Id.*

[42] *See, e.g.*, Hays, *supra* note 6 (citing case of 15-year-old stalked by complete stranger).

[43] *See, e.g.*, Beck et al., *supra* note 16 (girl and boyfriend stalked and killed by obsessed

lovers of their stalkers.[44] This last area of stalking—believed to be the largest—is the primary focus of legislative action.[45]

Domestic violence is increasing in America,[46] with an estimated three to four million women battered each year.[47] Domestic beating is the leading cause of injury among American women.[48] One half of all women killed in the United States are killed by their husbands or boyfriends,[49] and as many as ninety percent of them are stalked first.[50]

Recent attention on victims' and women's rights has been one

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acquaintance); Hall, *supra* note 6 (describing stalking by former high school classmate); *supra* notes 1-4 and accompanying text (woman stalked and killed by acquaintance).

[44] *See* Joseph Kirby, *Stalking Law Sends a New Signal*, CHI. TRIB., Aug. 13, 1992, at C1 (citing case of woman stalked by ex-husband); Donald B. Ayers, *Stalking Victims Tell Committee Their Stories*, UPI, Apr. 9, 1992, *available in* LEXIS, Nexis Library, UPI File (citing two cases of husbands stalking estranged wives).

[45] *See Ill. Senator Sponsors "Stalker" Bill*, *supra* note 22, at 9 (stating that proposed stalking statute was in response to several incidents of domestic violence stalking); Ross, *supra* note 8 (stating that antistalking laws were passed in response to growing awareness of domestic abuse as serious crime); *Bill Would Make Stalking a Crime*, UPI, Jan. 24, 1992, *available in* LEXIS, Nexis Library, UPI File (describing stalking bill as "designed mainly to provide protection for women who are stalked by jilted boyfriends or former husbands, behavior that can lead to physical attacks").

[46] *See* Peggy Lowe, *Bracelet Designed to Deter Stalkers of Women*, L.A. TIMES, Sept. 27, 1992, at B6 (stating that increased reports of domestic violence have authorities experimenting with alternate solutions); *Quincy Court vs. Domestic Crime*, BOSTON GLOBE, Oct. 2, 1992, at 18 ("The rising tide of domestic violence has lawmakers scrambling."). *But see* ELIZABETH PLECK, DOMESTIC TYRANNY 3 (1987) (indicating debate over actual cause of increase in reports of domestic violence). "Current statistics on the incidence of family violence show that the number of reports have risen dramatically, but it is difficult to know if this is the result of heightened social awareness or an actual increase in domestic abuse. Historical data are even less reliable." *Id.* at 3.

[47] *See* Nancy K. Sugg & Thomas Inui, *Primary Care Physicians' Response to Domestic Violence*, JAMA, June 17, 1992, at 3157.

> In a nationwide random sample of couples, 28% were found to have experienced violence at some point in their history. Furthermore, 3.8% of women living in couples had experienced severe violence in the year of the study. When extrapolated to the general population, this represents 1.8 million women per year being battered; if divorced or separated women are included, this estimate is 3 to 4 million women per year.

Id.

[48] Teri Randall, *Domestic Violence Intervention Calls for More Than Treating Injuries*, JAMA, Aug. 22, 1990, at 939 (citing E. D. Stark & A. Flitcraft, *Violence Among Intimates: An Epidemiological Review*, *in* HANDBOOK OF FAMILY VIOLENCE 293-318 (V. N. Hasselt et al. eds., 1988)).

[49] *See* Council on Scientific Affairs, American Medical Association, *Violence Against Women*, JAMA, June 17, 1992, at 3184 (over half of women murdered in United States are killed by current or former male partners).

[50] Beck et al., *supra* note 16, at 61 (quoting Ruth Micklem, co-director of Virginians Against Domestic Violence).

of the major factors prompting anti-stalking legislation.[51] Legislative activity focusing on domestic violence is widespread and growing.[52] Anti-stalking laws are seen as a component in the struggle to secure greater protection for women in society.[53]

C. *The Shortcomings of Traditional Remedies*

The primary concern of anti-stalking legislation is to stop threatening and harassing conduct before it escalates into violence.[54] Generally, this is in response to the ineffectiveness of traditional remedies.[55] Civil actions for monetary damages, usually

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[51] *See* Ross, *supra* note 8 (growing awareness of domestic violence has resulted in anti-stalking laws).

[52] *See* S. 3271, 102d Cong., 2d Sess. (1992). This bill, called the Sexual Assault Prevention Act of 1992, includes the following section entitled Domestic Violence and Offenses Against the Family:

> Sec. 208. Anti-stalking Legislation
> (A) findings and declarations.—The congress finds and declares that—
> (1) the criminal act of stalking other persons is a problem of deep concern;
> (2) previously available legal recourses against stalking, such as restraining orders, have proven to be inadequate;
> (3) anti-stalking legislation has been enacted or proposed in several states;
> (4) the constitutionality of state anti-stalking statutes may be challenged by defendants; and
> (5) the congress has an interest in assisting the states in enacting anti-stalking legislation that is effective, constitutional, and enforceable.
> (B) evaluation and report.—The attorney general shall--
> (1) evaluate enacted and proposed anti-stalking legislation in the states;
> (2) develop model anti-stalking legislation that is effective, constitutional, and enforceable;
> (3) prepare and disseminate to state authorities the findings of the evaluation under this subsection and the model anti-stalking legislation; and
> (4) not less than 1 year after the date of enactment of this act, submit a report to the congress containing the findings of the evaluation and the model legislation, and any recommendations the attorney general may have concerning the need for or appropriateness of further action by the federal government.

Id.

[53] *See Anti-Stalking Laws Top List of New Legislation*, WASH. POST, June 6, 1992 ("Laws against 'stalking' take effect in several states this week as part of a rapidly spreading effort to protect women from the terrifying advances of obsessed men."); Helen Dewar, *Senate's New Sensitivity; Message of Anger Spurs Women's Agenda*, WASH. POST, Sept. 24, 1992, at A1 (stating that heightened interest in women's issues have increased number of Senate bills on topics such as stalking and other forms of violence directed at women); Fountain & Kirby, *supra* note 17, at D1 ("In an attempt to offer women more protection, lawmakers across the country have enacted anti-stalking laws.").

[54] *See* Beck et al., *supra* note 16 (stating that new laws attempt to halt pattern of threats and harassment that often precedes violent acts).

[55] *See* Fountain & Kirby, *supra* note 17 (stating ineffectiveness of court orders as rationale for lawmakers to enact stalking legislation); Laird, *supra* note 8 (quoting Texas

based on tort theories, such as invasion of privacy or intentional infliction of emotional distress, are clearly inappropriate in stalking cases.[56] Moreover, in many cases the pecuniary relief granted in a civil court does not deter future offensive conduct[57] and is inadequate to repair the damage.[58] Finally, the usual delay in civil courts precludes such solutions from being effective in arresting violence.[59]

Equitable remedies, such as temporary restraining orders ("TROs"), stay away orders, and permanent injunctions have been the most common[60] and effective forms of preventing harassing behavior,[61] primarily because they are more flexible[62] and expedi-

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judge as stating that restraining orders are cumbersome and state should bear burden of prosecuting stalking); Ross, *supra* note 8 (stating that Pennsylvania stalking bill was in response to murder of woman who had exhausted all legal remedies). *See generally* EVE S. BUZAWA & CARL G. BUZAWA, DOMESTIC VIOLENCE: THE CRIMINAL JUSTICE RESPONSE 119 (1990). "Grau, Fagan, and Wexler (1985) interviewed 270 recipients of TROs. They found that the orders were generally ineffective in either reducing the rate or severity of abuse by serious abusers. Instead, they reported that 60% of the victims studied were abused again regardless of the presence of a restraining order." *Id.*

[56] BUZAWA & BUZAWA, *supra* note 55, at 55 (pecuniary awards are not appropriate in domestic violence contexts); *see* Andrea Robinson, *A Remedial Approach to Harassment*, 70 VA. L. REV. 507, 513 (1984) (monetary awards are clumsy and inappropriate for harassment); *see also* W. PAGE KEETON ET. AL., PROSSER AND KEETON ON THE LAW OF TORTS § 117 (5th ed. 1984). The tort of unreasonable intrusion is part of the invasion of privacy doctrine. It prohibits intrusion upon another's physical solitude or seclusion, and requires something prying in nature that would be offensive or objectionable to a reasonable person. While this does seem appropriate to stalking, it has been deemed inapplicable to invasions on public streets or in public places, where plaintiff has no legal right to be alone. *See, e.g.*, Forster v. Manchester, 189 A.2d 147 (Pa. 1963) (holding that plaintiff could not recover on invasion of privacy or intentional infliction of emotional distress theories because defendant's actions were reasonable).

[57] *See* Kenneth L. Wainstein, Comment, *Judicially Initiated Prosecution: A Means of Preventing Continuing Victimization in the Event of Prosecutorial Inaction*, 76 CAL. L. REV. 727, 735 (1988) ("[T]he assessment of damages will have absolutely no deterrent effect on insolvent criminal offenders."). It is suggested that such a result would also occur if the offender were sufficiently motivated or was indifferent to monetary penalties.

[58] *See* Robinson, *supra* note 56, at 514 (stating that money damages cannot repair dignitary injury or adequately compensate for emotional suffering).

[59] *Cf.* BUZAWA & BUZAWA, *supra* note 55, at 55. "Due to general case overload, most civil actions take an exceptionally long time to hear, often in excess of five years in major urban areas. Hence, they often become irrelevant and are of little assistance to domestic disputants." *Id.*

[60] *Cf.* Fountain & Kirby, *supra* note 17 (stating that court orders are most common legal recourse to domestic violence).

