

THE NEW JERSEY ANTISTALKING LAW: PUTTING AN END TO A “FATAL ATTRACTION”

Colleen P. Flynn*

I. Introduction

For four years the Peterson family has been haunted and terrorized by a deranged man who is obsessed with eleven-year-old Crystal Peterson.¹ This man, who the Petersons later found lived across the street from them, began watching Crystal when she was seven years old.² At first, he left gifts and notes on the Peterson's front porch, which they suspected to be nothing more than “puppy love messages” from a young school friend.³ The messages, however, became angry and hurtful, which forced the Petersons to call the police.⁴ The police responded by increasing patrols in the Peterson's neighborhood, but informed the family that they could not take action until Crystal or another family member was physically threatened.⁵ The police were finally able to arrest the man terrorizing Crystal Peterson, known as Robert Thomas Coker, for breaking into the Peterson's home.⁶ He was released only two

* B.S., Criminal Justice, Old Dominion University (*cum laude*); J.D., Seton Hall University School of Law, anticipated 1995.

¹ Claire Safran, *A Stranger was Stalking our Little Girl*, GOOD HOUSEKEEPING, Nov. 1992, at 185, 263.

² *Id.* at 185.

³ Alan Gustafson, *Man's Fixation on 11-Year-Old Haunts Family*, FLORIDA TODAY, Mar. 8, 1992, at A3.

⁴ Safran, *supra* note 1, at 263. The notes included sexual fantasies about a young child and went as far as calling Crystal vulgar names. *Id.* One letter said, “I saw you down the street with that boy. You are just like the other girls. Sorry, don't like sluts.” *Id.*

⁵ Gustafson, *supra* note 3, at A5. Because the Petersons knew they could not rely on the police, they took many precautions to protect their children. Safran, *supra* note 1, at 264. The shades were always drawn and the children were not allowed to play outside. *Id.* Crystal was not permitted to walk to school without being escorted by a parent and the school authorities were asked to watch Crystal at all times. *Id.*

⁶ Safran, *supra* note 1, at 265-66. The police were able to catch Coker at a planned meeting between Crystal's mother, Debbie Peterson and the stalker. *Id.* It was at that meeting that the police found letters to Crystal in his jacket and they were able to arrest him for the previous breaking and entering of the Peterson home. *Id.*

months after his arrest but was soon back in prison for violating a court order after he continued to write notes to the Peterson family.⁷ Incarceration, however, did not put a stop to Coker's harassing behavior, as he continued to write letters to Crystal from prison and has vowed to pursue and marry the young girl.⁸

Crystal Peterson is the victim of what is known as stalking, which has generally been defined as the relentless pursuit of another person that causes them to feel frightened or harassed.⁹ Unfortunately, during the period in which the Petersons were being haunted by Coker, they lived in one of the few remaining states that did not yet have an antistalking law.¹⁰ Most states, however, have responded to the recent increase in stalking and have enacted antistalking laws,¹¹ or are in the process of passing antistalking

⁷ *Id.*

⁸ Gustafson, *supra* note 3, at A5. Coker's rights as a prisoner include the right to mail letters, provided they are not threatening or obscene. *Id.*

⁹ Safran, *supra* note 1, at 266.

¹⁰ Gustafson, *supra* note 3, at A5. The Petersons live in Oregon which recently passed an antistalking bill. See S. 833, 67th Or. Leg., Reg. Sess. (1993) (enacted). Arizona, Minnesota and Pennsylvania are the only remaining states that have not yet passed antistalking legislation into law. See *infra* note 11 for states that have enacted antistalking legislation.

¹¹ A number of states have adopted antistalking statutes. See ALA. CODE § 13A-6-90 (1992); ARIZ. REV. STAT. ANN. § 13-2921 (1991); CAL. PENAL CODE § 646.9 (West Supp. 1992); COLO. REV. STAT. § 18-9-111 (West Supp. 1992); CONN. GEN. STAT. ANN. § 53a-181c (West 1993); DEL. CODE ANN. tit. 11, § 1312A (Supp. 1992); FLA. STAT. ANN. § 784.048 (West 1993); GA. CODE § 16-5-90 (Michie 1993); HAW. REV. STAT. ANN. § 711-1106.5 (Supp. 1992); IDAHO CODE § 18-7905 (Supp. 1992); ILL. ANN. STAT. ch. 720, para. 5/12-7.3 (Smith-Hurd 1993); IND. CODE ANN. § 35-45-10-5 (West 1993); IOWA CODE ANN. § 708.111 (West 1993); 1993 Kan. Sess. Laws 291 (codified in KAN. CRIM. CODE ANN. § 8-1567 (Vernon 1993)); KY. REV. STAT. ANN. § 508.140 (Michie/Bobbs-Merrill 1992); LA. REV. STAT. ANN. § 40.2 (West 1993); MASS. GEN. LAWS ANN. ch. 265, § 43 (West 1993); MICH. COMP. LAWS ANN. § 750.411h (West 1993); NEB. REV. STAT. § 28-311.02 (1992); N.J. STAT. ANN. § 2C:12-10 (West Supp. 1993); N.M. STAT. ANN. § 30-3A-3 (Michie 1993); N.C. GEN. STAT. § 14-277.3 (1992); OHIO REV. CODE ANN. § 2903.211 (Anderson 1992); OKLA. STAT. tit. 21, § 1173 (West Supp. 1993); R.I. GEN. LAWS § 11-59-2 (Supp. 1992); S.C. CODE ANN. § 16-3-1070 (Law. Co-op. Supp. 1992); S.D. CODIFIED LAWS ANN. § 22-19A-1 (Supp. 1992); TENN. CODE ANN. § 39-17-315 (1992); UTAH CODE ANN. § 76-5-106.5 (Supp. 1992); VA. CODE ANN. § 18.2-60.3 (Michie 1993); WASH. REV. CODE ANN. § 9A.46.110 (West 1993); W. VA. CODE § 61-2-9a (1993); WYO. STAT § 6-2-506 (1993).

Numerous statutes were so recently enacted that the texts of those statutes have not yet been entered to a session law series or on computer data bases. See H. 64, 18th Alaska Leg., 1st Reg. Sess. (1993) (enacted); S. 2, 79th Ark. Gen. Ass., Reg. Sess., (1993) (enacted); H. 1147, 116th Me. Leg., 1st Reg. Sess. (1993) (enacted); H. 433, 407th Md. Leg. Sess., Reg. Sess. (1993) (enacted); 1992 Miss. Laws 532; H. 476, 87th Mo. Leg. Ass., 1st Reg. Sess., (1993) (enacted); S. 37, 53d Mont. Leg. (1993) (en-

legislation.¹²

Because of the recent surge in stalking incidents,¹³ New Jersey, following the lead of many other states around the nation,¹⁴ has enacted an antistalking law.¹⁵ On January 5, 1993, Governor Jim Florio signed legislation that makes stalking a fourth degree crime for first offenders.¹⁶ The law is designed to fill a loophole in the criminal law between the disorderly persons offense of harassment and statutes that punish an actual physical assault or threat, a loophole into which stalking previously fit because it was not a physical touching, yet the conduct went beyond mere harassment.¹⁷

This note will examine antistalking legislation and its potential effect on the legal system's ability to handle stalkers. A brief summary of the state statutes after which New Jersey modeled its law and the pending federal antistalking legislation will be discussed. A thorough analysis of the New Jersey antistalking law will cover the bulk of the note, providing the legislative history, as well as the law in its enacted form. Finally, the public's reaction to the stalking epidemic and the antistalking laws will be examined.

acted); H. 199, 66th Nev. Leg., Reg. Sess. (1993) (enacted); S. 4682, 215th N.Y. Gen. Ass., 1st Reg. Sess. (1993) (enacted); H. 476, 153d N.H. Leg., Reg. Sess. (1993) (enacted); H. 1237, 53d N.D. Leg. Ass., 1st Reg. Sess. (1993) (enacted); S. 833, 67th Or. Leg. Ass., Reg. Sess. (1993) (enacted); S. 25, 73d Tex. Leg., Reg. Sess. (1993) (enacted); S. 46, 62d Vt. Gen. Ass., 1st Biennial Sess. (1993) (enacted); A. 739, 90th Wis. Leg., Reg. Sess. (1992) (enacted).

¹² S. 129, 78th Minn. Leg., Reg. Sess. (1993); H. 100, 78th Minn. Leg., Reg. Sess., (1993); S. 221, 78th Minn. Leg., Reg. Sess. (1993); S. 243, 78th Minn. Leg., Reg. Sess., (1993); S. 268, 176th Pa. Gen. Ass., Reg. Sess. (1993).

¹³ See Andy Court, *She Knew the System Would Fail Her*, AM. LAW., June 1992, at 110 (citing FBI supplemental homicide report which states that 30% of those women killed in 1990 were killed by their boyfriends or husbands). See also Melinda Beck et al., *Murderous Obsession*, NEWSWEEK, July 13, 1992, at 60, 61. Ruth Micklem, co-director of Virginians Against Domestic Violence noted that out of the one-third of women in America that are killed by their husbands or boyfriends, an estimated 90% of those women had been stalked prior to their murders. *Id.*

¹⁴ See *supra* note 11 (setting forth all currently existing antistalking statutes).

¹⁵ N.J. STAT. ANN. § 2C:12-10 (West Supp. 1993).

¹⁶ *Id.* A person who commits a second offense of stalking or stalks someone in violation of a court order prohibiting such behavior is guilty of a crime in the third degree. *Id.* § c, d.

¹⁷ See Ron Marsico, *New Law to Help Victims of Stalking*, STAR-LEDGER (Newark), Jan. 6, 1993, at 1.

II. Background Information

A. Facts and Figures

Although not a recent phenomenon, stalking has become a prevalent problem in the United States.¹⁸ Stalking generally refers to harassing or threatening behavior in which an individual engages repeatedly, such as making harassing phone calls, appearing at a person's home or workplace, or vandalizing a person's property.¹⁹ Experts estimate that there are as many as 200,000 stalkers preying on victims in America today,²⁰ with the likelihood of one in every forty people being stalked at one point in their lifetime.²¹

Many stalkers have a history of psychological problems or were raised in a so called "dysfunctional" family.²² Regardless of a stalker's upbringing, the common characteristic among all stalkers is that they thrive on playing psychological games with their vic-

¹⁸ See Howard Kohn, *The Stalker*, REDBOOK, Apr. 1993, at 106, 106. In this article, Michigan State Senator R. Robert Geake, a non-practicing psychologist and sponsor of an antistalking bill, stated that "stalking is probably as old as mankind. Its roots may go back to the ancient concept of women as property." *Id.*

¹⁹ Beck et al., *supra* note 13, at 60.

²⁰ *Stalking Victims Turn to Congress for Help* (CNN television broadcast, Sept. 29, 1992) (citing psychiatric study estimating that 200,000 stalkers exist in the United States today). Ninety percent of stalkers suffer from at least one kind of mental disorder. *Antistalking Legislation: Hearings on S. 2922 Before the Committee on the Judiciary of the United States Senate*, 102d Cong., 2d Sess. 4-5 (1992) [hereinafter *Antistalking Legislation*]. Nine and one-half percent suffer from erotomania, a disorder where the stalker believes that the victim is in love with him or her. *Id.* Forty-three percent of stalkers have a love obsession with their target, who is generally a stranger to the stalker. *Id.* Forty-seven percent of stalkers have a simple obsession with their target, who is usually a former spouse, lover, or employer. *Id.*

²¹ Safran, *supra* note 1, at 266 (citing psychiatrist Helen Morrison who estimates that as many as one in forty people may be stalked at some time).