[61] *See* Robinson, *supra* note 56, at 513 (claiming that injunctive litigation is most effective relief where compensatory damages prove unsatisfactory).

[62] *See* BUZAWA & BUZAWA, *supra* note 55, at 113.

> [T]he courts have far wider discretion to fashion injunctive relief, unlike the rela-

tious[63] than tort remedies. In many cases, however, these remedies are considered ineffectual,[64] "cumbersome,"[65] or merely "piece[s] of paper."[66] Law enforcement agencies have limited resources and often can provide only nominal assistance for enforcing such measures.[67] Also, insensitivity towards domestic violence and inadequate discretion on the part of law enforcement officers are well documented and have done much to undermine the effectiveness of provisional remedies.[68]

The procedural hurdles imposed upon victims/plaintiffs pose another obstacle to successful prosecution of civil claims. The pro-

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> tively strict sentencing restraints in criminal cases. Thirty-eight states have expressly given judges the authority to grant "any constitutionally warranted relief that is available" (Finn, 1989). For example, courts often issue the following protective orders in domestic violence cases: Orders to refrain from other physical or psychological abuse or even to restrict any contact with an alleged victim; orders to vacate a domicile within a certain period or to allow the alleged victim the exclusive use of certain personal property, such as a car, even though title to the property is in the name of the restrained party; orders to enter counseling . . . . This list should not, however, be viewed as exhaustive. A court's power to restrain improper conduct is not limited to any particular remedy, but is intended to be applied to the specific situation. The order may be fashioned to prevent circumstances that have previously led to violence.

Id.

[63] *See* BUZAWA & BUZAWA *supra* note 55, at 113. "If the matter is urgent, such as the threat of immediate violence, 37 states have authorized short-term *ex parte* orders. They are usually in effect for no more than 10 days if the order is issued without the alleged offender being present and only the complainant attends." *Id.*

Some states do issue temporary restraining orders for durations of up to 15 days. *See, e.g.*, CAL. CIV. PROC. CODE § 527.6 (West 1992).

[64] *See infra* note 77 (court orders are generally ineffective).

[65] Laird, *supra* note 8. "Technically, victims can apply to civil courts for a restraining order. But state district Judge Ted Poe calls the process too 'cumbersome' to be effective." *Id.*

[66] LENORE E. WALKER, THE BATTERED WOMAN 211 (1979); Horton, *supra* note 22 (" '[R]estraining order is a piece of paper, and papers don't stop bullets . . . .' ") (quoting Sgt. Bob Medkeff, Los Angeles Police Department).

[67] *See* Peter J. Howe, *Court Order Eyed in Slaying; Critics: Restraining Rulings Inadequate*, BOSTON GLOBE, Feb. 9, 1992, at 25 (quoting police officer stating that 24-hour protection would be "impossible").

[68] *See* BUZAWA & BUZAWA, *supra* note 55, at 27-31. Buzawa and Buzawa list several reasons for the "classic" police response to domestic violence. First, police do not believe that responding to domestic violence calls is "an appropriate police responsibility," because it does not constitute what is considered a "serious" crime. Second, domestic violence calls are unproductive in the sense that they decrease the chance an officer will make a substantive felony arrest by using up his time. Third, police mistakenly believe that domestic violence calls are more violent than other types of calls. On the other hand, they accurately perceive that few domestic violence cases result in successful prosecution; their work, therefore, is ultimately futile. Finally, police share common societal sentiments that domestic violence and other "private misconduct" should not be subject to public intervention. *Id.*

cess of obtaining an injunctive order must be initiated and pursued by an oftentimes bewildered and harried victim.[69] Moreover, with few exceptions, TROs are issued at the court's discretion,[70] with no uniformity from jurisdiction to jurisdiction.[71] Specifically, there is disagreement as to when certain relationships between the offender and victim prohibit the availability of protective orders, the type of past conduct necessary to make the granting of an order appropriate, and the policies to be considered when granting an order.[72] Also, prosecutors and judges, already enormously burdened by the backlog of more "serious" cases, are reluctant to hear "relationship" cases.[73] Finally, TROs are of a very short duration,[74] and sometimes the offender simply waits out the term to begin harassment anew.[75]

The ultimate reason for failure of the injunctive remedy, how-

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[69] BUZAWA & BUZAWA, *supra* note 55, at 117 (claiming victims must initiate and pursue court orders, often against arcane procedural requirements and indifference of judiciary).

[70] BUZAWA & BUZAWA, *supra* note 55, at 115.

> They [TROs] are not issued as a matter of course, and judges usually require the prior commission of serious acts of domestic violence prior to issuing an order. This reluctance is naturally increased when an ex-parte order of the type common in a TRO is considered. Because such an order significantly restricts a defendant's liberty and property rights, he is constitutionally protected in his right to due process from its arbitrary issuance.

Id.

[71] BUZAWA & BUZAWA, *supra* note 55, at 117-18.

[72] *See* BUZAWA & BUZAWA, *supra* note 55, at 117-18. There are several factors that could impede the issuance of protective orders.

> [1)] Life-styles of the victim/offender often deny the capability of granting an order. Three states do not allow orders to be issued to former spouses; thirteen do not for people who have never formally married even if "intimates"; . . . (Finn, 1989).
>
> [2)] Limits have been placed on the type of past conduct that may be used to justify the imposition of a restraint. Nine states require proof of actual physical abuse and refuse to grant protective orders in cases of threats or intimidation.
>
> [3)] Further limitations have often been administratively placed upon ex-parte TROs—arguably the most important form of protective order given potential for immediate violence . . .
>
> [4)] Numerous procedural limitations exist in many states such as filing fees (which may however be waived at the discretion of the judge) or an inability of a victim to obtain an emergency nighttime or weekend order (Finn, 1989).

Id.

[73] *See* BUZAWA & BUZAWA, *supra* note 55, at 57-58.

[74] *See supra* note 63 (TROs are generally for 10 to 15 days).

[75] *See* Christine Evans, *Victims Hope Law Will Stop Stalkers in Their Tracks*, MIAMI HERALD, Mar. 16, 1992, at A1 (stating stalkers often behave properly until court restraining orders expire and then resume harassment).

ever, is its weak deterrent effect.[76] In many situations, orders are useless against a party already considering criminal conduct and are therefore of limited benefit in preventing unwanted contact.[77] Additionally, violators often receive minimal jail time,[78] and criminal contempt proceedings are not a guaranteed result for violation of an injunctive order.[79]

D. Stalking Legislation—The Solution?

The question logically raised at this point is whether stalking statutes will represent an improvement over the remedies presently available. For several reasons the answer seems to be "yes." First, stalking statutes will be more uniform than existing protection.[80] Second, the statutes will be more effective than restraining orders because the wide discretion of the police,[81] the judiciary,[82]

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[76] *See* Wainstein, *supra* note 57, at 736.

> Unlike a criminal sentence, an injunction merely *threatens* criminal or civil penalties in the event of its violation. The charge resulting from the violation of a court order—contempt of court—does not arise until *after* the victim has already suffered the feared injury. Thus, when a victim secures an injunction against criminal conduct after an initial offense, that victim cannot count on deterrent sanctions until she has suffered a second offense.

Id.

[77] Wainstein, *supra* note 57, at 736.

> This is especially true when a crime victim seeks to enjoin the perpetrator from repeating a crime. If the threat of regular criminal sanctions failed to deter the offender from committing the first violation, there is no reason to think that the additional possibility of contempt sanctions will deter a second offense.

Id.

[78] *See* Karen Tumulty & Stephanie Chavez, *Domestic Abuse Laws; Victims Find Little Safety in System*, L.A. TIMES, Sept. 4, 1989, at 1 (stating that even with arrest, violator can be free in matter of hours).

[79] *See* Wainstein, *supra* note 57, at 738 (stating that prosecutors and judges are hesitant to bring contempt proceedings after violation of injunctive order); *see also* Fountain & Kirby, *supra* note 17 (citing Illinois State Police report that states 35,346 reported violations of orders of protection reported in five month period, with almost 8,000 violations in June alone); Adrian Walker, *Third of Court Orders Flouted, Officials Say*, BOSTON GLOBE, Sept. 30, 1992, Metro/Region Section, at 1 (reporting that of 2,000 restraining orders issued in Massachusetts during first three weeks of state-wide record system, over 700 violations were reported).

[80] *See* Tharp, *supra* note 16 (contending that stalkers "slip between the cracks of law-enforcement and mental-health agencies"); *cf.* BUZAWA & BUZAWA, *supra* note 55, at 117-18 (noting there is wide variation in requirements for court orders).

[81] *See supra* note 68 and accompanying text (claiming law enforcement authorities have sometimes abused discretion in enforcing court orders).

[82] *See supra* note 70 and accompanying text (suggesting judges given wide discretion in issuing court orders).

and the victims themselves[83] will be reduced. Third, the stalking statutes are more comprehensive because they are available to all victims at all times, regardless of whether the victims qualify for civil relief[84] or have the economic resources to pursue protective orders.[85] Fourth, anti-stalking laws will be more responsive to the needs of victims by granting protection without requiring a court appearance.[86] Similarly, the statutes will be effective against stalkers whose identities are unknown to victims, whereas civil remedies totally fail in this regard since the name of the offender is a prerequisite to obtaining a protective order.[87] Finally, stalking statutes will be a greater deterrent. Mere arrest will often dissuade or reform some offenders,[88] and the prospect of stiffer fines and jail terms will, in many cases, give the would-be stalker reason to reconsider his or her planned conduct.[89] If unsuccessful as a deterrent, the statutes will serve at least to incapacitate the offender and provide victims some relief from harassment.[90]

There are compelling arguments, however, that the statutes will not be effective.[91] Why, for example, would new statutes be enforced by the police and courts when existing statutes are not?[92]

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[83] *See e.g., Fountain & Kirby, supra* note 17 (reporting woman kidnapped after reconsidering prosecution of criminal charges, allowing release of boyfriend from jail); *cf.* Eva J. Patterson, *How the Legal System Responds to Battered Women, in* BATTERED WOMEN 79, 86 (Donna M. Moore ed., 1979) (noting one reason why justice system fails is because victims sometimes drop charges due to intimidation or out of compassion).