²² See generally *The Oprah Winfrey Show: Inside the Mind Of A Stalker*, (ABC television broadcast, May 25, 1992) at 22 [hereinafter *Mind of a Stalker*] (transcript on file with the *Seton Hall Legislative Journal*). A dysfunctional family is one where there has been emotional or physical abuse to one or more of the family members. Ardath A. Hanam, *Family Surrogate Laws: A Necessary Supplement to Living Wills and Durable Powers of Attorney*, 38 VILL. L. REV. 103 (1993). See, e.g., Eric Lichtblau, *Man Held in Stalking of Top Skater*, L.A. TIMES, Dec. 27, 1991, at D1 (describing man who stalked Olympic figure skater Katarina Witt as being a "paranoid schizophrenic" with a history of psychological problems); *Mind of a Stalker*, *supra* at 22 (discussing stalking of Texas Senator Tom Krueger and his wife Kathleen). The man stalking the Kruegers was abused as a child and his obsession with the Kruegers is blamed on his need to fit into the ideal family he never had. *Id.*

tims.²³ Although stalkers have different underlying reasons for following or harassing their victims,²⁴ the stalker gains a sense of satisfaction or a boost in their self-esteem through intimidation of their victim.²⁵ Frequently, the stalker simply wants to incite fear within the victim, thus letting the victim know that the stalker is in charge.²⁶ If these unstable individuals are confined for their illegal conduct, many become even more hostile towards their victims when they are released.²⁷

Women tend to be the targets of most stalking incidents.²⁸ For years, women have complained to police that an individual, most often a former boyfriend or ex-husband, was following them,

²³ See Marsico, *supra* note 17, at 12 (quoting Governor Jim Florio at the bill signing ceremony, who stated, "What we're doing today is breaking down the power of stalkers to put victims in psychological prisons. Stalkers, in a sense, are psychological terrorists. And fear, in a sense is their most important weapon.").

²⁴ See Gera-Lind Kolarik, *Terror in the Shadows*, FAM. CIRCLE, May 18, 1992, at 98. Dr. Marvin Schwarz, a forensic psychologist, separates stalkers into three different categories based upon their reason for stalking their victims. *Id.* The three categories are: 1) stalkers who have an obsession or compulsion with another person; 2) stalkers who have a "paranoid delusion" and need to fixate on someone; and 3) those who stalk out of rage, hurt and revenge who are generally found in domestic violence incidents. *Id.*

²⁵ See, e.g., Beck et al., *supra* note 13, at 61 (citing Virginia clinical psychologist Stanton Samenow, author of *Inside The Criminal Mind*, who noted that people who are rejected and have disturbed self images will often try to intimidate those by whom they were rejected to regain their self-esteem).

²⁶ See, e.g., *Mind Of a Stalker*, *supra* note 22, at 8 (citing man who stated that he stalked his wife because he wanted to scare her into not trying to take their baby out of his possession).

²⁷ See Beck et al., *supra* note 13, at 61. Stanton Samenow, a psychologist, stated that while prison may deter some stalkers, the threat of prison for others is "like putting fuel on a fire." *Id.* For example, a man who stalked his ex-girlfriend for three months was finally sentenced to two years in jail for harassing and beating her. *Mind of a Stalker*, *supra* note 22, at 19. However, the man was released after serving only nine months in prison. *Id.* He was out of prison for one day when he began making threatening phone calls and following his ex-girlfriend. *Id.* Therefore, it has been recommended that counselling, in lieu or in addition to a jail sentence, is the best way to deter stalkers from continuing their conduct in the future. *Id.* at 20. National Victims' Center director Anne Seymour noted that while tough sentences are necessary to deter the stalkers, the counseling that is provided by the Federal Bureau of Prisons will also help the stalkers because it is one of the best counseling programs available. *Id.* at 18.

²⁸ Kohn, *supra* note 18, at 106. As many as one out of every 20 women will be followed or harassed at some point in her life by a former boyfriend or husband, or even by an obsessed stranger. *Id.* Moreover, women between the ages of 20-45, whether single or divorced, are the most common target for stalkers. *Id.*

sending them offensive letters, or making death threats.²⁹ Prior to the antistalking laws, police had advised such women that there was nothing to be done unless the individual carried out the threats, such as through physically attacking the women.³⁰ Many times, the individual did follow through with his threats and caused serious bodily injury or death to the woman.³¹

While a majority of stalking incidents are domestically related,³² a variety of other stalking scenarios are also common.³³ Men, for example, may become the victims of obsessive former girl-

²⁹ George Robeson, *Carrying a "Love" Obsession Too Far Can Now be Illegal*, PRESS TELEGRAM, June 11, 1991, at C28.

³⁰ *Id.* See also Richard Pliskin, *Stalking Bill Signed*, N.J.L.J., Jan. 11, 1993, at 8.

³¹ See Court, *supra* note 13, at 110. Here, the author depicts the stalking of Ann Kotel, a Long Island school teacher who was eventually murdered by her former boyfriend. *Id.* See also *Donaldson v. City of Seattle*, 831 P.2d 1098 (Wash. Ct. App. 1992) (defendant stabbed ex-girlfriend to death only 24 hours after police responded to a domestic violence complaint in which they could not arrest the defendant for violating a no-contact order because the order was never entered into the state criminal information system); *State v. Newsome*, 524 So. 2d 133 (La. Ct. App. 1988) (ex-boyfriend set fire to ex-girlfriend's home and threatened to kill her and her family if she breaks-up with him); Beck et al., *supra* note 13, at 60. Karen Erjavec and her boyfriend Glenn Beach were murdered by Kenneth Kopecky after being harassed and threatened by Kopecky for six months. *Id.* Both of the victims received threatening phone calls and anonymous letters, and Beach's car had been vandalized by Kopecky. *Id.* Even Erjavec's father, a police officer, realized there was that nothing could be done to stop the harassment until someone was physically harmed. *Id.*

³² See Beck et al., *supra* note 13, at 60, 61. While a few stalkers pursue co-workers or complete strangers, it has been noted that the majority of stalking incidents involve former spouses or companions. *Id.* See also *People of N.Y. v. Hill*, 163 A.2d 813 (N.Y. 1990) (defendant convicted based on evidence that he stalked ex-girlfriend and subsequently broke into her home and stabbed her to death); *Wilkes v. United States*, No. 91-CF-263, 1993 WL 375307, at *1 (D.C. Sept. 23, 1993) (ex-boyfriend convicted of murder after he stalked ex-girlfriend, ran her car off the road and finally shot her to death); Maura Beth Johnson, Note, *Home Sweet Home?: New Jersey's Prevention of Domestic Violence Act of 1991*, 17 SETON HALL LEGIS. J. 234, 241-44 (1993). This note provides examples of women who were threatened, harassed, and subsequently murdered by their husbands.

³³ See Kohn, *supra* note 18, at 133. A study conducted by Lieutenant John Lane of the Los Angeles Police Department's antistalking unit and forensic psychiatrist Michael Zona identified five categories of stalking victims. *Id.* Based on 74 stalking cases in the Los Angeles area, the study concluded that even in such a "star studded city," average citizens are stalked more frequently than the stars. *Id.* The study concluded that 38% of victims are average citizens stalked by former spouses, neighbors or strangers. *Id.* Thirty-two percent of the victims are lesser known celebrities while 17% of the victims are highly recognized celebrities. *Id.* Eleven percent of the victims studied were corporate executives pursued by former employers while the final two percent were superiors threatened by unhappy workers and psychotherapists pursued by patients. *Id.*

friends or wives.³⁴ An assailant may stalk a complete stranger³⁵ or celebrity with which he is obsessed.³⁶ It was not until the death of Rebecca Schaeffer, the young co-star of the television sitcom "My Sister Sam," that the public and legislators realized the severity of a problem faced by men and women around the country who are repeatedly threatened and followed by other persons.³⁷

B. *The Need For Change*

Kristin Lardner, a twenty-one year old art student and daughter of Washington Post reporter George Lardner, was one of many people who mistakenly thought that a restraining order would pro-

³⁴ See Robeson, *supra* note 29, at C-28. California state senator Edward R. Royce, sponsor of California's felony stalking law, noted that "fatal attraction" type cases are common in California. *Id.* He recalled one case where a woman followed a former boyfriend and harassed him by jumping on the hood of his car and attacked his date in a restaurant. *Id.*

³⁵ See, e.g., *Antistalking Legislation*, *supra* note 20, at 39 (discussing a man's obsession with and constant harassment of young beauty queen Kim Poland). See *supra* notes 1-9 and accompanying text (describing the ordeal 11 year-old Crystal Peterson and her family has gone through because of a stranger's constant harassment); Rosalind Resnick, *States Enact Stalking Laws: California Takes Lead*, NAT'L L.J., May 11, 1992, at 3 (describing conduct of man who has pursued Gail Manning of Holiday, Florida, for six years).

³⁶ See Andrea Ford, *Suspect on Tape Tells of Actress' Last Words*, L.A. TIMES, June 25, 1992, at B3 (describing stalking of singers Janet Jackson and her brother Jermaine Jackson and discussing the recent arrest of Janet Jackson's stalker under the California antistalking law); Lichtblau, *supra* note 22, at B1 (discussing threatening letters sent to Olympic figure skater Katarina Witt); Bruce Rubenstein, *Stalker a Danger to Himself and Others; But He May Go Free*, ILL. LEGAL TIMES, June 1992, at 18 (describing threats against singers Olivia Newton John, Cher and Sheena Easton by mentally deranged stalker, Ralph Nau); David Ellis et al., *Nowhere to Hide*, PEOPLE, May 17, 1993, at 63, 72 (describing obsessed woman who broke into talk show host David Letterman's Connecticut home); 138 CONG. REC. S9520, S9527 (daily ed. July 1, 1992) (statement of Sen. Cohen) (discussing threats made against author Stephen King by a deranged man who believed King had murdered John Lennon and that former President Reagan had helped cover up the murder).

³⁷ See Resnick, *supra* note 35, at 3. Robert Bardo, an obsessed fan of Schaeffer, wrote letters, sent flowers and various gifts and finally appeared at Schaeffer's Los Angeles home one morning. *48 Hours: Stalker* (CBS television broadcast, July 21, 1993) at 4 (transcript on file with *The Seton Hall Legislative Journal*). After confronting Schaeffer once, Bardo returned to her apartment, rang the doorbell and hid behind a bush. *Id.* at 5. When Schaeffer opened the door, Bardo grabbed her by the arm and proceeded to shoot her in the chest, killing her instantly. *Id.* Although four other Orange County women were murdered by stalkers, it took the murder of a television star for the problem of stalking to gain national attention. Resnick, *supra* note 35, at 3.

tect her from an assailant with criminal intentions.³⁸ After Lardner's boyfriend, Michael Cartier, kicked her repeatedly in the head and legs and left her lying unconscious in the street, she went to the police for protection.³⁹ The police filed a complaint charging Cartier with various offenses, but the paperwork was not completed by the magistrate in order for an arrest warrant to be issued.⁴⁰ Cartier continued to harass Lardner by appearing at her work place and following her various times while she was out with her friends.⁴¹ Lardner also obtained two restraining orders from the courts, barring Cartier from going within 200 feet of her.⁴²

³⁸ Beck et al., *supra* note 13, at 61. A restraining order is "an order in the nature of an injunction which may issue upon filing of an application for an injunction forbidding the defendant from doing the threatened act until a hearing on the application can be had." BLACK'S LAW DICTIONARY 1314 (6th ed. 1990). In domestic violence cases, a device similar to a restraining order, referred to as a protection order, is issued by judges to help prevent behavior such as threats or harassment which could lead to future violence. PETER FINN & SARAH COLSON, NAT'L INST. OF JUST. ISSUES & PRAC., CIVIL PROTECTION ORDERS: LEGISLATION, CURRENT COURT PRACTICE, AND ENFORCEMENT 1 (March 1990) [hereinafter CIVIL PROTECTION ORDERS]. Depending on state statutes and local procedures, violators of the protection orders may be charged with civil or criminal contempt or the misdemeanor offense of violating a court order. *Id.* at 57. Restraining or protective orders have always been available to people who fear for their safety, but such orders have been difficult for the police to enforce. Beck et al., *supra* note 13, at 61. In Massachusetts, for example, there are over 44,000 restraining orders issued per year with not nearly enough police officers to enforce each of those orders. See Bob Hohler, *Court's Shield Can Draw a Bullet*, B. GLOBE, Oct. 7, 1992, at 1 (citing statement made by Massachusetts state representative Barbara E. Gray). Restraining orders have also proven to be ineffective in Illinois with a reported 35,346 violations of order of protection in a five-month period in 1992. John W. Fountain & Joseph Kirby, *Stalking Victims Find Laws Are Little Help*, CHI. TRIB., Aug. 5, 1992, at D1.