[84] *See supra* note 72 and accompanying text (many victims are ineligible for court orders).

[85] *See* Robinson, *supra* note 56, at 514 (civil remedies impose cost of initiating litigation on victim).

[86] *See supra* note 63.

[87] *See supra* note 42 and accompanying text (some stalking victims are unacquainted with their pursuers).

[88] *See* Tumulty & Chavez, *supra* note 78 ("A good arrest does not have to lead to a conviction. A good arrest leads to a change in behavior.") (quoting Edmund Stubbing, ex-New York City police officer who works for Victims Services Agency and organizes seminars to help set up pro-arrest systems in police departments).

[89] *Compare infra* Table 1 (indicating that stalking violations carry sentences of up to five years) *with* Laird, *supra* note 8 (stating that in Texas most stalker can get is misdemeanor charge of harassment or terroristic threat, with maximum jail term of 180 days and $1,500 fine). Texas has since passed a stalking statute. *See infra* note 172 and accompanying text.

[90] *See* MICHAEL D. MALTZ, RECIDIVISM 11 (1984) (suggesting crime rates could be significantly lowered by selectively incapacitating violent and high-rate offenders).

[91] *See infra* notes 93-97 and accompanying text.

[92] *See* Kathy Brennan, *An Attempt to Stop Violence at the Stalking Stage*, PHILA. DAILY NEWS, Jan. 24, 1992, Local Section, at 14 (quoting Jake Marcus, Litigation Coordinator for Women Against Abuse in Philadelphia, regarding doubtfulness of effective stalking

The statutes will represent another opportunity for unscrupulous "victims"[93] and could possibly be misused by public officials in a variety of situations.[94] In many domestic violence cases, they will exacerbate an already volatile situation and further alienate the offender.[95] Considering that the chances of rehabilitation are exceedingly slim,[96] victims may be at even greater risk upon release of the criminal.[97]

Instead of passing new laws, perhaps what is needed is enhanced enforcement and strengthening of existing laws. Indeed, it has been shown that current mechanisms for dealing with abusive and harassing parties can be made to work.[98] In recent years, a

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legislation when assault cases are not resulting in arrests).

Stalking statutes, it is submitted, may further burden the police and the court system. *See* Wainstein, *supra* note 57, at 740 (noting that due to strain on prosecutorial resources charges are often dropped on less "serious" offenses).

[93] *See* Beck et al., *supra* note 16 (claiming that stalking laws carry potential for misuse, particularly in marital disputes); Evans, *supra* note 75 (referring to Florida's stalking statute as having potential abuse because it allows arrest based solely on alleged victim's word); David Heckelman, *"Stalking" Legislation Draws Fire over Bond Provision*, CHICAGO DAILY L. BULL., June 2, 1992, at 1 (citing Illinois State Senator's concerns that stalking statutes could be used by parties to divorce as tool for harassment).

[94] *See* Raoul V. Mowatt, *Bill Would Make Stalking of Another Person Illegal*, PHILA. INQUIRER, Jan. 24, 1992, at B3; Ross, *supra* note 8 (stating that stalking laws could be used against investigative reporters). A deputy director of the ACLU, Susan Frietsche, expressed reservations about the Pennsylvania stalking statute, stating "you have to be very careful in writing a criminal statute to be very specific and clear as to what kind of conduct is legal and what kind is not." Mowatt, *supra*. "For example," she said, "anti-abortion protesters often follow women from clinics and try to talk to them. 'You don't want to make it illegal to walk down the street . . . .'" *Id.*

[95] *See* Betsy Q.M. Tong, *Harshbarger: Domestic Violence Escalating*, BOSTON GLOBE, Oct. 25, 1992, at 26 (stating that laws designed to stem domestic violence, such as stalking statute, may increase potential for violence by "upping the ante"); David B. Mitchell, *Symposium on Domestic Violence: Arresting the Abuser: Is It Enough*, 83 J. CRIM. L. & CRIMINOLOGY 241, 247 (1992). Unfortunately, there is a growing body of evidence that such arrests do not necessarily prevent recurrences of abuse. In fact, there is now a feeling that these arrests may even worsen the situation within some families. As a result, many knowledgeable people are questioning arrest as an exclusive, preferred method for preventing further violence. *Id.*

[96] *See* MALTZ, *supra* note 90, at 27 (noting that rehabilitation efforts have had little effect on recidivism).

[97] *See* Beck et al., *supra* note 16 (stating first person sentenced under California's stalking statute wandered away from psychiatric facility where he was serving his probation; he was found waiting outside his victim's health club); Gera-Lind Kolarik, *Stalking Laws Proliferate: But Critics Say Constitutional Flaws Also Abound*, A.B.A. J., Nov. 1992, at 35 (stating that jail will not constitute deterrent to stalkers and that upon release they will be even more angry).

[98] *See Quincy Court vs. Domestic Crime*, *supra* note 46 (reporting that Quincy District Court, in Quincy, Massachusetts, implemented successful program for monitoring domestic

number of police departments have become more effective at dealing with domestic violence by improving policy goals and training officers in how to handle domestic calls.[99] Also, traditional methods have tighter controls and are less prone to abuse.[100]

It is submitted that, ideally, there should be both a concerted effort to enforce existing mechanisms and new legislation to protect parties who are left vulnerable. Such a comprehensive program would result in a two-tier system. First, restraining orders and injunctive relief can be strictly enforced as a means of preemptive protection. Second, stalking statutes will provide blanket protection for all members of society.[101] Thus, stalking statutes would be a satisfactory solution to the shortcomings of provisional remedies, by providing more comprehensive and responsive protection, and by serving as a greater deterrent.

II. QUESTIONS OF CONSTITUTIONALITY

A. The Void-for-Vagueness Doctrine

1. Background

A widely noted problem with existing stalking legislation is its potential for unconstitutional vagueness.[102] Rooted in the Due Process Clause of the Fourteenth Amendment,[103] the void-for-vague-

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violence).

[99] *See* Kirby, *supra* note 44. "Among other things, police departments are revising training procedures, hiring social workers, establishing ties with battered-women's shelters, and, in some instances, even requiring that an arrest be made in each case of domestic violence." *Id.* Police could be trained, it is suggested, to respond in a similar fashion when dealing with cases of stalkers violating orders of protection.

[100] *See supra* note 70 (discussing court's discretion in issuing restraining orders and injunctions).

[101] *See* Beck et al., *supra* note 16 (referring to stalking laws as "one more weapon to employ against stalkers").

[102] *See* Ayers, *supra* note 44 (quoting attorney for American Civil Liberties Union); Beck et al., *supra* note 16 (stalking statutes vague, per civil liberties experts); Hall, *supra* note 6 (same) (quoting Ephraim Margolin, former president of the National Association of Criminal Defense Attorneys); Toni Locy, *Senate Passes Stalking Measure*, BOSTON GLOBE, Apr. 28, 1992, Metro Region, at 22 (reporting that opposition to Massachusetts' stalking bill was in response to its vagueness); Mowatt, *supra* note 94 (stating that Pennsylvania's stalking bill was criticized as vague); *see also Nightline* (ABC News television broadcast, Sept. 3, 1992) (stating that stalking statute vagueness has always been unconstitutional).

[103] U.S. CONST. amend. XIV, § 1; *see* Bouie v. Columbia, 378 U.S. 347, 350 (1964) (statute struck down because its vagueness violated due process); Wright v. Georgia, 373 U.S.

ness doctrine has two primary objectives: 1) to give notice of the prohibited conduct,[104] and 2) to avoid arbitrary and discriminatory enforcement by providing clear guidelines for police,[105] perhaps the most important being "the requirement that a legislature establish minimal guidelines to govern law enforcement."[106]

2. Vagueness and the Stalking Statutes

As previously discussed, the definition of stalking is inherently vague.[107] Thus, it is necessarily difficult to criminalize without violating the void-for-vagueness doctrine. The broad language of existing anti-stalking laws, however, compounds the problem. The California statute, which has been used as a model by numerous states, is instructive.[108]

284, 293 (1963) (same); Connally v. General Constr. Co., 269 U.S. 385, 390 (1926) (same).

[104] United States v. Harriss, 347 U.S. 612, 617 (1954) (Statute is unconstitutional if it fails to give "a person of ordinary intelligence fair notice that his contemplated conduct is forbidden . . . "). The reasoning behind this holding is that "no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed." *Id.*; *see, e.g.*, Wainwright v. Stone, 414 U.S. 21, 22 (1973) (statute upheld because prior cases had delineated criminal acts therein); Papachristou v. City of Jacksonville, 405 U.S. 156, 158 (1972) (holding that loitering ordinance was unconstitutional because it failed to give fair notice).

[105] *See* Kolender v. Lawson, 461 U.S. 352 (1983); Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489 (1982); Pringle v. Court of Common Pleas, 778 F.2d 998 (3rd Cir. 1985); Kramer v. Price, 712 F.2d 174 (5th Cir. 1983); *see also* Giaccio v. Pennsylvania, 382 U.S. 399 (1966) (announcing that doctrine serves to insure that judges and juries have legally fixed standard of what law prohibits).

[106] *Kolender*, 461 U.S. at 358 (quoting Smith v. Goguen, 415 U.S. 566, 574 (1974)).

[107] *Cf.* MODEL PENAL CODE § 250.4 cmt. 6 (harassment statute). The same problem occurs in harassment statutes, which likewise deal with a vague subject matter. "Taken together, these elements of the offense should sufficiently flesh out its meaning to survive vagueness review. This conclusion is supported by the fact that it is probably impossible to do any better." *Id.* (citing Miller v. California, 413 U.S. 15, 26-30 (1973)).

[108] *See* CAL. PENAL CODE § 646.9 (West 1990). The pertinent portion of § 646.9 states:

> (a) Any person who willfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat with the intent to place that person in reasonable fear of death or great bodily injury is guilty of the crime of stalking . . . .
>
> (d) For the purposes of this section, "harasses" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys or harasses the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the person. "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

Several terms of the California statute may lack sufficient clarity either to provide adequate notice or to avoid arbitrary enforcement. The import of "follows," for example, was a concern mentioned in the initial California Assembly Reports,[109] but no change was implemented to allay that concern in the final version of the statute.[110] In fact, the same term is found in many other statutes, and in all but one the word is not defined.[111] Consequently, because of the many ways in which it is commonly defined, "follows" is a possible source of vagueness.[112]

The term "repeatedly" also raises questions of vagueness. Although its use in a Colorado telephone harassment statute[113] has withstood constitutional challenge in the state courts by virtue of judicial interpretation,[114] no such saving gloss has been placed upon the word in other jurisdictions. Unless narrowed by defini-

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Id.

[109] *See Hearings on SB 2184 Before the California State Assembly Comm. on Public Safety*, 1989-90 Reg. Sess. (1990).

> *Following.* It is not clear what constitutes 'following'. Under the bill, if "A" is under court order to keep 100 feet away from "X" and witnesses report seeing "A" following "X" around from a distance of 150 feet, "A" could still be prosecuted under this bill if "A" had the intent to place "X" in reasonable fear of death or great bodily injury. Under the bill, a person could still be prosecuted for stalking even though he or she was not violating any court order.

Id.

Although the Assembly's hypothetical reasonably demonstrates how the statute could eliminate the need for restraining orders, it does nothing to clarify what is meant by "following."

[110] *See* CAL. PENAL CODE § 646.9 (West 1990) (omitting definition of "follows").

[111] Wisconsin is the only state to define "follows." *See* 1992 Wis. A.B. 668, 90th Legis. Sess., 940.32 (enacted). " 'Follow' means to walk or proceed after a person for no legitimate purpose." *Id.*

Several states avoid the term "follows" entirely and focus on other types of conduct. *See, e.g.*, 1992 Haw. Sess. Laws 292 ("pursues or conducts surveillance"); 1992 Ohio Laws 234 ("engages in a pattern of conduct"); VA. CODE ANN. § 18.2-60.3 (Michie 1992) ("engages in conduct"); *see also* 1992 Ky. Rev. Stat. & R. Serv. ch. 443 (Baldwin) ("stalks another person"). In Kentucky, however, the statute states that "to 'stalk' means to engage in an intentional course of conduct; directed at a specific person or persons; which seriously alarms, annoys, intimidates, or harasses the person; and which serves no legitimate purpose." *Id.*

[112] *Compare* WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 883 (1981) ("follow" defined as to "move behind over the same path") *with id.* (also defined as "to watch steadily").

[113] *See* COLO. REV. STAT. § 18-9-111(1)(h) (1992).

[114] *See* People *ex rel.* Van Meveren v. County of Larimer, 551 P.2d 716 (Colo. 1976). " 'Repeatedly' is a word of such common understanding that its meaning is not vague. It simply means in the context of this statute that the defendant used insulting, taunting or challenging language more than one time." *Id.* at 720.

tion, the term "repeatedly" may be fertile ground for constitutional challenges.[115]

The California statute also[116] employs the terms "annoys" and "alarms"—both the subject of vagueness challenges in several states,[117] with varying results.[118] In many states these words have not received a settled meaning, and may thus also be subject to constitutional controversy.

Numerous states, by hastily adopting the California statute with little or no modification, have adopted these same problems.[119] Other states have been more independent, but in their desire to draft effective and narrow statutes, they have created their own quandary of unconstitutional vagueness. Phrases such as "explicit or implicit threat,"[120] "seriously alarm, annoy or har-

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[115] Several states have provided a specific or minimum number of recurrences that will trigger the violation of the statute, and thereby circumvented the vagueness problem associated with the subjective term "repeatedly." In Illinois, the perpetrator must either follow the victim or place her under surveillance by remaining present outside her home or place of work on at least two separate occasions. 1992 Ill. Laws 871. Colorado, Hawaii, Iowa, North Carolina, and Virginia each require that the stalking occur "on more than one occasion." *See* COLO. REV. STAT. ANN. § 18-9-111 (West 1992) (" 'repeatedly' means on more than one occasion"); 1992 Haw. Sess. Laws 292 (stalking must occur on more than one occasion); 1992 Iowa Legis. Serv. H.F. 2025 (West) (same); N.C. GEN. STAT. § 14-277.3 (1992) (same); VA. CODE ANN. § 18.2-60.3 (Michie 1992) (same). Kentucky supplies the quantity necessary by defining "course of conduct" as "a pattern of conduct composed of two or more acts, evidencing a continuity of purpose." 1992 Ky. Rev. Stat. & R. Serv. ch. 443 § 508.130 (Baldwin).

[116] *See* CAL. CIV. PROC. CODE § 527.6 (Deering 1992). This section of the statute is taken directly from the California Code of Civil Procedure section granting temporary restraining orders and injunctions for harassment.

[117] *See, e.g.*, Baker v. State, 494 P.2d 68 (Ariz. Ct. App. 1972) (statute upheld); Bolles v. People, 541 P.2d 80 (Colo. 1975) (holding statute unconstitutional); People v. Klick, 362 N.E.2d 329 (Ill. 1977) (upholding statute constitutional); State v. Jaeger, 249 N.W.2d 688 (Iowa 1977) (ruling statute constitutional); Von Lusch v. State, 387 A.2d 306 (Md. 1978) (same); State v. Dronso, 279 N.W.2d 710 (Wis. Ct. App. 1979) (holding statute constitutional).

[118] *Compare* Colorado v. McBurney, 750 P.2d 916 (Colo. 1988) (holding that because of narrowing standards, presence of words "annoy" and "alarm," by themselves, is insufficient to render statute unconstitutionally vague) *with* City of Everett v. Moore, 683 P.2d 617 (Wash. Ct. App. 1984) (finding law barring conduct that "alarms or seriously annoys" void for vagueness). "Conduct that annoys some people does not annoy others. Thus, the ordinance is vague, not in the sense that it requires a person to conform his conduct to an imprecise but comprehensible normative standard, but rather in the sense that no standard of conduct is specified at all." *Id.* at 619.

[119] *See infra* note 146 (listing states with stalking statutes similar to California's); *see also infra* Table 1 (complete listing of all states with stalking statutes; comparison of crime elements).

[120] *See* 1992 Ky. Rev. Stat. & R. Serv. ch. 443 § 508.10 (Baldwin). "A person is guilty of stalking in the first degree when he intentionally: 1. stalks another person; and 2. makes an

ass,"[121] "intentionally and closely follows,"[122] and "lies in wait"[123] have been employed in several statutes without sufficient definition or clarity. It is likely that these statutes fail both prongs of the void-for-vagueness doctrine, but are especially susceptible to arbitrary and discriminatory enforcement.

3. Possible Solutions

There are certain techniques that can be used by lawmakers and the judiciary to help avoid the potential for unconstitutional vagueness. For instance, a scienter element might mitigate against vagueness,[124] or a term could be narrowed by a judicial interpretation.[125] In addition, a seemingly vague statutory term can take its meaning from other legislation,[126] or from its use at common law.[127]

Doctrinally, every statute has a strong presumption of consti-

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explicit or implicit threat with the intent to place that person in reasonable fear of: a. sexual contact as defined in KRS 510.010; b. serious physical injury; or c. death." *Id.*

[121] TENN. CODE ANN. § 39-17-315 (1992). "A person commits the offense of stalking who . . . intentionally commits a series of . . . acts . . . to seriously alarm, annoy or harass a specific person . . . ." *Id.*

[122] W. VA. CODE § 61-2-9a (1992).

[123] *See id.*; 1992 Conn. Acts 92-237 HB 5882 (Reg. Sess.).

[124] *See* Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489 (1982) (holding that, because of implied scienter requirement, ordinance restricting sale of drug paraphernalia was not vague); Papachristou v. City of Jacksonville, 405 U.S. 156 (1972) (lack of specific intent assisted in rendering statute vague); Screws v. United States, 325 U.S. 91 (1945) (specific intent element counters vagueness challenges).

The concept of a saving scienter element is based upon the notion that "a person already bent on serious wrongdoing has less need for notice and that a citizen who refrains from acting with morally bad intent is not endangered by the statutory sanction." Royall, *supra* note 35, at 1409 (quoting Note, *Due Process Requirements of Definiteness in Statutes*, 62 HARV. L. REV. 77, 85 (1948)).

[125] *See* Ward v. Illinois, 431 U.S. 767, 771-73 (1977) (holding that prior rulings on statute reached defendant's conduct); *see also Screws*, 325 U.S. at 100 ("Only if no construction can save the Act from this claim of unconstitutionality are we willing to reach that result.").