³⁹ 138 CONG. REC. S9520, S9527 (daily ed. July 1, 1992) (statement of Sen. Cohen). Cartier had previously served six months in jail and was on probation for beating a former girlfriend. Beck et al., *supra* note 13, at 61. He was also participating in a program for violent offenders when he began dating Lardner. *Id.*

⁴⁰ *Hearing on Anti-Stalking Proposals Before the Senate Committee on the Judiciary*, 103d Cong., 1st Sess. 29 (1993) [hereinafter *Anti-Stalking Proposals*] (statement of Helen M. Lardner). Lardner noted that although her sister refused to file a complaint against Cartier for fear of retaliation, Sergeant Robert G. Simmons of the Brookline, Massachusetts Police Department himself completed an application for a one-day emergency order in order to protect Kristin Lardner from Cartier. *Id.* at 30. He also filed a complaint charging Cartier with larceny, assault and battery, intimidation of a witness and violation of the domestic violence law. *Id.* The complaints were still sitting in the magistrate's in-box when Kristin was killed by Cartier. *Id.*

⁴¹ Beck et al., *supra* note 13, at 61.

⁴² 138 CONG. REC. S9520, S9527, (daily ed. July 1, 1992) (statement of Sen. Cohen). It should be noted that the judge who issued the restraining orders did not check Cartier's record. *Anti-Stalking Proposals*, *supra* note 40, at 30 (statement of Helen

The restraining orders, however, only provoked Cartier,⁴³ leading to Kristin Lardner's violent death on May 30, 1992, when Cartier shot Lardner outside the liquor store where she worked.⁴⁴

Leslie Wein, another young stalking victim, was pursued by her ex-boyfriend, Mark Bleakley, for two months.⁴⁵ After Wein broke off the couple's two year relationship, Bleakley began making threatening phone calls to Wein.⁴⁶ Wein filed thirteen police reports, accusing Bleakley of twice slashing the tires on her car.⁴⁷ After he abducted her dog from her backyard, Wein obtained a court order forbidding Bleakley from going near her or harassing her in any way.⁴⁸ The threats, however, did not stop, even though Wein had a restraining order against him.⁴⁹ Bleakley slashed the tires on Wein's rental car and threatened her over the phone stating, "You'll be the next thing damaged."⁵⁰ Because Leslie Wein lives in California, a state that has enacted an antistalking law, a tragic ending was prevented.⁵¹ Mark Bleakley was the first person

M. Lardner). Had he been aware of Cartier's record, the judge may have realized the danger Cartier posed to Lardner and insisted on a warrant and immediate arrest rather than simply a restraining order barring Cartier from going within a short distance of Lardner. *Id.*

⁴³ 138 CONG. REC. S9520, S9527 (daily ed. July 1, 1992) (statement of Sen Cohen). Cartier had bragged to Lardner, telling her that the restraining orders would not be of any help to her. *Id.* In many cases, restraining orders do not restrain but instead enrage and provoke the assailant. See Joanne Furio, *Can New State Laws Stop the Stalker?* Ms., Jan.-Feb. 1993, at 90 (husband threatened to "blow away" wife, after receiving the restraining order she had obtained against him). See also Hohler, *supra* note 38, at 1 (discussing incident in which a woman, her son, her sister and her sister's boyfriend were brutally murdered by the woman's former boyfriend against whom a restraining order had been issued less than eight hours before the killing occurred).

⁴⁴ See Beck, et al., *supra* note 13, at 61.

⁴⁵ Michael Connelly, *Ex-Boyfriend Jailed Under Stalking Law*, L.A. TIMES, June 10, 1991, at B1.

⁴⁶ *Id.*

⁴⁷ James Quinn, *Stalking Law Violator Jailed a Second Time*, L.A. TIMES, Mar. 18, 1992, at B3.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Connelly, *supra* note 45, at B1.

⁵¹ See Quinn, *supra* note 47, at B3. When the police went to arrest Bleakley for stalking Wein, they found a .357 Magnum revolver in his home. Connelly, *supra* note 45, at B1. It was at that instant that the authorities first realized that the antistalking law was serving its purpose to stop the stalker before his harassing conduct had an opportunity to turn violent. *Id.* See also Tamar Lewin, *New Laws Address Old Problem: The Terror of a Stalker's Threats*, N.Y. TIMES, Feb. 8, 1993, at A5.

to be charged under California's antistalking law.⁵²

Women, however, are not the only victims of stalkers. Young children have also been the victims of obsessed stalkers.⁵³ Eleven-year-old Caty Thayer, for example, was stalked by a total stranger for nineteen months.⁵⁴ The stalking ended abruptly when Thayer's assailant kidnapped her and proceeded to repeatedly rape Thayer and finally stab her, leaving her to die.⁵⁵ These incidents opened the eyes of many legislators and made them aware of that fact that celebrities were not the only individuals who were being unjustly harassed and terrorized by crazed stalkers.

C. *The Handling Of Stalking In The Past*

Prior to the enactment of antistalking laws and in states that do not have antistalking laws,⁵⁶ there was little the police could do to stop the unwarranted behavior of stalkers. In New Jersey, for example, most stalking incidents went unpunished by the police unless the assailants acted out threats by physically or sexually assaulting the victim.⁵⁷ When charges were brought against the suspects, the police were limited to using the disorderly persons offense of harassment which carries only a maximum 30-day jail sentence and \$500 fine.⁵⁸ Moreover, those who were charged with harassment were released as soon as they posted bail, thus taking

⁵² *Man Pleads No Contest Under New Stalking Law*, L.A. TIMES, July 23, 1991, at B2. At his trial for the stalking charge, Bleakley was sentenced to a year in prison, but was given credit for the five months he had previously spent in jail. Quinn, *supra* note 47, at B3. Bleakley blamed his behavior on steroid use and was permitted to serve the remainder of his sentence in a locked rehabilitation center. *Id.* He was arrested a second time for stalking Wein one afternoon when he was permitted to leave the center and was subsequently sentenced to up to two years in prison for violating the terms of his probation. *Id.*

⁵³ See *supra* notes 1-8 and accompanying text (discussing incident where man has been stalking 11 year old child and her family for over four years).

⁵⁴ 138 CONG. REC. S9520, S9527 (daily ed. July 1, 1992) (statement of Sen. Cohen).

⁵⁵ *Id.*

⁵⁶ See *supra* notes 11-12.

⁵⁷ See Marsico, *supra* note 17, at 12.

⁵⁸ *Id.* Such a charge does not even leave the offender with a criminal record. *Id.* For the complete text of New Jersey's Harassment Statute see N.J. STAT. ANN. § 2C:33-4 (West 1993). In the more serious cases, the police sometimes used the terroristic threats statute to justify an arrest. Marsico, *supra* note 17, at 12. See also N.J. STAT. ANN. § 2C:12-3 (West 1992).

away any sense of security the victim had while the assailant was detained.⁵⁹

III. The Beginning of Antistalking Legislation

A. The California Antistalking Statute

On September 29, 1990, California responded to the deaths of television actress Rebecca Schaeffer and four other Orange County women by passing the country's first antistalking legislation.⁶⁰ The antistalking law, which received support from both legislators⁶¹ and coalitions,⁶² defines a stalker as a 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."⁶³ In cases where the alleged offender has committed the crime of stalking in violation of a restraining order, the offense is upgraded from a misdemeanor to a felony.⁶⁴ The law also permits judges to establish a higher bail in

⁵⁹ See Art Weissman, *Stalkers Lose as Victims Gain Power*, ASBURY PARK PRESS, Jan. 6, 1993, at A10 (citing statement of Beth Miller at the N.J. anti-stalking bill signing ceremony). Miller noted that the man who has been stalking her for eight years has been arrested several times by the police, but was usually set free within three hours of his arrest. *Id.*

⁶⁰ Press Release from the Office of Sen. Royce, R-Cal., Royce Stalking Bill Signed Into Law; Seen as Major Boost In Battle Against Domestic Violence, Obsessive "Fan" Crimes, (Oct. 1, 1990) (on file with *Seton Hall Legislative Journal*) [hereinafter Royce Release]. For complete text of the statute see CAL. PENAL CODE § 646.9 (West Supp. 1992).

⁶¹ Royce Release, *supra* note 60, at 3. The antistalking law passed the California Senate 36-0, and the California Assembly on a 66-1 vote. *Id.*

⁶² *Id.* at 2-3. Senator Royce noted that the antistalking bill received great support from the Hollywood community, including the Conference of Personal Managers and the Screen Actors Guild. *Id.*

⁶³ CAL. PENAL CODE § 646.9-a (West Supp. 1992). The statute defines "harasses" as "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." Cal. § 646.9-d. "Credible threat" is defined 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 . . .

CAL. § 646.9-e. The definition of credible threat requires that the offender's conduct rise to the level of an overt threat or verbal communication to cause great bodily injury or death to the victim. *Antistalking Legislation, supra* note 20, at 72 (statement of Lt. John Lane, Los Angeles Police Dept.).

⁶⁴ CAL. § 646.9-b, *supra* note 60. A first offense of stalking is considered a misdemeanor and carries a sentence of up to one year in a county jail and/or a \$1000 fine.

stalking cases to ensure that dangerous individuals are not released to continue to harass their victims.⁶⁵

B. *The Florida Antistalking Statute*

Concerned about the rising rate of stalking incidents and the lack of a sufficient law with which the police could handle such cases,⁶⁶ the Florida Legislature unanimously approved an antistalking law, effective July 1, 1992.⁶⁷

Patterned after the California antistalking law,⁶⁸ both statutes share a similar definition of stalking, however the type of conduct that constitutes stalking in California is considered aggravated stalking in Florida.⁶⁹ To file a charge for stalking in Florida, the victim merely has to prove that he or she has been repeatedly followed or harassed by the offender, regardless of whether the offender made any threats to put the victim in fear of his or her life.⁷⁰ An individual who commits the crime of stalking in violation of a protective order is considered an aggravated stalker and is subject to a more serious penalty.⁷¹

The statute will serve as a valuable tool to the police in protecting the public, in that the police do not have to have a warrant to

CAL. § 646.9-a. A person who stalks in violation of a restraining order or stalks the same person more than one time in a seven year period may face the same penalty as stated above or may serve up to one year in the state prison. CAL. § 646.9-b, c.

⁶⁵ CAL. § 1270-a. The judge is required to take into account the nature of the threat and the offender's previous behavior when determining how high to set the bail. Robeson, *supra* note 29, at C28.

⁶⁶ *Stalking Law Overdue*, FLA. TODAY, Mar. 7, 1992, at A1 [hereinafter *Stalking Law Overdue*]. A Pasco County woman testified before the legislature that she had been terrorized by a man for five years, however during that time law enforcement officers told her there was nothing they could do until he physically harmed her. *Id.*

⁶⁷ *Id.* See FLA. STAT. ch. 784.048 (1992). 784.048].

⁶⁸ *Stalking Law Overdue*, *supra* note 66, at A1.

⁶⁹ Fla. 784.048-3. A person guilty of aggravated stalking is one who "willfully, maliciously, and repeatedly follows or harasses another person, and makes a credible threat with the intent to place that person in reasonable fear of death or bodily injury." *Id.*

⁷⁰ Fla. 784.048-2. A person who commits the offense of stalking is one who "willfully, maliciously, and repeatedly follows or harasses another person." *Id.*

⁷¹ Fla. 784.048-4. Under the statute, simple stalking is a misdemeanor of the first degree and could result in a fine of \$1000 and one year in jail. *Stalking Law Overdue*, *supra* note 66, at A1. Aggravated stalking, a felony of the third degree, could be punishable by a fine of \$5000 and five years in prison. *Id.*

arrest an individual for stalking.⁷² Moreover, because the victim does not have to be threatened in addition to being followed, the police are able to apprehend the offender for stalking without any overt threats⁷³ being made.⁷⁴

C. *Federal Anti Stalking Bill*

Although many people around the country are protected by state antistalking laws, there still remains a handful of states that have not yet enacted antistalking legislation.⁷⁵ In order to protect those people who live in states without antistalking laws, federal legislators have introduced various bills that would make stalking a federal crime.⁷⁶

⁷² Fla. 784.048-5. Arresting a suspect inside his or her home is per se unreasonable absent exigent circumstances. *Payton v. New York*, 445 U.S. 573 (1980). However, if there is sufficient evidence that an individual participated in a felony, an arrest warrant may be issued which would permit an officer to enter the suspect's home. *Id.* at 603-04. The law enforcement officer, however, must have probable cause to believe that the individual violated the statute in order to make an arrest without a warrant. *Id.* For example, a 66 year-old man was arrested for repeatedly telephoning his victim and appearing at her house uninvited. Ardy Friedberg, *Elderly Man May Be First Charged Under Florida Stalking Law*, HOUS. CHRON., July 12, 1992, at 16. Similarly, a 12 year-old boy was apprehended for violation of the antistalking statute for allegedly sending threatening notes to a classmate. *Boy 12, Accused in Stalking Case*, WASH. TIMES, Dec. 17, 1992, at B5. For problems with this "no warrant" provision, see *infra* notes 141-44 and accompanying text.

⁷³ See BLACK'S LAW DICTIONARY 1104-05 (6th ed. 1990), defining "overt act" as "an open, manifest act from which criminality may be implied." *Id.* A "threat" is defined as "a communicated intent to inflict physical or other harm on any person or on property." *Id.* at 1480-81.

⁷⁴ CONGRESSIONAL RESEARCH SERVICE, ANTI-STALKING STATUTES: BACKGROUND AND CONSTITUTIONAL ANALYSIS, 92-735A, at 7 (Kenneth R. Thomas ed., Sept. 26, 1992) [hereinafter CRS REPORT]. Arresting an individual for non-threatening behavior could cause problems for people such as news reporters who may follow a celebrity to get a story and as a result be found guilty of stalking. *Id.*

⁷⁵ See *supra* note 12 (listing states that have antistalking legislation pending).

⁷⁶ See Ellis et al., *supra* note 36, at 63 (Sen. Krueger (D-Tex.), and Sen. Barbara Boxer, (D-Cal.), introduced a bill in Congress making stalking a federal offense). See also Press Release from the Office of Sen. Royce, R-Cal., Next Step: Make Stalking a Crime at the Federal Level — Allow California Law to Benefit All Americans (June 25, 1991) (on file with *Seton Hall Legislative Journal*) [hereinafter Next Step]. Senator Royce vowed to introduce legislation in the U.S. House of Representatives that would make stalking a federal crime. *Id.*

The crusade for federal antistalking legislation began in 1992 when less than half the states had antistalking laws.⁷⁷ Although the sponsors of the first federal antistalking bill believed it was the responsibility of each individual state to enact and enforce its own legislation, they were concerned about the constitutionality of the enacted state statutes and hoped that a law drafted by the federal government would serve as model legislation.⁷⁸

In order to assist the states with the difficult task of drafting antistalking legislation, a bill was introduced charging the National Institute of Justice with creating a model antistalking law that could be used by the states to enact legislation or amend current laws.⁷⁹ Although the bill is being developed by the federal government, the drafters' intent is not to make stalking a federal crime,⁸⁰ but rather to study and analyze the stalking epidemic in order to provide information to the states and improve overall stalking legislation.⁸¹

With the beginning of the 103d Congress came a handful of

⁷⁷ See 138 CONG. REC. S9520, S9527 (daily ed. July 1, 1992) (statement of Sen. Cohen). Senator Cohen noted that 20 states had antistalking legislation enacted at the time he was sponsoring S.2922. *Id.* at S9520.

⁷⁸ *Id.* at S9520. See S. 2922, 102d Cong., 2d Sess. (1992).

⁷⁹ *Antistalking Legislation*, *supra* note 20, at 2 (statement of Sen. Joseph R. Biden, Jr., Chairman of the Senate Judiciary Committee). The National Institute of Justice serves as a federal clearinghouse that is able, with the assistance of experts from across the country, to study the issue of stalking and gather statistics that can assist the drafters in creating an enforceable antistalking law. *Id.* In attempting to draft these guidelines, S. 2922 instructs the National Institute of Justice to do four things:

- (1) Evaluate anti-stalking legislation and proposed anti-stalking legislation in the States;
- (2) Develop model anti-stalking legislation that is constitutional and enforceable;
- (3) Share its findings with State authorities;
- (4) Within one year of enactment, report to the Congress its findings and the need or appropriateness of further action by the Federal Government.

Id. at 20 (statement of Sen. Cohen).

⁸⁰ *Id.* at 6 (statement of Sen. Thurmond). Senator Thurmond noted that the National Institute of Justice has created model legislation in the past that was utilized by the states without making such model legislation a federal crime. *Id.*

⁸¹ *Id.* at 65 (statement of Rep. Bullard). The National Institute of Justice was given the task of researching and analyzing the stalking issue because it has the resources and funding to conduct the necessary studies both in the United States and other countries. *Id.* While state governments do not have the resources to scientifically determine how successful their laws are being implemented, the national government is able to organize intensive studies on the effect of antistalking laws around the country. *Id.*

antistalking bills that are currently pending in the House and the Senate.⁸² One pending Senate bill punishes the crime of stalking on a federal level.⁸³ A similar bill is also pending in the House that is titled The Federal Anti-Stalker Act of 1993.⁸⁴ While these bills are very similar to the California antistalking law,⁸⁵ the federal bills apply only to particular circumstances,⁸⁶ therefore narrowing their scope.⁸⁷ The federal bills, however, carry more severe penalties

⁸² See *infra* notes 83-94 and accompanying text.

⁸³ S. 470, 103d Cong., 1st Sess. (1993) [hereinafter S. 470]. This bill was introduced on March 2, 1993, and is currently being considered by the Senate Judiciary Committee. *Id.* This bill would make stalking a federal crime if committed on federal property, or if committed by means of interstate commerce, such as by telephone or through utilization of the mail. *Anti-Stalking Proposals, supra* note 40, at 33 (statement of Sen. Boxer).

⁸⁴ H.R. 740, 103d Cong., 1st Sess. (1993) [hereinafter H.R. 740]. This bill was introduced by Sen. Royce (R-Cal.) and was then referred to the House Judiciary Committee for consideration. *Id.*

⁸⁵ *Id.* An individual is guilty of stalking at the federal level if he willfully, maliciously and "repeatedly follows or harasses another person; and makes a credible threat with the intent to place that person in reasonable fear of death or serious bodily injury of that person or a member of that person's immediate family." *Id.* § 2. The bill defines the terms "harasses" and "course of conduct" using the exact same language as the California antistalking law. See CAL. PENAL CODE § 646.9 (West Supp. 1992). The definition of "credible threat" is also very similar, with the only difference being that the federal antistalking criminalizes threats made against the victims family. H.R. 740 § 2. The similarity between H.R. 740 and the California antistalking law is not a coincidence in that Senator Royce, sponsor of both bills, stated that he planned to federalize the California law rather than create a new bill to introduce to Congress. Next Step, *supra* note 76, at 3.

⁸⁶ H.R. 740 § 2, *supra* note 84. The federal antistalking bill can be applied if the stalker crosses a state border during or in the process of committing the offense, if the stalker uses the mail or an "instrumentality of interstate commerce" in the course of stalking, or if the stalking occurred "in the special maritime and territorial jurisdiction of the United States." *Id.* A first conviction under the proposed statute will result in a fine and/or imprisonment for not more than one year. *Id.* A subsequent conviction under the statute against the same person or stalking in violation of a restraining order will result in a fine and/or imprisonment of up to three years. *Id.* See also *infra* note 93 (describing legislation that applies solely to stalking of federal officers and employees).

⁸⁷ *Anti-Stalking Proposals, supra* note 40, at 33 (statement of Sen. Barbara Boxer). The federal antistalking bill is more narrow in scope than the state laws, in that the federal bill only pertains to conduct that performed on federal property or through interstate commerce, such as through utilization of the mail or by telephone. *Id.* § 2. Alleged offenders charged with stalking under the federal law, however, may still face trial in the state courts. *Id.* Because of the backlog of cases in the federal system, S. 470 permits the Attorney General to make a determination as to whether the case will be tried in state or federal court. *Id.*

than many state antistalking laws.⁸⁸

As a result of the recent surge in stalking related crimes, a federal bill was introduced to establish a national program that will reduce the incidence of stalking.⁸⁹ Titled "The National Stalker Reduction Act of 1993," the legislation authorizes states to set up programs that increase awareness, reporting, and prevention of stalking.⁹⁰ States that receive funding through the Omnibus Control and Safe Streets Act of 1968 must allocate part of those funds to develop the required recording systems as set forth in the act.⁹¹ It is apparent that the federal bills, although narrower in some respects,⁹² serve a greater purpose than the individual state antistalk-

⁸⁸ *Id.* A first time offender would receive up to two years in prison and/or up to a \$5000 fine. *Id.* If the offender violated a restraining order, the penalty would increase to a prison sentence of two to four years and/or a fine of between \$5000 and \$100,000. *Id.* Repeat offenders would receive a prison sentence of five to ten years and/or a fine between \$25,000 and \$200,000. *Id.* These penalties exceed the penalties in California, where the maximum sentence includes up to one year in prison and/or up to a \$1000 fine, Cal. § 646.9-c, *supra* note 60, and in New Jersey, where the penalty for stalking in violation of a restraining order includes a term of imprisonment of three to five years and/or a fine of up to \$7,500. N.J. STAT. ANN. § 2C:12-10 (West Supp. 1993).