[126] *See* Mishkin v. New York, 383 U.S. 502 (1966) (defining "scienter" from other New York statutes); Jordan v. De George, 341 U.S. 223 (1951) (defining "moral turpitude" from laws governing disbarment of attorneys, revocation of medical licenses, and crimes involving fraud); Omaechevarria v. Idaho, 246 U.S. 343 (1918) (defining word "range" by reference to its usual and customary meaning is not due process violation).

[127] *See* Connally v. General Constr. Co., 269 U.S. 385, 394-95 (1926) (stating that prior case law did not provide sufficient common-law definition for "locality"); International Harvester Co. v. Kentucky, 234 U.S. 216, 221-22 (1914) (finding that "real value" had been defined in previous cases as "market value under fair competition, and under normal market conditions"); Nash v. United States, 229 U.S. 373, 378 (1913) (punishing conspiracies on common-law footing by imposing liability for act of conspiring without requiring anything more).

tutionality that can only be overcome with proof beyond a reasonable doubt.[128] Due process considerations permit statutory language to be sufficiently general so that the statute may be applied to a variety of situations,[129] and when dealing with subject matter that does not allow for more definite statutory guidelines, uncertain language is given the benefit of the doubt.[130] Nevertheless, the oblique subject matter of stalking legislation lends itself to constitutional difficulty.[131]

B. Other Constitutional Concerns

There are also concerns that stalking legislation may be abused to deprive accused stalkers of their rights. Florida's statute, for example, allows a police officer to make an arrest without a warrant as long as probable cause exists[132] and would permit an arrest for "aggravated stalking"[133] based solely on information supplied by the victim. This provision raises Fourth Amendment issues[134] and may lead to abuse by giving vindictive parties the power to have their mates arrested.[135]

The statutes of Illinois, Ohio, and Iowa each grant courts the power to deny bail to a stalking suspect.[136] While these mecha-

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[128] *See* Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911).

[129] *See Nash*, 229 U.S. at 377 (Holmes, J.)("[L]aw is full of instances where a man's fate depends on his estimating rightly . . . ").

[130] *See* United States v. Petrillo, 332 U.S. 1 (1947) (holding that statute prohibiting broadcaster from employing "persons in excess of the number of employees needed," was worded with as much exactness as possible).

[131] *See* Resnick, *supra* note 34 at 27 ("[B]y writing a statute which is unconstitutional, they are ensuring that any stalker convicted under the statute will ultimately go free.") (quoting Jeffrey S. Weiner, president of National Association of Criminal Defense Lawyers, speaking in reference to Florida statute).

[132] *See* 1992 Fla. Laws ch. 92-208. "Any law enforcement officer may arrest, without a warrant, any person he or she has probable cause to believe has violated the provisions of this section." *Id.*

[133] *See id.* § 784.048(3). Aggravated stalking is a third degree felony, punishable by imprisonment for up to five years and a $5,000 fine. *Id.*

[134] *See* Terry v. Ohio, 392 U.S. 1 (1968). The Supreme Court has held that the police, through the warrant procedure, must obtain advance judicial approval of searches and seizures whenever practicable. *Id.* at 20; *see also* Katz v. United States, 389 U.S. 347 (1967); Beck v. Ohio, 379 U.S. 89 (1964); Chapman v. United States, 365 U.S. 610 (1961).

[135] *See* Beck et al., *supra* note 16 (Florida stalking statute carries potential for misuse because of high incident of false allegations against current or former spouses) (citing Miami criminal defense lawyer Jeffrey Weiner).

[136] *See* 1992 Ill. Laws 871. The Illinois statute lists eight factors to be considered by the court: the nature and circumstances of the offense; the history and characteristics of the offender; the nature of the threat; any statements made by the defendant; the age and phys-

nisms are aimed at protecting victims, they also provide convenient avenues for misuse[137] and raise important Eighth Amendment and state constitutional issues.[138]

Fifteen statutes make exceptions for "constitutionally protected activities,"[139] and nine exclude "conduct which occurs during labor picketing."[140] Several statutes, however, possess neither of these protections.[141] The omission of such exceptions raises the

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ical condition of any person assaulted by the accused; whether he possesses or has access to weapons; whether he was on parole or probation at the time of the offense; and "any other factors . . . deemed by the court to have reasonable bearing upon the defendant's propensity or reputation for violent, abusive or assaultive behavior, or lack of that behavior." *Id.* The release of the defendant may be denied if the defendant "poses a real and present threat to the physical safety of the alleged victim." *Id.* This portion of the Illinois statute has drawn heated criticism for being violative of both the United States and Illinois Constitutions. *See* Collina, *infra* note 138; Heckelman, *supra* note 93.

Ohio's statute lists five factors: whether the offender has a history of violence towards the victim; the mental health of the offender; whether the person has a history of violating court orders; whether the offender is a potential threat to any other person; and whether setting bail at a high level will interfere with any treatment or counseling that the person is undergoing. 1992 Ohio Laws 234.

In Iowa, there is a presumption of ineligibility for bail after the second offense. 1992 Iowa Legis. Serv. H.F. 2025 (West).

[137] *See* Beck et al., *supra* note 16 ("Some civil-liberties experts argue that the new laws are overly vague and carry a potential for misuse, particularly in marital disputes.").

[138] *See* Joseph V. Collina, *Stalking Law Is Bad Legislation, Unneeded and Unconstitutional*, CHI. DAILY L. BULL., July 31, 1992, at 5 (stating that United States and Illinois Constitutions both forbid holding persons without bail, except in capital offenses).

[139] *See* 1992 Ala. Acts 92-675 (constitutionally protected activity is not included in definition of "harasses"); CAL. PENAL CODE § 646.9; 68 Del. Laws 250 (1992) (constitutionally protected activity is not included within meaning of "course of conduct"); 1992 Fla. Laws ch. 92-208 (listing picketing and other organized protests as constitutionally protected activities); IDAHO CODE § 18-7905 (1992) (constitutionally protected activity is not included within meaning of "course of conduct"); 1992 Kan. Sess. Laws 298 (same); 1992 Ky. Rev. Stat. & R. Serv. 443 (Baldwin) ("Constitutionally-protected activity is not included within meaning of 'course of conduct.' If the defendant claims that he was engaged in constitutionally protected activity, the court shall determine the validity of that claim as a matter of law and, if found valid, shall exclude that activity from evidence."); 1992 La. Acts 80 (constitutionally protected activity is not included within meaning of "course of conduct"); 1992 Miss. Laws 532 (same); 1992 Neb. Laws 1098 (same); 1992 N.J. S.B. 256, 205th Legis., 1st Reg. Sess. (enacted); OKLA. STAT. tit. 21, § 1173 (West 1993) (same); 1992 R.I. Pub. Laws ch. 92-201 (same); 1992 S.C. Acts 417 (same); S.D. CODIFIED LAWS ANN. § 22-19A-5 (1992) (same); UTAH CODE ANN. § 76-5-106.5 (1992) (same).

[140] *See* CAL. PENAL CODE § 646.9; 68 Del. Laws 250 (1992); 1992 Fla. Laws ch. 92-208 (includes picketing or other organized protests); 1992 Ill. Laws. 871 (picketing occurring at workplace that is otherwise lawful and arises out of bona fide labor dispute); 1992 Kan. Sess. Laws 298; 1992 Neb. Laws 1098; 1992 N.J. S.B. 256, 205th Legis., 1st Reg. Sess. (enacted); 1992 S.C. Acts 417 HB 4086; 1992 Wis. A.B. 688, 90th Legis. Sess. (enacted).

[141] *See* COLO. REV. STAT. ANN. § 18-9-111 (West 1992); 1992 Conn. Acts 92-237 (Reg. Sess.); 1992 Haw. Sess. Laws 292; 1992 Iowa Legis. Serv. H.F. 2025 (West); MASS. ANN. LAWS ch. 265, § 43 (Law. Co-op. 1992); 1992 N.Y. Laws 345; N.C. GEN. STAT. § 14-277.3

specter of stalking laws as tools for interfering with legal demonstrations,[142] private investigations,[143] or proper, albeit overzealous, journalistic tactics.[144]

III. Questions of Effectiveness

Aside from policy debates over the need for anti-stalking laws and their constitutionality, the effectiveness of the specific statutes in curbing the stalking problem is at issue. This section will discuss the three main categories of stalking statutes and also delve into some of the specific features of several statutes.

A. *General Categories*

While there are some differences among the anti-stalking laws, most bear a resemblance to the first anti-stalking statute, enacted in California in 1990.[145] What distinguishes the California statute, and its numerous imitators,[146] is the threat requirement; specifically, a "credible threat"[147] or some lesser threat[148] is required for

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(1992); TENN. CODE ANN. § 39-17-315 (1992); VA. CODE ANN. § 18.2-60.3 (Michie 1992); W. VA. CODE § 61-2-9a (1992); 1992 Wis. A.B. 668, 90th Legis. Sess. (enacted).

[142] *See* Mowatt, *supra* note 94 (suggesting stalking laws could be used against anti-abortion protesters).

[143] *See* CALIFORNIA SENATE COMMITTEE ON JUDICIARY, REPORT ON SB 2184, April 24, 1990 (raising concern that statute could be used against private investigators, insurance adjusters, law enforcement officers, repossessors, and newspaper reporters).

[144] *See* Ross, *supra* note 8 (quoting Loren Siegel, director of public education for American Civil Liberties Union).

[145] *See* CAL. PENAL CODE § 646.9 (West 1992); Resnick, *supra* note 34 (stating that California enacted first stalking statute in 1990 following murders of five women by ex-husbands or boyfriends).