⁸⁹ H.R. 840, 103d Cong., 1st Sess. (1993) [hereinafter H.R. 840]. This bill was introduced by Rep. Kennedy (D-Mass.) on Feb. 4, 1993, and was referred to the House Committee on the Judiciary for consideration. *Id.*

⁹⁰ *See id.* The National Stalker Reduction Act of 1993 was created to amend the Omnibus Crime Control and Safe Streets Act of 1968. *Id.* § 3-a. The act requires all states to have an antistalking law in their criminal codes by September 30, 1994. *Id.* at § 3-b. Additionally, every state must develop training programs for law enforcement officers and judicial personnel on how to handle stalking cases, report information dealing with domestic violence cases to a statewide central registry, and search that central registry for an offender's criminal history before issuing any civil restraining order. *Id.*

⁹¹ *Id.* § 4. Each state that receives funds under § 506 of the Omnibus Crime Control and Safe Streets Act of 1968 must allocate at least five percent of those funds to developing a recording system for stalking and domestic violence cases. *Id.* For the full text of the Omnibus Crime Control and Safe Streets Act of 1968 see Pub. L. No. 90-351, 82 Stat. 197 (1970). A proposal was also made by Sen. Biden which was designed to increase the flow of information to all judicial officers who deal with stalking and domestic violence cases. *Anti-Stalking Proposals*, *supra* note 40, at 3 (statement of Sen. Biden). The proposal, called the "Stalker and Family Violence Enforcement Act" or "SAFE" Act, would give all courts that deal with stalking and domestic violence cases access to federal criminal history records located in the National Crime Information Center ("NCIC") and the Interstate Identification Index ("Triple Eye"). *Id.* This system would enable family and civil court judges to research the criminal history of stalkers before granting restraining orders against them. *Id.*

⁹² H.R. 740, *supra* note 84 and accompanying text.

ing laws.⁹³ The federal bills, specifically the National Stalker Reduction Act of 1993, are intended to force states not only to enact antistalking legislation, but also to make sure the laws are being enforced and followed.⁹⁴ It can only be hoped that the federal bills are enacted with as much speed and support as the various states bills have been enacted.

IV. *The New Jersey Antistalking Bill*

A. *Legislative History*

Nearly two and one-half years after the first antistalking law was enacted, New Jersey signed into law its own antistalking bill, which was substantially modeled after the California law.⁹⁵ The bill, sponsored by Sen. James Cafiero (R-Wildwood), and by Assemblymen Frank LoBiondo (R-Vineland), and John Gibson (R-Seaville),⁹⁶ was introduced to the Senate Committee on Judiciary on January

⁹³ H.R. 2370, 103d Cong, 1st Sess. (1993). This legislation seeks to prevent the stalking of Federal officers and employees. *Id.* This piece of legislation was introduced in response to the recent murders of postal workers in Dearborn, Michigan and Dana Point, California, as well as other federal employees who are harassed and murdered every year simply because of the title of their jobs. 139 CONG. REC. H3515 (daily ed. June 15, 1993) (statement of Rep. Collins).

⁹⁴ H.R. 840, *supra* notes 89-91, § 3-6 and accompanying text.

⁹⁵ Press Release from the Offices of Senator Cafiero, Assemblyman LoBiondo and Assemblyman John Gibson, Cafiero/LoBiondo/Gibson Stalking Bill Signed Into Law (Jan. 5, 1993) (on file with *Seton Hall Legislative Journal*). Although the New Jersey antistalking law varies in many aspects from the California law, the drafters of the New Jersey law used the basic frame of the California law to create the New Jersey law. *Id.* The California statute is tougher than the New Jersey statute in that a second stalking offense committed while a temporary restraining order is in effect will result in a felony offense. CAL. PENAL CODE § 646.9-b (West Supp. 1992). The New Jersey statute does not make subsequent stalking offenses felony crimes. *See* N.J. STAT. ANN. § 2C:12-10 (West Supp. 1993). However, the New Jersey statute makes it easier for the police to apprehend the stalkers than the California statute in that the New Jersey statute does not require the threats to be explicit. *See infra* notes 101-03 and accompanying text. Thus, an implicit or vague threat will warrant an arrest of a stalker in New Jersey but will not suffice as a credible threat under the California statute. *Compare* N.J. STAT. ANN. § 2C:12-10 (West Supp. 1993) with CAL. PENAL CODE § 646.9-e (West Supp. 1992) (New Jersey statute enables law enforcement officers to act on either implicit or explicit threats while the California statute does not differentiate between the types or threats, therefore allowing action to be taken on explicit threats only).

⁹⁶ Press Release from the Office of Senator James Cafiero, Cafiero Stalking Bill Passes Senate (May 21, 1992) (on file with *Seton Hall Legislative Journal*). S-256 was sponsored by Senator James S. Cafiero (R-Atlantic, Cape May, Cumberland). *Id.* A companion bill, A-801, was sponsored by Assemblymen John C. Gibson (R-Atlantic, Cape May, Cumberland) and Frank A. LoBiondo (R-Atlantic, Cape May, Cumber-

24, 1992.⁹⁷

After only four months, the bill had unanimously passed the Senate Committee on Judiciary and was sent to the Assembly Committee on Judiciary, Law and Public Safety for approval.⁹⁸ In support of the bill, two women and a police officer testified at the hearing, urging that such a law be passed because the existing laws dealing with harassment were not sufficient.⁹⁹ It was at this stage that the first amendments to the bill were made.¹⁰⁰ The amendments adopted by the committee delineate that any type of threat, explicit or implicit,¹⁰¹ is an element of the crime of stalking.¹⁰² In

land). *Id.* The two bills were merged for procedural purposes and the Senate bill, S. 256, was finally enacted into law. Letter from Miriam Bavati, Associate Counsel for New Jersey Legislative Services Commission to Colleen P. Flynn, *Seton Hall Legislative Journal* (June 29, 1993) (letter on file with the *Seton Hall Legislative Journal*) [hereinafter Bavati letter].

⁹⁷ S. 256 Summary, 205th N.J. Leg., 1st Reg. Sess. (1992), available in WESTLAW, N.J. Bill Tracking File [hereinafter S.B. 256 Summary].

⁹⁸ See *Panel Oks Antistalking Bills*, BRIDGETON EVENING NEWS, Aug. 31, 1992, at A1 [hereinafter *Panel*]. S-256 passed the full Senate on May 21, 1992, by a vote of 40-0. *Id.*

⁹⁹ See Ron Marsico, "Stalking" Legislation Approved, STAR-LEDGER (Newark), Nov. 10, 1992, at 1 [hereinafter *Legislation Approved*]. See also Henry J. Holcomb, *Florio Signs Law On Stalking*, PHILADELPHIA INQUIRER, Jan 6, 1993, at S1. One of the women who anonymously testified before the Assembly Judiciary, Law and Public Safety Committee finally faced the cameras at the bill signing ceremony. *Id.* Beth Miller of Summit, New Jersey, described to reporters how she had been stalked for four years by a man that still remains free. *Id.*

¹⁰⁰ See N.J. ASSEMBLY JUDICIARY LAW AND PUBLIC SAFETY COMM., STATEMENT TO S. 256, 205th LEG., 1st Sess. (Aug. 24, 1992) [hereinafter COMMITTEE STATEMENT].

¹⁰¹ "Explicit" is defined as "not obscure or ambiguous, having no disguised meaning or reservation." BLACK'S LAW DICTIONARY 579 (6th ed. 1990). Therefore, an explicit threat would be an overt, verbal threat to harm or injure that person. See *Ms. B. V. Montgomery County Emergency Serv.*, 799 F. Supp. 534, 536 (E.D. Pa. 1992) (describing patient's threats to kill co-workers as explicit). The New Jersey antistalking statute, however, permits the police to arrest a person who makes implicit threats to another. N.J. STAT. ANN. § 2C:12-10-a-2 (Wset Supp. 1993). Simply following another person so as to alarm them will suffice as an implicit threat and will warrant an arrest of the stalker. *Id.* This serves as an advantage to both the police and the victims because many suspects do not make actual threats of bodily harm to the victims. *Antistalking Legislation*, *supra* note 20, at 72.

¹⁰² COMMITTEE STATEMENT, *supra* note 100. Prior to the amendments, the bill provided that a person is guilty of stalking "if he purposely and repeatedly follows or harasses another person and makes a credible threat with the intent to place that person in reasonable fear of death or serious bodily injury." *Id.* The amendment broadens the definition of "credible threat" by allowing either an explicit or implicit threat to constitute stalking. *Id.* This amendment expanded the antistalking law and now serves as an advantage to the police because stalking generally does not involve explicit threats or physical contact. *Antistalking Legislation*, *supra* note 20, at 72. Prior

addition, the amendments expand the scope of the bill by making it a crime to place a victim in "reasonable fear of bodily injury" rather than "serious bodily injury" as the bill provided when originally introduced.¹⁰³

The final amendment made to the bill by the Assembly Committee on Judiciary, Law and Public Safety provided that the bill would not apply to actions that occurred during organized group picketing.¹⁰⁴ While protesting is protected under the antistalking laws, once the organized assembly turns into harassment or terrorism, the antistalking law may be used to apprehend the offenders.¹⁰⁵ With the above mentioned amendments intact, the Assembly Judiciary, Law and Public Safety Committee unanimously approved S-256 on August 24, 1992.¹⁰⁶

With great enthusiasm and support,¹⁰⁷ the bill was submitted to the full General Assembly for consideration.¹⁰⁸ Not completely satisfied with the bill in its amended stage, the bill was furthered amended on the Assembly floor.¹⁰⁹ These amendments provide that a person is guilty of stalking "if he purposely and repeatedly follows another person and engages in a course of conduct or

to the law, an assailant could only be charged with the disorderly persons offense of harassment. See Weissman, *supra* note 59, at A1.

¹⁰³ See COMMITTEE STATEMENT, *supra* note 100 and accompanying text.

¹⁰⁴ *Id.* The bill, as originally introduced, stated, "This act shall not apply to conduct which occurs during labor picketing." S. 256, 205th N.J. Legis., 1st Reg. Sess. (1993) (enacted) [hereinafter S. 256]. The amendment was passed to include all organized group picketing, rather than picketing that was only labor related. Picketing is a form of expressive conduct that is protected by the First Amendment and cannot be restricted by a statute or ordinance without a substantial governmental interest. *Police Dept. v. Mosley*, 408 U.S. 92, 99 (1972). However, picketing in certain areas, such as a private residence, has been prohibited by the courts in the past. *Boffard v. Barnes*, 623 A.2d 1384 (N.J. Super. Ct. App. Div. 1993) (restraining order against abortion protesters from picketing in front of doctor's home is a valid time, place and manner restriction).

¹⁰⁵ See Ted Appel, *Bill Would Sharpen California's Antistalking Law*, UPI, Mar. 8, 1993, available in LEXIS, Nexis Library, Newspaper File (citing California's Lt. Governor Leo McCarthy who noted that anti-abortion activists who are becoming more brazen in their terrorist activity may be subject to stalking laws in the future).

¹⁰⁶ *Panel*, *supra* note 98, at A1 and accompanying text.

¹⁰⁷ See *Legislation Approved*, *supra* note 99, at 31. This article quotes Richard Pompeio, an activist for victims rights throughout New Jersey, who praised the legislation and noted that the antistalking law is seeking to save lives of stalking victims. *Id.*

¹⁰⁸ S.B. 256 Summary, *supra* note 97. It was at this stage that A-801 and S-256 were merged for procedural purposes with the bill being entitled S-256. See Bavati letter, *supra* note 96.

¹⁰⁹ S.B. 256 Summary, *supra* note 97.

makes a credible threat with the intent of annoying or placing that person in reasonable fear of death or bodily injury."¹¹⁰ The Assembly proceeded to alter the definition of "course of conduct" to avoid any ambiguities¹¹¹ and eliminated "harassment" as an element of the offense.¹¹²

After passing the Assembly and Senate by an overwhelming majority,¹¹³ the bill was sent to the Governor for consideration. On January 5, 1993, the tragic nightmare for stalking victims in New Jersey came to an abrupt halt as Governor Jim Florio signed S-256 into law, making stalking a crime in New Jersey.¹¹⁴ With the law in effect, stalking victims would finally be able to turn to the police for help and feel confident that the police had the power and authority to apprehend the stalker.¹¹⁵ Advocates of the antistalking law hope that victims of stalkers will realize the existence of the new law and not hesitate to report any incidents to the police as many victims had done in the past.¹¹⁶ The new antistalking law was intended to not only give the police the power to arrest the assail-

¹¹⁰ N.J. ASSEMBLY, STATEMENT TO ASSEMBLY FLOOR AMENDMENTS, 205th Leg., 1st Sess. (1992). Prior to the amendments, the bill provided that a person is guilty of stalking "if he purposely and repeatedly follows or harasses another person and makes a credible threat with the intent to place that person in reasonable fear of death or bodily injury." *Id.* The amendment excludes the word "harasses" from the text and broadens the scope of the bill by including the phrase "engages in a course of conduct" and by permitting a simple annoyance of the victim, in addition to placing the person in reasonable fear of harm, to permit an arrest for stalking. *Id.*

¹¹¹ *Id.* Prior to the amendments, "course of conduct" was defined as "a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose." S. 256, *supra* note 104, § a-1. The statute as enacted includes that the course of conduct must be knowing and willful, must be directed at a specific person, and must alarm or annoy the victim so as to cause that person to suffer emotional distress. N.J. STAT. ANN. § 2C:12-10-a-1 (West Supp. 1993).

¹¹² S. 256, *supra* note 104, § a-3.

¹¹³ See S. 256 Summary, *supra* note 97. The bill passed the Assembly on Oct. 29, 1992. *Id.* The Senate passed the bill on Nov. 9, 1992. *Id.*

¹¹⁴ See Pliskin, *supra* note 30, at 8. At the bill signing ceremony, victim's rights advocates praised the bill for taking a "bold step" in advancing the rights of victims. *Id.* The advocates stated that "New Jersey is on the side of the victim." *Id.*

¹¹⁵ See Marsico, *supra* note 17, at 12. Prior to the antistalking law, law enforcement authorities were hampered by the laws because they did not have the authority to apprehend suspects until they made a physical attack, threat or sexual assault upon the victim. *Id.*

¹¹⁶ See Weissman, *supra* note 59, at A10. Jim O'Brien, president of the Coalition for Crime Victims Rights, stated, "I urge the silent victims of stalking to now report these crimes to the police." *Id.*

ant for stalking, but more specifically to intervene before the assailant became violent with the victim.¹¹⁷

B. *The New Jersey Antistalking Law*

The 1993 antistalking law is a piece of landmark legislation in that it makes stalking a crime in New Jersey.¹¹⁸ Because no such law existed in New Jersey prior to the enactment of 2C:12-10, the drafters of the bill modeled the New Jersey bill after already existing antistalking laws, in order to create an ideal antistalking law.¹¹⁹ Consequently, New Jersey's antistalking law is known as the "toughest" in the nation.¹²⁰

The new law has given the police the authority to arrest a suspect for any type of conduct that scares¹²¹ the victim and serves no lawful purpose.¹²² The broad legal protection once given to stalkers has been taken away by the enactment of the antistalking legis-

¹¹⁷ See, e.g., Lewin, *supra* note 51, at A5 (citing statement of David Beatty, director of public policy at the National Victim Center in Washington, who noted that the new antistalking laws were intended for the police to intervene before physical violence occurred). Representative Royce, sponsor of California's statute stated: "The old adage was, 'Once he attacks you physically, then we can act' [With the stalking law] we established a precedent giving law enforcement the ability to intervene . . . before it is too late." Connelly, *supra* note 45, at B1.

¹¹⁸ N.J. STAT. ANN. § 2C:12-10 (West Supp. 1993).

¹¹⁹ See COMMITTEE STATEMENT, *supra* note 100 (noting that the New Jersey antistalking law was modeled after the California statute). See also Bavati letter, *supra* note 96 (noting that the New Jersey statute was based on both the Florida and California antistalking statutes).

¹²⁰ Holcomb, *supra* note 99, at S1. Jim O'Brien, a victims' rights advocate stated that the New Jersey law is the "toughest" because unlike other state laws, it does not require an explicit threat to be made to the victim. *Id.* The California statute, for example, requires a threat to be "against the life of, or a threat to cause great bodily injury to, a person . . ." See CAL. PENAL CODE § 646.9-e (West Supp. 1992). Requiring overt rather than implicit threats has created problems for police in California because they are forced to wait for an explicit threat to be made against a person's life to file criminal charges against the stalker. See Fountain & Kirby, *supra* note 38, at D1 and accompanying text.

¹²¹ N.J. STAT. ANN. § 2C:12-10-b (West Supp. 1993). More specifically, the law states that the threats must be made with the intent of "annoying or placing that person in reasonable fear of death or bodily injury." *Id.*

¹²² See Weissman, *supra* note 59, at A10. The phrase "serves no legitimate purpose" has been deemed redundant in that if a person has a legitimate or lawful reason to be following or harassing another person, their behavior is not in violation of the statute. CRS REPORT, *supra* note 74, at 10. Such a phrase could be a basis for a court to strike down a statute for unconstitutional vagueness. *Id.* (citing *People v. Norman*, 703 P.2d 1261 (Colo. 1985)). In that case, the court found that the phrase "serves no legitimate purpose" in a harassment statute was vague and had no defined meaning

lation, as assailants who were once permitted to follow a victim on a public street or stand outside that victim's house will now face up to eighteen months in prison and/or a \$7500 fine the first time such conduct is reported.¹²³ A second or subsequent offense of stalking against the same victim or a violation of a court order requiring the stalker to stay away from the victim will result in a prison term of three to five years and/or a fine of up to \$7500.¹²⁴

Stalking, a crime of the fourth degree,¹²⁵ is defined as "purposely and repeatedly follow[ing] another person and engag[ing] in a course of conduct or mak[ing] a credible threat with the intent of annoying or placing that person in reasonable fear of death or bodily injury."¹²⁶ The primary reason for New Jersey's antistalking being called the "toughest" is because of the way in which "credible threat" is defined.¹²⁷ A "credible threat" can either be explicit or implicit,¹²⁸ therefore eliminating the necessity for any overt threat or actual physical contact.¹²⁹ Defining "credible threat" to include implicit threats limits problems facing police because often times suspects do not overtly threaten the victims, therefore making it

under the statute. Such vague language had the tendency to invite subjective evaluations of what type of conduct was prohibited by the statute. *Id.* at 1267.

¹²³ See Weissman, *supra* note 59 at A10. See also COMMITTEE STATEMENT, *supra* note 100. A first time offense of stalking is considered a crime of the fourth degree under New Jersey law. N.J. STAT. ANN. § 2C:12-10-b (West Supp. 1993).

¹²⁴ COMMITTEE STATEMENT, *supra* note 100. A second stalking offense or stalking someone in violation of a protective order is considered a crime of the third degree under New Jersey law. N.J. STAT. ANN. § 2C:12-10-c (West Supp. 1993).

¹²⁵ N.J. STAT. ANN. § 2C:43-1 (West 1992). Crimes defined by the New Jersey Code of Criminal Justice are classified, for the purpose of sentencing, into four degrees: first degree, second degree, third degree and fourth degree. *Id.* Crimes designated as high misdemeanors are considered crimes of the third degree for the purpose of sentencing and crimes designated as misdemeanors are considered crimes of the fourth degree for the purpose of sentencing. *Id.*

¹²⁶ N.J. STAT. ANN. § 2C:12-10-b (West Supp. 1993). Compare N.J. § 2C:12-10 (violation of the New Jersey statute can result in up to 18 months in prison and/or \$7500 fine) with Fla. STAT. ANN. 784.048 (West 1993). The Florida statute's definition of credible threat is similar to that of New Jersey's definition, but in Florida it is considered aggravated stalking and is punishable with five years in prison and a \$5000 fine. *Id.*

¹²⁷ Holcomb, *supra* note 99, at S1. Because a credible threat includes implicit as well as explicit threats, the police are able to apprehend stalkers without any overt threats being made. *Id.* This provision is an effective tool for police in stopping the stalkers since stalkers generally do not make overt threats to their victims. *Antistalking Legislation*, *supra* note 20, at 72.

¹²⁸ See *supra* note 101.

¹²⁹ Holcomb, *supra* note 99, at S1.

difficult for police to arrest the suspect.¹³⁰ Stalkers may now be arrested for purposely and repeatedly following a person in a way that annoys or alarms that person and that "causes a reasonable person to suffer emotional distress."¹³¹

Even though a threat may indeed be made, such a threat is not actionable unless the victim "reasonably" fears for his or her safety.¹³² The "reasonable fear" standard was included in the law so that the statute would not be construed as overly broad,¹³³ as "it's not a crime to make a paranoid person fearful."¹³⁴ Although the drafters' intent was to avoid any ambiguity in the wording of the law, the "reasonable" standard has been considered vague by critics of the law in that it is not clear who will determine what type of fear is reasonable.¹³⁵

When creating the New Jersey antistalking law, the drafters were at an advantage in that they were able to view other state antistalking laws and avoid modeling any part of those laws that have been criticized as being vague or possibly unconstitutional by crit-

¹³⁰ See Fountain & Kirby, *supra* note 38, at D1. Lt. John Lane of the Los Angeles Police Department noted that police are having difficulties with the broad wording of California's antistalking law because "credible threat" is not specifically defined to include implicit threats. *Id.* The legislature, however, is seeking to remedy that problem by proposing legislation that will "redefine 'credible threat' to include placing a person in reasonable fear of death or great bodily injury to the person's immediate family and to increase penalties for subsequent stalking convictions." Resnick, *supra* note 35, at 3.

¹³¹ N.J. STAT. ANN. § 2C:12-10-b (West Supp. 1993).

¹³² N.J. STAT. ANN. § 2C:12-10-a-2 (West Supp. 1993).

¹³³ See BLACK'S LAW DICTIONARY 1103 (6th ed. 1990). A statute is overbroad, and should therefore be invalidated, if it is "fairly capable of being applied to punish people for constitutionally protected speech or conduct." *Id.*

¹³⁴ Constance L. Hays, *If That Man is Following Her, Connecticut is Going to Follow Him*, N.Y. TIMES, June 5, 1992, at B1. Thomas S. Luby, a state representative and sponsor of the Connecticut bill discussed the justification for the "reasonable fear" standard. *Id.* A drafter of the Connecticut antistalking legislation, Luby noted that the reasonable fear standard was included in order to uphold the constitutionality of the statute by drawing a boundary line between legitimate and illegitimate behavior. *Id.*

¹³⁵ See, e.g., Furio, *supra* note 43, at 91. Joan Zorza, an attorney with the National Battered Women's Law Program noted that the problem with the reasonable fear standard is how it is defined and who is responsible for defining it. *Id.* Because courts generally view reasonable from a man's point of view, discrimination could arise because what might not be fearful to a reasonable man will cause fear in a reasonable woman. *Id.*

ics of the law.¹³⁶ The first step taken by the drafters in order to avoid the problem of vagueness was to include a scienter, or criminal intent requirement.¹³⁷ For a suspect to be found guilty of stalking, he must have "knowing and willful conduct that serves no legitimate purpose and alarms or annoys the victim."¹³⁸ Authorities may arrest and subsequently prosecute a suspect only upon a finding of probable cause¹³⁹ to believe that the suspect possesses the required criminal intent as provided by the statute.¹⁴⁰ Therefore, police in New Jersey can arrest a suspect for stalking if they have probable cause to believe that the suspect with a "knowing and willful course of conduct" intends to cause the victim to suffer emotional distress or to reasonably fear for his or her safety.¹⁴¹

C. Constitutional Problems

Critics have argued that where probable cause is concerned, problems of constitutionality could arise when police arrest someone for stalking solely on the word of the alleged victim.¹⁴² It is further argued that these types of statutes provide a potential for

¹³⁶ See *State v. Smith*, 218 A.2d 147 (N.J. Sup. Ct. 1966). A statute is vague if it forbids or requires conduct in terms so general or ambiguous that "men of common intelligence" must guess at the meaning of the statute. *Id.* at 151.