[146] *See* 1992 Ala. Acts 92-675; 1993 Ark. Acts 379; COLO. REV. STAT. ANN. § 18-9-111 (West 1992); 1992 Ill. Laws 871; 1992 Iowa Legis. Serv. H.F. 2025 (West); 1992 Ky. Rev. Stat. & R. Serv. ch.443 (Baldwin); 1992 La. Acts 80; MASS. ANN. LAWS ch. 265, § 43 (Law. Co-op. 1992); 1992 Neb. Laws 1098; OKLA. STAT. tit. 21, § 1173 (West 1993); 1992 R.I. Pub. Laws 92-201; 1992 S.C. Acts 417; S.D. CODIFIED LAWS ANN. § 22-19 (1992); TENN. CODE ANN. § 39-17-315 (1992); 1993 Tex. Sess. Law Serv. 10 (Vernon); UTAH CODE ANN. § 76-5-106.5 (1992); 1992 Wis. A.B. 688, 90th Legis. Sess. (enacted). Each of these statutes is virtually identical to California's.

[147] *See* CAL. PENAL CODE § 646.9 (West 1992). The California Code defines a "credible threat" as "a threat made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety . . . . The threat must be against the life of, or a threat to cause great bodily injury to, a person . . . ." *Id.* Similar language is used in all "threat" states except for those listed *infra* note 148.

[148] Illinois, Massachusetts, and Tennessee all use the bare term "threat" in their statutes, while Kentucky uses the phrase "explicit or implicit threat." See supra note 146, for citations to each statute. The Arkansas statute employs the term "terroristic threat." *See*

the law to be violated. This requirement severely limits the scope and applicability of the statute[149]—solely following or harassing a victim is not a violation. The effectiveness of such a narrowly drafted statute is questionable.[150] Although probably intended as a means for limiting abuse, this component provides criminals with a loophole through which to avoid punishment.[151]

The second category of stalking statutes is roughly based on the California statute, but much broader in scope. These statutes, adopted in ten states,[152] close the loophole created by the credible threat element by either making a threat a separate act punishable under the statute[153] or by defining the actus reus as a "course" or "pattern" of conduct.[154] This type of stalking statute not only cor-

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1993 Ark. Act 379.

[149] *See* Interview with Dietz, *supra* note 19. Dr. Parker Dietz, in an interview with the author, expressed his reservations about the "credible threat" requirement of the statutes. An overt threat should not be an element, according to Dr. Dietz, because it does not precede many of the more serious consequences of stalking. "If you wait for the threat you will have failed most of the time." *Id.* It is submitted that although a "threat" statute will provide some protection in cases of domestic violence, or in cases in which an abusive or violent perpetrator is familiar with the victim, the limiting language will prevent convictions of obsessive or psychotic stalkers who have little or no communication with their victims. The statutes will also exclude parties who are familiar with the legal elements of the crime and refrain from communicating any threat. *Cf.* Ross, *supra* note 8 ("Many of these guys know what the definition of domestic violence is and officially avoid it . . . ") (quoting Joan Zorza, attorney for National Battered Women's Law Project in New York).

[150] Telephone Interview with Lt. John C. Lane, Los Angeles Police Department Threat Management Unit (Oct. 27, 1992) [hereinafter Lane Interview]. Lt. Lane stated that in many cases the suspect never overtly communicates a threat. *Id.*; *see also* Horton, *supra* note 22 (stating that law would not be helpful in cases in which overt threat is absent).

There have been attempts to change this portion of the California law. Lt. Lane stated that he has lobbied to eliminate the "credible threat" element and to replace it with a "reasonable threat" standard. Lane Interview, *supra*.

[151] Despite its flaws, the California statute has been successful in putting stalkers behind bars. California courts have already handed down several convictions for violations of section 646.9. The California Attorney General Law Enforcement Division reports that the state does not track misdemeanor convictions of stalking. As of October 1992, however, there have been three recorded convictions for felony stalking. Telephone Interview with Charlotte Rhea, Office of Statistics, California Attorney General's Office (Oct. 15, 1992).

[152] *See* 68 Del. Laws 250 (1992); 1993 Ind. Legis. Serv. 97 (West); 1993 Md. Laws Ch. 206; MICH. COMP. LAWS ANN. § 750.411 h & i (West 1993); 1992 Miss. Laws ch. 532; 1992 N.Y. Laws 345; 1992 Ohio Laws 234; VA. CODE ANN. § 18.2-60.3 (Michie 1992); W. VA. CODE § 61-2-9a (1992); 1993 Wyo. Sess. Laws Ch. 92.

[153] *See, e.g.*, 68 Del. Laws 250 (1992). The stalking statute of Delaware is typical: "Any person who willfully, maliciously, and repeatedly follows or harasses another person or who repeatedly makes a credible threat with the intent to place that person in reasonable fear of death or serious physical injury is guilty of the crime of stalking." *Id.*

[154] *See, e.g.*, 1992 N.Y. Laws 345. New York's law is part of the N.Y. Penal Code's menacing section and reads as follows:

rects the shortcomings of the California statute, but also enlarges the scope of enforcement to include conduct that would not generally be defined as "pursuing" or "following."[155] Of all the statutes passed thus far, this group will likely be the most effective and far-reaching; unfortunately, they will also be subject to the most criticism with respect to intrusiveness and overbreadth.[156]

The final group can be characterized as "pure" stalking statutes. These laws do not require a credible threat and are limited to conduct in which the offender repeatedly "follows" the victim.[157] These statutes specifically address the prohibited conduct without requiring an additional element that limits the statute and without extending the statute's reach into conduct that is constitutionally protected.[158] There are eleven "pure" statutes,[159] and it is submitted that they represent the optimum balance between defendants' civil rights and victims' rights.

> A person is guilty of menacing in the second degree when . . . 2. He or she repeatedly follows a person or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place another person in reasonable fear of physical injury, serious physical injury or death.

Id.

[155] *See supra* note 112 (defining "following" as to "move behind over the same path").

[156] The doctrine of overbreadth is designed to guard against laws that interfere with activities protected by the First Amendment. This doctrine is not without limitations. *See* Broadrick v. Oklahoma, 413 U.S. 601 (1973). The Supreme Court, in *Broadrick*, explained that the concept of "substantial" overbreadth is the test applicable in cases in which speech is joined with conduct.

> [The function of the overbreadth doctrine is] a limited one at the outset, [and] attenuates as the otherwise unprotected behavior that it forbids the State to sanction moves from "pure speech" toward conduct and that conduct—even if expressive—falls within the scope of otherwise valid criminal laws that reflect legitimate state interests in maintaining comprehensive controls over harmful, constitutionally unprotected conduct.

Id. at 615. Consequently, the doctrine has little relevancy to stalking legislation, in which conduct, not speech, is the central focus. However, with implementation of a "threat" as a separate ground for violating the statute, the law moves closer towards pure speech and therefore, the possibility of overbreadth.

[157] *See, e.g.*, 1992 Conn. Pub. Acts 92-237 (Reg. Sess.). "A person is guilty of stalking in the second degree when, with intent to cause another person to fear for his physical safety, he wilfully and repeatedly follows or lies in wait for such other person and causes such other person to reasonably fear for his physical safety." *Id.*

[158] *See infra* note 159.

[159] *See* 1992 Conn. Pub. Acts 92-237 (Reg. Sess.); 1992 Fla. Laws ch. 92-208; 1993 Ga. Laws 560; 1992 Haw. Sess. Laws 292; IDAHO CODE § 18-7905 (1992); 1992 Kan. Sess. Laws 298; 1993 Mont. Laws 292; 1992 N.J. S.B. 256, 205th Legis., 1st Reg. Sess. (enacted); 1993 N.M. Laws 86; N.C. GEN. STAT. § 14-277.3 (1992); 1992 Wash. Legis. Serv. 186 (West).

B. *Special Provisions*

Several states have included provisions that expressly protect certain types of victims. Alabama,[160] Arkansas,[161] California,[162] Georgia,[163] Idaho,[164] Oklahoma,[165] Texas,[166] Utah,[167] and Wyoming[168] proscribe stalking or threatening members of the victim's immediate family, which prevents stalkers from attacking their victims through intimidation or harassment of family members. The Connecticut statute contains an enhancement that automatically raises the offense of stalking from a misdemeanor to a felony when the victim is under sixteen years of age.[169]

Other states have focused more on the stalker and his or her state of mind. Eight statutes broaden or eliminate entirely the mens rea requirement.[170] These statutes allow convictions of stalkers who, because of mental disease or incapacity, lack the specific intent required by many statutes.

At the other extreme, several states have enacted severely limited stalking statutes that will likely be ineffective. Nebraska's statute, for instance, requires that the perpetrator violate an injunction, restraining order, protection order, or no-contact order before criminal liability arises.[171] The Texas stalking statute, signed by Governor Richards in March of 1993, requires annoying or harassing conduct, a threat and that the conduct occur after the victim has previously reported the perpetrator to the police.[172] One

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[160] *See* 1992 Ala. Acts 92-675.

[161] *See* 1993 Ark. Acts 379.

[162] *See* CAL. PENAL CODE § 646.9 (West 1992).

[163] *See* 1993 Ga. Laws 560.

[164] *See* IDAHO CODE § 18-7905 (1992).

[165] *See* OKLA. STAT. tit. 21, § 1173 (West 1993).

[166] *See* 1993 Tex. Sess. Law Serv. 10 (Vernon).

[167] *See* UTAH CODE ANN. § 76-5-106.5 (1992).

[168] *See* 1993 Wyo. Sess. Laws 92.

[169] *See* 1992 Conn. Pub. Acts 92-237 (Reg. Sess.).