¹³⁷ CRS REPORT, *supra* note 74, at 9. The New Jersey antistalking statute has two separate intent requirements. The first is that the person accused of stalking must have a "knowing and willful course of conduct." N.J. STAT. ANN. § 2C:12-10-a-1 (West Supp. 1993). The second and more narrowing intent requirement is that the stalker's acts were done with the intent of "annoying or placing that person in fear of death or bodily injury." N.J. § 2C:12-10-b. This intent requirement narrows the statute so that the nature of the stalker's conduct would be considered by a court or jury. CRS REPORT, *supra* note 74, at 9. Therefore, a judge or jury could not find a person guilty of stalking from simply following another person without some evidence of an intent to harm that person. *Id.*

¹³⁸ N.J. STAT. ANN. § 2C:12-10-a-1 (West Supp. 1993).

¹³⁹ See *United States v. Touby*, 710 F. Supp. 551 (D.N.J. 1989). Probable cause exists where the facts and circumstances within the knowledge of the police officer are reasonably trustworthy and sufficient to warrant a person of reasonable caution in believing that the alleged offender has committed the offense. *Id.* at 561.

¹⁴⁰ See *Sunderbrand v. Shills*, 82 N.J.L. 700, 702 (1912) (Court of Error and Appeals held that lower court was justified in holding there was no probable cause for arrest because suspect did not have the criminal intent to steal).

¹⁴¹ N.J. STAT. ANN. § 2C:12-10 (West Supp. 1993).

¹⁴² Resnick, *supra* note 35, at 3. Jeffrey S. Weiner, President of the National Association of Criminal Defense Lawyers opined that a judge should review the incident before police arrest suspects based solely on the alleged victim's statement. *Id.* The Florida antistalking law, for example, permits police to arrest a suspected stalker without a warrant or catching the suspect in the act. Weiner argues that the Florida law is

misuse, especially in the area of domestic and marital disputes,¹⁴³ as in those types of situations, it is probable that victims will make false allegations about their former spouses or companions in order to elicit revenge for a painful breakup.¹⁴⁴ When the former spouse is abusive, however, the antistalking law will provide the victim with safety where such safety was once almost impossible to obtain.¹⁴⁵

Further, the requirement of the scienter element is aimed to ensure the New Jersey antistalking law to overcome any constitutional challenges that it may face in the future.¹⁴⁶ Additionally, the drafters refrained from including a clause permitting arrests without a warrant, which has been held as being suspect in the states that included such a provision as part of the law.¹⁴⁷ Generally, a warrant and probable cause are necessary for police to make a lawful arrest unless the officer views the criminal conduct firsthand.¹⁴⁸ Fostering the ability to permit the arrest of suspects without a warrant could lead to the antistalking law being found unconstitu-

a clear example of an unconstitutional statute because it allows arrests to be made without sufficient probable cause. *Id.*

¹⁴³ See, e.g., Beck, et al., *supra* note 13, at 61 (citing Jeffrey Weiner who stated, "There are very often false allegations made in all sorts of contexts against spouses or former spouses.")

¹⁴⁴ *Id.*

¹⁴⁵ See Kohn, *supra* note 18, at 130. In states where stalking is categorized as a domestic dispute, it is unlikely that the stalker will be punished since arrests in domestic cases rarely result in convictions. *Id.* Lee Williams, a Michigan lawyer who represents battered women, advises women in abusive situations to report to the police that a stranger is stalking them rather than admit that it is former husband or boyfriend. *Id.*

¹⁴⁶ See CRS REPORT, *supra* note 74, at 9 and accompanying text.

¹⁴⁷ See, e.g., Resnick, *supra* note 35, at 3 (citing Jeffrey S. Weiner who questioned the constitutionality of the Florida "no warrant" antistalking law.) See also Gera-Lind Kolarick, *Stalking Laws Proliferate: But Critics Say Constitutional Flaws Also Abound*, 78 A.B.A.J. 35 (1991) (discussing the constitutionality of various antistalking laws and citing Jonathan Turley, a professor at George Washington University National Law Center, who similarly criticizes the no warrant aspect of the Florida statute as being unconstitutional).

¹⁴⁸ Kolarick, *supra* note 147, at 35. See also *State v. Hand*, 242 A.2d 888, 894 (N.J. Super. Ct. Law Div. 1968) (holding that under common law, a police officer has authority to arrest an individual without a warrant where he has probable cause to believe the person committed a crime punishable by at least one year or has witnessed the commission of disorderly conduct or a traffic violation); *United States v. Allen*, 629 F.2d 51, 55-56 (D.C. Cir. 1980) (holding that arrest without a warrant is valid where officer observed defendant drinking in public in violation of a local ordinance).

tional, therefore ensuring that any stalker convicted under the statutes will ultimately go free,¹⁴⁹ thus putting victims in fear for their safety with nothing in the criminal codes to outlaw stalking.¹⁵⁰

However, it is the opinion of police officers that being able to apprehend an alleged stalker based on probable cause alone is not giving the police more power, but is rather acting as a deterrent.¹⁵¹ By detaining the suspect for questioning, police are able to deter the suspect from further annoying the victim, and determine if there is enough information to file charges against the suspect for stalking.¹⁵² Avid support and positive attitudes of police officers in New Jersey¹⁵³ and around the country¹⁵⁴ will help put an end to a problem that in the past had not been taken seriously.¹⁵⁵

¹⁴⁹ See generally Resnick, *supra* note 35, at 3 (discussing the problems with various state antistalking laws and the consequences to be faced as a result of vague or unconstitutional laws). Warrantless arrests made without probable cause are in violation of the Fourth Amendment. *United States v. Watson*, 423 U.S. 41 (1976). The Fourth Amendment, applicable to the states through the Fourteenth Amendment, *Mapp v. Ohio*, 367 U.S. 463 (1961), provides

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

¹⁵⁰ See Furio, *supra* note 43, at 91 (discussing vague antistalking laws that if challenged and overturned will put women in "back-to-where-we-started-from" situations).

¹⁵¹ See *Stalking Laws Proliferate*, *supra* note 147, at 36 (citing Elmhurst, Illinois Police Chief John Millner who stated that the antistalking law does not give police the authority to decide who a stalker is, but allows them to "bring an alleged stalker into the station to see if there is enough evidence for charges instead of doing nothing.")

¹⁵² *Id.*

¹⁵³ Interview with veteran patrolman John Flynn, Lacey Township Police Department in Forked River, N.J. (July 10, 1993) (on file with *Seton Hall Legislative Journal*). Ptl. Flynn noted that the new law will make it easier for the police to arrest stalkers for their conduct because prior to the law, the only crime they could be charged with was harassment, which was often difficult to prove. *Id.*

¹⁵⁴ See *Stalking Laws Proliferate*, *supra* note 147, at 36. Police Chief John Millner, Elmhurst, Ill., noted that the stalking law is nationally supported by police chiefs and police associations around the country. *Id.* See also *Antistalking Legislation*, *supra* note 20, at 81 (citing Charles Meeks, Executive Director of the National Sheriffs' Association, who stated that sheriffs around the nation support the antistalking laws).

¹⁵⁵ Furio, *supra* note 43, at 91. Phil Gutis, a spokesman for the American Civil Liberties Union, noted that although stalking is an old problem, it has not received attention in the past because police often ignored complaints made by victims. *Id.* In addition to the antistalking laws, Gutis stated that "we've got to change attitudes in the criminal justice system and add some enforcement dollars" to properly deal with the stalking epidemic. *Id.*

To further ensure the constitutionality of the New Jersey antis-talking law, the drafters additionally included two provisions in the statute that provide that any "constitutionally protected activity is not included within the meaning of 'course of conduct'" and that the statute "shall not apply to conduct which occurs during organized group picketing."¹⁵⁶ A statute that infringes upon a person's constitutional rights such as freedom of speech and association would likely be challenged and possibly overturned.¹⁵⁷ Civil liberties experts have already questioned the constitutionality of statutes that may criminalize protected activity and speech under the antis-talking laws.¹⁵⁸

The latest trend that may effect the New Jersey antistalking law is being set by pro-choice advocates who seek to amend antistalking laws to apply more clearly to anti-abortion harassment tactics.¹⁵⁹ These lobbyists are currently attempting to broaden existing antistalking laws so that they provide abortion clinic workers and those who visit the clinics from harassment by anti-abortion

¹⁵⁶ N.J. STAT. ANN. § 2C:12-10-e (West Supp. 1993).

¹⁵⁷ See *R.A.V. v. City of St. Paul*, 112 S. Ct. 2538, 2550 (1992) (ordinance prohibiting speech on the basis of the subject the speech addresses is unconstitutional because it criminalizes expression protected by the First Amendment); *Lewis v. City of New Orleans*, 415 U.S. 130, 133-34 (1948) (ordinance that regulates person's speech is overbroad and facially invalid).

¹⁵⁸ See, e.g., Furio, *supra* note 43, at 91 (describing Connecticut law that could make legitimate behavior, such as a reporter following a politician, illegal); Hays, *supra* note 133, at B5 (discussing general concept that a prosecutor could include legally protected conduct and speech while prosecuting an alleged stalker); 138 CONG. REC. S9520, S9527 (daily ed. July 1, 1992) (statement of Sen. Cohen) (discussing laws that could make a reporter guilty of stalking for pursuing a person about an article or preventing a parent who is denied visitation rights from watching their children from a distance); CRS REPORT, *supra* note 74, at 8-9 (contemplating the Florida antistalking statute as being constitutionally challenged because of the failure to define "follow", which could lead to private detectives, newspaper reporters and police officers being prosecuted under the law).

¹⁵⁹ See Bob Ortega, *Stalking Laws Used to Fight Abortion Foes*, WALL ST. J., Apr. 7, 1993, at B1. Dr. Norman Tompkins, a Dallas obstetrician and gynecologist, has a motion pending in state court for an injunction against Tom Cyr's Dallas Pro-Life Action Network. *Id.* at B10. Cyr's network has been harassing Tompkins and has also made threats on his life. *Id.* See also Kurt Chandler, *Abortion Foes Say Humphrey's Office Sided with Prochoicers*, STAR TRIB., July 22, 1993, at B1. Four abortion rights advocates were arrested under the Minnesota antistalking law for following a group of abortion protesters. *Id.* The protesters, part of Operation Rescue, were in route to the homes of two abortion clinic doctors when they pulled over to tell the police they were being followed by the activists. *Id.*

activists.¹⁶⁰ One state's reaction to anti-abortionist tactics has been to propose legislation that will enable victims of stalkers to seek civil damages.¹⁶¹ Another state has followed the recent trend and criminally charged an anti-abortion activist with stalking.¹⁶² Action has also been taken on the federal level to put an end to the harassment and violence that clinic workers and patients face while trying to enter the abortion clinics.¹⁶³ Experts, however, are questioning whether the antistalking laws will be an effective deterrent to the harassing conduct of the abortion protesters.¹⁶⁴

With respect to statutory construction and application, the New Jersey antistalking law, like other antistalking laws, has yet to face a legal challenge concerning the specific language of the stat-

¹⁶⁰ Ortega, *supra* note 159, at B1. Generally, most of the actions and tactics used by anti-abortion activists are legal or constitutionally protected by the First Amendment. *Id.* However, the recent murder of Dr. David Gunn outside of the abortion clinic where he worked in Pensacola, Florida, has brought great concern to pro-choice lobbyists and employees in abortion clinics. *Id.* at B10.