[170] *See* COLO. REV. STAT. ANN. § 18-9-111 (West 1992) (no intent necessary); 1992 Haw. Sess. Laws 292 (in reckless disregard of risk of harassing, annoying or alarming another); IDAHO CODE § 18-7905 (1992) (no intent necessary); 1992 Kan. Sess. Laws 298 (no intent necessary); 1992 Ohio Laws 234 (knowingly causes another to believe that physical harm or mental distress will result); TENN. CODE ANN. § 39-17-315 (1992) (knowing that reasonable person would suffer emotional distress); 1992 Wash. Legis. Serv. 186 (West) (knows or reasonably should know that victim is afraid); 1993 Wyo. Sess. Laws 92 (same). Most of the remaining statutes require a minimum mens rea element of "intent to place in reasonable fear of death or bodily injury." *See infra* Table 1.

[171] *See* 1992 Neb. Laws 1098.

[172] *See* 1993 Tex. Sess. Law Serv. 10 (Vernon).

of the most narrowly written statutes is West Virginia's,[173] which states that the victim must have resided with, cohabited with, or engaged in sexual or intimate contact with the perpetrator.[174]

There is also a wide divergence in the penalties prescribed by the different states.[175] Nearly all make the first offense a misdemeanor and employ escalating sentences or felony charges for repeat offenders and for those violating court orders.[176] In most anti-stalking laws the penalty for the first conviction is a misdemeanor carrying a maximum sentence of either six months or one year;[177] second convictions are generally felonies if committed within a specified period of time, generally five to ten years.[178] The states are, however, evenly split between felony and misdemeanor treatment of those convicted of violating restraining orders or injunctions.[179]

Both Michigan[180] and Wyoming[181] employ an innovative remedy; the victim is allowed to pursue a civil action against the stalker. A successful plaintiff can recover punitive damages, costs, and attorney's fees, regardless of whether the defendant has been convicted or charged with criminal stalking.[182]

In the final analysis, the anti-stalking statutes will generally close the interstices in the law which have allowed stalkers to pursue their victims. However, there are significant disparities be-

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[173] *See* W. VA. CODE § 61-2-9a (1992).

[174] *Id.*

[175] *See* Table 1 (displaying various degrees of penalties).

[176] *See id.* Exceptions include Arkansas, Delaware, Illinois, Massachusetts, and New Jersey, which provide for first offense felony counts, stiffer penalties, and minimum sentencing. *See* 1993 Ark. Acts 379; 68 Del. Laws 250 (1992); 1992 Ill. Legis. Serv. 871 (West); MASS. ANN. LAWS ch. 265, § 43 (Law. Co-op. 1992); 1992 N.J. S.B. 256, 205th Legis., 1st Reg. Sess. (enacted). The New Mexico statute differs from the norm in that it classifies the second offense as a misdemeanor and withholds felony classification until the third conviction. *See* 1993 N.M. Laws 86.

[177] *See infra* Table 1.

[178] *Id.* Several states also omit the requirement that the second offense occur within a certain amount of time from the first. *See id.* (Connecticut, Hawaii, Illinois, Iowa, New Jersey, Ohio, and Washington each leave open time period for second offense).

[179] *See id.* There is also a wide variance from state to state as to the penalties imposed for stalking in violation of a provisional remedy. *Compare* CAL. PENAL CODE § 646.9 (West 1992) (charging stalker with misdemeanor carrying prison term of not more than one year and fine of not more than $1,000, or both, but with option of serving sentence in state facility) *with* 1992 Fla. Laws ch. 92-208 (charging stalker with aggravated stalking, third degree felony, carrying maximum five year sentence).

[180] *See* MICH. COMP. LAWS ANN. § 600.2954 (West 1993).

[181] *See* 1993 Wyo. Sess. Laws 92.

[182] *See id.*; MICH. COMP. LAWS ANN. § 600.2954 (West 1993).

tween the statutes from state to state, and the effectiveness of the statutes will differ accordingly.[183] The California statute and its progeny are the most narrowly written statutes and as a result will be less effective in controlling stalking. But statutes that define the stalking actus reus as a "course or conduct" or "credible threat," as opposed to "following," may be overly broad and, consequently, encounter applicational or constitutional problems. The "pure" statutes are perhaps the best compromise because they do not contain constricting elements that render the statute ineffective or so loosely focus on the problem conduct that they create constitutional problems.

IV. PROPOSED STALKING STATUTE

The following proposed statute, developed by the author, incorporates various elements found in existing stalking statutes:

a. Definitions

1. "Credible threat" means a threat made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or for the safety of a member of his or her immediate family.

2. "Follows" means to pursue or travel along the same path while maintaining, or attempting to maintain, visual contact.

3. "Harasses" means a pattern of conduct, purposely committed, comprising two or more acts evidencing a continuity of purpose, directed at a specific person, which reasonably causes substantial emotional distress to the person.

4. "Knowingly" means that the offender is aware that it is practically certain that his conduct will cause such a result.

5. "Member of the immediate family" means any spouse, parent, child, sibling, or any other person who regularly resides in the household of that person.

6. "Purposely" means that it is the offender's conscious object

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[183] *See infra* Table 1. Besides those enumerated, there are a number of other differences in the statutes. *See, e.g.*, N.C. GEN. STAT. § 14-277.3 (1992). North Carolina's statute requires that a potential victim make a "reasonable warning or request to desist." *Id.* On the other hand, the statutes of Hawaii, Utah, and Washington all contain provisions that extend the statute to cover instances in which the victim, in addition to being stalked or harassed, reasonably believes or fears that the stalker intends to injure the *property* of the victim or of another person. *See* 1992 Haw. Sess. Laws 292; UTAH CODE ANN. § 76-5-106.5 (1992); 1992 Wash. Legis. Serv. 186 (West).

to engage in conduct of that nature or to cause such a result as is specified as an element.

b. Stalking in the Fourth Degree.—Any person who purposely follows or harasses another person on more than one occasion, and knowingly places that person in reasonable fear of physical harm, is guilty of the crime of stalking in the fourth degree, a misdemeanor punishable by imprisonment for not more than six months, or by a fine of not more than $500, or both.

c. Stalking in the Third Degree.—Any person who purposely follows or harasses another person on more than one occasion, with the intent of placing that person in reasonable fear of physical harm, or any person who violates subsection (b) and there exists one or more of the enhancers listed in subsection (f), is guilty of the crime of stalking in the third degree, a misdemeanor punishable by imprisonment for not more than one year, or by a fine of not more than $1000, or both.

d. Stalking in the Second Degree.—Any person who purposely follows or harasses another person on more than one occasion, and who makes a credible threat with the intent of placing that person in reasonable fear of physical harm, or any person who violates subsection (c) and there exists one or more of the enhancers listed in subsection (f), is guilty of the crime of stalking in the second degree, a felony punishable by imprisonment for a term not less than one year and not more than three years, or by a fine of not more than $3000, or both.

e. Stalking in the First Degree.—Any person who violates subsection (d) and there exists one or more of the enhancers listed in subsection (f), is guilty of the crime of stalking in the first degree, a felony punishable by imprisonment for a term not less than three years and not more than five years, or by a fine of not more than $5000, or both.

f. The enhancers for the purposes of this section are as follows:

1. the defendant has previously pleaded guilty to or has been convicted of stalking; or

2. in committing the offense, the defendant violated a court order of protection, a temporary restraining order, or an injunction; or

3. the intended victim was, at the time of the offense, under eighteen years of age; or

4. the defendant was, at the time of the offense, in possession of a dangerous weapon, as defined by other sections of the pe-

nal law.

g. Severability.—The provisions of this article shall be severable, and if any clause, sentence, paragraph, subdivision, or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

This proposed statute is intended to cover the widest variety of stalking situations, yet remain within constitutional parameters. After the definitions in subdivision (a), subdivision (b) establishes the threshold offense as following or harassing with knowledge of the victim's fear. The most important distinction between this and most of the statutes passed to date is the absence of the "threat" element, which severely limited the scope of those statutes.[184] The statute also contains several elements that are broader than those employed in most of the statutes passed to date.[185] But, in general, the terms are narrowly defined, eliminating vagueness problems[186] and restricting the opportunity for abuse by utilizing words that have less ambiguous meanings.[187]

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[184] *See supra* notes 145-151 and accompanying text (positing that California's statute and those closely modelled after it are overly narrow).

[185] The component "knowingly placing in reasonable fear" lessens the rigors of the "intent" requirement of many of the statutes, and thus broadens the scope of the statute. *See supra* notes 38-39 and accompanying text (suggesting that narrow specific intent elements exclude many stalkers). At the same time, the scienter element gives fair warning, strengthening the statute against any constitutional challenge of vagueness.

"Knowingly," as defined by the proposed statute, is subjective and would require actual knowledge that the conduct was causing reasonable fear. In the alternative, the definition could be broadened by an objective definition such as "knows or should have known." The subjective form was used because of its greater element of notice, making the statute less vague. *See supra* note 124 and accompanying text.

The element describing the result of the offender's actions, "fear of physical harm," is also wider in scope than the more commonly used "fear of death or serious physical injury." *See supra* note 153.

[186] *See supra* notes 107-23 and accompanying text (discussing vagueness of many stalking statutes).

[187] *See supra* notes 109-12 (defining "follows"). "Follows" although inherently vague, is defined by words that have precise and well-settled meanings. *See id.*

Specific quantities are also designated in the statute, avoiding the arbitrariness innate in the word "repeatedly." *See supra* notes 113-15 and accompanying text (asserting that "repeatedly" could be unconstitutionally vague term). Words that have raised constitutional problems in the past, such as "annoy" and "alarm," have also been intentionally avoided. *See supra* notes 117-18 ("annoy" and "alarm" have previously been grounds for vagueness).

Subdivision (c) describes a more egregious form of conduct, stalking with intent to cause fear, and consequently carries a stiffer sentence. Procedurally, subdivision (c) is also the lowest offense with an enhancing element present, and this element is included in the remaining sections.[188] The definition of stalking is narrowed again and the penalties increased in subsection (d), which is substantially similar to the California statute,[189] and again in (e), the highest grade of stalking.[190]

The proposed statute covers threats directed to family members,[191] which is a feature in several statutes.[192] Finally, the statute contains a severability clause that should help guarantee the survival of the statute in the event of a successful constitutional challenge to one or more of its sections.[193]

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[188] Several variations of the enhancement methodology used in the model are possible. Other possibilities include that the defendant is on parole, probation, or under a separate investigation for a crime involving the present victim, or that the defendant has crossed state lines or traveled more than a specified distance in stalking the victim.

The most common enhancements—a violation of a court order and the previous conviction for stalking the same victim—pose special concerns. In the above model statute, their presence increases the severity of the violation by one degree. However, in the interest of justice and in order to provide better protection for victims, the option of including even stronger penalties should be explored. Arguably, a stiff minimum sentence for a violation of a court order or a previous conviction is warranted; the defendant has clearly demonstrated his intention to interfere with another's life and refuses to abate such conduct. A second offense of stalking in the fourth degree may merit more than a one year sentence. A classification of a felony offense for the presence of either of these two enhancers should be considered.

An alternate method of handling the enhancement section is to assign an additional penalty to each and then make the penalties cumulative. For instance, one year could be added for each of the enhancements present. Under this alternate approach, the conviction for stalking in the fourth degree, with the enhancements of a violated court order, a repeated conviction, and the possession of a weapon, would carry a maximum sentence of three and one-half years. Under the system initially described above, the sentence is only one year.

[189] *See supra* note 110.

[190] Subsection (e) is the functional equivalent of a higher grade violation of several statutes. *See, e.g.*, 1992 Conn. Pub. Acts 92-237 (Reg. Sess.) (defining stalking in first degree, felony offense, as when person commits stalking in second degree and (1) he has previously been convicted of stalking, or (2) he violates court order, or (3) victim is under sixteen years).

[191] *See supra* notes 160-68 and accompanying text. The scope of the statute can be broadened beyond "immediate family." *See* 1992 Haw. Sess. Laws 292 (reasonable belief that offender intends to cause bodily injury or property damage to victim or to another).

[192] *See* 1992 Ala. Acts 92-675; CAL. PENAL CODE § 646.9 (West 1992); IDAHO CODE § 18-7905 (1992); OKLA. STAT. tit. 21, § 1173 (West 1993); UTAH CODE ANN. § 76-5-106.5 (1992); *infra* Table 1.

[193] As of July 1993, only one state has included a severability provision, Alabama. *See* 1992 Ala. Acts 92-675.

CONCLUSION

Anti-stalking legislation is a pragmatic, even necessary, step in the battle against violence in American society. Thousands of people are subjected to this type of harassing conduct every year, yet the legal system has been, for the most part, unable to provide an adequate response. Although stalking laws are capable of mitigating this deficiency, the statutes passed thus far are a far cry from ideal. Many are too narrow, and most may be subject to some type of constitutional challenge. A better solution is possible. By carefully examining the problem and exploring the available options, balanced, more inclusive laws, such as the proposed statute contained herein, may be created.

Richard A. Lingg

TABLE 1 — STALKING STATUTES
State-by-State Comparison

	mens rea conduct			#		conduct							threat			mens rea result		
	intentionally	willfully	maliciously	repeatedly	more than once	follows	or	and	harasses	engages in a course of conduct	and makes	or makes	credible threat	threat	with intent to cause fear	knowingly or recklessly	causes fear / emotional distress
AL	*			*		*	*		*		*		*		*			*
AR										*	*			*	*			
CA		*	*	*		*	*		*		*		*		*			*
CO					*	*					*		*					
CT		*		*		*									*			*
DE		*	*	*		*	*		*			*	*		*			*
FL		*	*	*		*	*		*									*
GA[1]	follows, places under surveillance, or contacts another for the purpose of harassing or intimidating the other person																	*
HI[1]	pursues or conducts surveillance with intent to harass, annoy, or alarm, or in reckless disregard to the risk thereof														*	*		
ID		*	*	*		*	*		*									
IL					*	*					*			*	*			
IN	*			*					*	*								*
IA		*			*	*	*		*		*		*		*			
KS		*	*	*		*		*	*									*
KY	*				*					*	*			*	*			
LA		*	*	*		*	*		*		*		*		*			*
MD			*							*					*			
MA		*	*	*		*	*		*		*			*	*			
MI		*		*					*	*								*
MS		*	*	*		*	*		*			*	*		*			*
MT	purposely or knowingly					*	*		*									*
NE[2]		*	*	*		*	*		*		*		*		*			*
NJ				*		*		*		*		*	*		*			*
NM	knowingly pursues a pattern of conduct and					*	*		*				*		*			
NY	*			*		*	*			*					*			
NC		*			*	*									*			
OH					*					*						*		
OK		*	*	*		*	*		*		*		*		*			*
RI		*	*	*		*	*		*		*		*		*			*
SC		*	*	*		*	*		*		*		*		*			*
SD		*	*	*		*	*		*		*		*		*			*
TN	*			*		*	*			*	*			*		*		*
TX	*					*	*			*	*			*				
UT				*		*	*		*		*		*		*			
VA					*					*					*			
WA	*			*		*									*	*		*
WV[3]	*					*						*		*	*			
WI	*		*	*		*	*		*		*		*					*
WY	with intent to harass					*	*			*								*

1. This statute is significantly different from other statutes and does not fit within categories listed. 2. Also requires some type of restraining order against the accused. 3. Victim must have formerly cohabited or had a sexual relation with the accused.

TABLE 1 — STALKING STATUTES
State-by-State Comparison

	perceived result					exceptions		sentencing[4]			
	of death or great bodily injury	for physical safety/harm/injury	of harm to family member	of sexual contact or assault	of property damage	excludes constitutionally protected activities	excludes labor picketing	first offense	second offense	within — yrs	in violation of a court order
AL	*		*			*		1 yr. & $5000			2 yrs. & $10,000
AR	*		*					3 yrs.	5 yrs.	10	5 yrs.
CA	*		*			*	*	1 yr. & $1000	1 yr. & $1000	7	1 yr. & $1000
CO		*						6 mos. & $750		-	2 yrs. & $5000
CT		*						1 yr. & $1000	5 yrs.		5 yrs.
DE	*					*	*	1 yr. & $1000	1 yr. & $1000	7	6 mos. & $100
FL						*	*	1 yr. & $1000			5 yrs. & $5000
GA	*		*			*		1 yr. & $1000	1 to 5 yrs.	-	5 yrs. & $10,000
HI		*			*			30 days & $500	1 yr. & $1000	-	
ID			*			*		1 yr. & $1000	5 yrs. & $5000	7	1 yr. & $1000
IL	*	*		*			*	1 to 3 yrs.	2 to 5 yrs.	-	2 to 5 yrs.
IN	terrorized, frightened intimidated, threatened					*	*	6 mos. & $1000	2 yrs. & $10,000	-	1 yr. & $5000
IA	*							30 days & $100	2 yrs. & $5000		1 yr. & $1000
KS						*	*	6 mos. & $1000	1 yr. & $2500	7	1 yr. & $2500
KY	*			*		*		1 yr. & $500	5 yrs. & $1000	5	5 yrs. & $1000
LA	*					*		6 mos. & $1000	2 yrs. & $5000	7	1 yr. & $5000
MD	*							5 yrs. & $5000			
MA	*							30 mos. & $1000	2 to 10 yrs.	-	5 yrs. & $1000
MI[5]	terrorized, frightened intimidated, molested					*		1 yr. & $1000	5 yrs. & $10,000	-	5 yrs. & $10,000
MS	*					*		6 mos. & $1000	2 yrs. & $2000	7	1 yr. & $1000
MT	*					*		1 yr. & $1000	5 yrs. & $10,000	-	5 yrs. & $10,000
NE	*					*	*	1 yr. & $10,000	5 yrs. & $10,000	7	
NJ	*	*						18 mos. & $7500	5 yrs. & $7500	-	5 yrs. & $7500
NM	*			*			*	1 yr. & $1000	72 hours[6]		
NY	*	*						1 yr. & $1000			
NC	*							6 mos. & $1000	2 yrs. & $2000	5	2 yrs. & $2000
OH		*						6 mos. & $1000	18 mos. & $2500	-	
OK	*		*			*		1 yr. & $1000	5 yrs. & $2500	10	5 yrs. & $2500
RI	*					*		1 yr. & $3000	5 yrs. & $10,000	7	2 yrs. & $6000
SC	*					*	*	1 yr. & $1000	3 yrs. & $2000	7	2 yrs. & $1000
SD	*					*		1 yr. & $1000	2 yrs. & $2000	7	1 yr. & $1000
TN	*							1 yr. & $2500	6 yrs. & $3000	7	6 yrs. & $3000
TX		*	*		*	*		1 yr. & $2000	2 yrs. & $5000		
UT		*	*		*	*		6 mos. & $1000			
VA	*	*						6 mos. & $1000	1 yr. & $2500	57	1 yr. & $2500
WA		*			*			1 yr. & $1000	5 yrs. & $10,000	-	5 yrs. & $10,000
WV		*						6 mos. & $1000			1 yr. & $1000
WI	*					*		9 mos. & $1000	2 yrs.	7	2 yrs.
WY[5]			*			*		6 mos. & $750	10 yrs.	5	10 yrs.

4. States which have no separate category for second offense or in violation of a court order have blank space under those headings. Dash for time period of second offense indicates that state observes no time limit. 5. Provides the victim a civil cause of action against the stalker. 6. Mandatory minimum sentence.