¹⁶¹ Appel, *supra* note 105, at 3 (discussing California's A.B. 1548, pending legislation that would enable victims who were harassed by stalkers to file a civil law suit seeking monetary compensation). See also MICH. COMP. LAWS ANN. § 600.2954 (West 1993) (allowing victims to maintain a civil action against a stalker for damages the victim incurred as a result of the stalker's conduct).

¹⁶² See Ortega, *supra* note 159, at B1. South Carolina was the first state to criminally charge an anti-abortion activist with stalking after she allegedly threatened an employee of an abortion clinic. *Id.* A state circuit court judge in Melbourne, Florida has also issued a restraining order to protect abortion clinic employees from harassment and threats made by anti-abortion activists. *Id.*

¹⁶³ See 139 CONG. REC. S3812 (daily ed. Mar. 25, 1993) (statement of Sen. Harkin, co-sponsor of the Freedom of Access to Clinic Entrances Act). This legislation, sponsored by Senator Kennedy, is aimed at eliminating the violence and blockades that are present at many abortion clinics. *Id.* The legislators' goal is to protect the clinic workers and patients from the harassment and violence they face as a result of the protesters conduct. *Id.* See Maureen M. Smith, *Operation Rescue Trainee Arrested: Clinic Guard was Allegedly Stalked*, STAR TRIB., June 26, 1993, at B1 (man arrested for following clinic security guard from his home to his workplace); Amy Driscoll, *Abortion Foe Puts Florida Law to Test in Nurse-Stalking Case*, HOUS. CHRON., Apr. 25, 1993, at A12 (man who harassed clinic nurse for a year by holding anti-abortion signs in front of her car, blocking her path, trying to blind her while she was driving and using a hand gesture as if he were shooting her, was charged under the Florida antistalking law).

¹⁶⁴ Maria Puente, *Clinic Protesters Under Pressure from Stalking Laws*, USA TODAY, May 10, 1993, at A2. Many pro-life advocates argue that they do not physically threaten people and feel that expanding the antistalking laws will limit their actions during legal protests. *Id.* Experts also question the use of the antistalking laws in abortion protest cases because many stalking laws require repeated explicit, overt threats of bodily injury, which are not often made in the abortion protest cases. *Id.*

ute.¹⁶⁵ However, several antistalking statutes around the country have recently begun facing legal challenges as state court judges deem unconstitutional the newly created laws.¹⁶⁶ Civil rights groups¹⁶⁷ and attorneys¹⁶⁸ have also questioned the validity of the antistalking laws and are waiting for rulings on the constitutionality of the statutes¹⁶⁹

The problem with the statutes in question is that many of their terms are defined broadly, thus causing constitutionally protected activity to be held criminal.¹⁷⁰ While some judges have held entire statutes to be unconstitutional, others have held only certain provisions to be invalid while upholding the greater part of the statutes.¹⁷¹ Because many of these disputes have been decided only at

¹⁶⁵ See *Stalking Laws Proliferate*, *supra* note 147, at 36. Cook County Circuit Court Judge William Maddeux noted that many of the new antistalking laws around the nation have yet to be legally tested. *Id.*

¹⁶⁶ See *Florida's Stalking Law Leads to Legal Challenges*, ASBURY PARK PRESS, Aug. 1, 1993, at A9 [hereinafter *Legal Challenges*] (discussing Florida antistalking law that was found unconstitutional because of the vague definitions of certain terms); Susan Kuczka, *Clause in Stalking Law Ruled Unconstitutional*, CHI. TRIB., Feb. 5, 1993, at 3 (describing the provision that allows defendants to be held without bond prior to trial as unconstitutional).

¹⁶⁷ *Antistalking Legislation*, *supra* note 20, at 85. The American Civil Liberties Union (ACLU) has expressed its concern that many state antistalking laws are vague and will violate people's rights of freedom of expression and speech. *Id.* After arguments by the ACLU, the Illinois antistalking law's no-bond provision was held unconstitutional at the trial level, and the case is currently before the Illinois Appellate Court. Charles Mount, *Lawyer Calls Stalking Law Unconstitutional*, CHI. TRIB., June 2, 1993, at D6.

¹⁶⁸ *Id.* Attorney R. Mark Gummerson of the Cook County Sheriff's Department argued that the terms "following" and "surveillance" in the Illinois antistalking statute are unconstitutionally vague. *Id.*

¹⁶⁹ *Id.* Gummerson argued his motion to find the statute unconstitutional in front of McHenry County Judge Henry Cowlin and is waiting for the judge's ruling on the statute. *Id.*

¹⁷⁰ *Id.* Gummerson stated that because of the way the terms "following" and "surveillance" are defined, activities such as standing 200 feet away from the alleged victim's home, dropping off food at her home while the house was empty and driving down her street are illegal under the vague statute. *Id.*

¹⁷¹ See Kuczka, *supra* note 166, at 3. Associate Judge Nicholas S. Zagone ruled that the no-bond provision of the Illinois antistalking law is unconstitutional because the Illinois Constitution states that individuals facing trial may only be held without bail if they are charged with an offense for which they cannot receive probation, such as murder. *Id.* For other statutes that have been held unconstitutional, either in their entirety or partially, see *Kolender v. Lawson*, 461 U.S. 352, 357 (1983) (California loitering statute held to be unconstitutionally vague for failing to clarify what exactly constitutes "credible and reliable" identification); *Florida v. Saiez*, 469 So. 2d 927, 929 (Fla. Dist. Ct. App. 1985) (portion of statute that prohibits mere possession of embossing machine to reproduce credit cards is vague because it fails to set a standard by

the trial level, it remains to be seen how the higher courts will resolve the antistalking law controversy.¹⁷² Although the New Jersey antistalking law has been called an improvement upon the law on which it was modeled,¹⁷³ officials believe there is still room for improvement.¹⁷⁴ "Overly stringent" burdens of proof requirements, for example, may hinder the antistalking law by making it even more difficult to prove than harassment.¹⁷⁵ Advocates of the law, however, have noted that it is easier to modify a problem such as an overly stringent burden of proof requirement than to have the statute declared unconstitutional for vagueness.¹⁷⁶

which a possessor of such a machine would know whether his acts are illegal); *State v. Martinez*, 538 P.2d 521, 524 (Wash. 1975) (statute that does not adequately define loitering is void for vagueness because it does not necessarily connote illegal activity and would not give fair warning to citizens as to what type of conduct is illegal); *State v. Mitchell*, 485 N.W.2d 807, 815 (Wis. 1992) (Wisconsin hate crimes statute held unconstitutionally overbroad because it punishes all individuals' speech and will have a chilling effect upon free speech).

¹⁷² See Debbie Salamone, *Debate On Stalking Law Headed To Appeals Court*, THE ORLANDO SENTINEL, July 30, 1993, at B1. Circuit Judge Alan A. Dickey rejected a defense attorney's argument that the Florida antistalking law should be declared unconstitutional. *Id.* The debate over the constitutionality issue therefore will move to the 5th District Court of Appeal in Daytona Beach and very likely to the Florida Supreme Court. *Id.* See also *Legal Challenges*, *supra* note 166, at A9. Five different judges in the Florida court system have ruled the stalking law is unconstitutional. *Id.* However, the rulings that the law is unconstitutional apply only in the courtrooms of the judges who issued the decisions. *Id.* The discrepancy in the validity of the law will remain until the issue reaches the Florida Supreme Court, which will take over a year. *Id.*

¹⁷³ Pliskin, *supra* note 30, at 8 (quoting Lisa Glock Zucker, Director of the ACLU of New Jersey who opined that the California law is overbroad).

¹⁷⁴ See *Legislation Approved*, *supra* note 99, at 31. Christopher Florentz, a spokesman for the New Jersey Attorney General's office, explained that, while amendments were made prior to the passing of the law, it still could be improved, especially where burdens of proof are concerned. *Id.* The burden of proof poses a problem for the police, in that there must be evidence of an intent to intimidate and threaten before the police can apprehend the stalker. Lisa Fittermen, *Action To Curb Abortion Foes Urged: Use Of Federal Anti-Stalking Law*, VANCOUVER SUN, July 16, 1993, at A3.

¹⁷⁵ *Legislation Approved*, *supra* note 99, at 31. See also CRS REPORT, *supra* note 74, at 9. While the intent requirement will enable the antistalking laws to uphold constitutional challenges, it also makes it more difficult to charge someone with stalking. *Id.* A conviction for stalking will be likely only where there is evidence that the following or harassing was done with the intent to harm or cause bodily injury to the victim. *Id.* New Jersey's harassment statute, however, only requires that the alleged offender have an intent to "alarm or seriously annoy such other person." N.J. STAT. ANN. § 2C:33-4c (West Supp. 1993).

¹⁷⁶ *Legislation Approved*, *supra* note 99, at 31. Florentz stated, "You've got to be careful you don't get overly aggressive [in establishing a law] that could convict innocent people." *Id.* at 31. For examples of cases where a statute was held unconstitutional for criminalizing protected activity, see *supra* note 171.

D. *The Victim's Role*

Even with the new law in effect, a stalker cannot be detained without the help of the victim. Authorities have noted that many victims have been hesitant to report stalking incidents either because they did not have faith in the legal system¹⁷⁷ or because they feared that the stalker would retaliate.¹⁷⁸

For the suspect to be apprehended by the police, the victim must take responsibility and document all actions of the suspect.¹⁷⁹ It is also essential that the victim obtain a restraining order or court order¹⁸⁰ mandating that the suspect stay away from the victim.¹⁸¹ In most states, a violation of the court order will guarantee an enhanced prison sentence.¹⁸² Additionally, victims in some states can

¹⁷⁷ See *Florio Signs Bill Making Stalking A Crime In N.J.*, NEWS TRI., Jan 6, 1993, at A3. Jim O'Brien, leader of the Coalition for Crime Victims Rights, stated that "many women won't report the crime because of the revolving door of justice." *Id.* See also *Mind of a Stalker*, *supra* note 22, at 22 (discussing a woman who is petrified that her abusive ex-husband, who only served a six month sentence for threatening her because the police would not charge him with stalking, will come back to harm her once he is released); Kohn, *supra* note 18, at 108 (describing incident where a woman, prior to being beaten and raped by her ex-husband, refused to report other assaults to the police because she figured all of the complaints would be put in the domestic violence category and forgotten since such complaints are difficult to prosecute).

¹⁷⁸ See *Fountain & Kirby*, *supra* note 38, at D1 (discussing story of woman who went to the police for help but refused to press charges against her ex-boyfriend because she was afraid he would hurt her after he was released from jail).

¹⁷⁹ *Mind Of A Stalker*, *supra* note 22, at 21 (discussing various stalking incidents around the country and what measures are being taken to stop the problem). Ann Seymour, Director of National Victim's Center noted that victims must document any telephone conversations with a tape recorder, videotape the stalker's conduct whenever possible and keep a file of all photographs and letters sent by the stalker. *Id.*

¹⁸⁰ Also known as civil protection orders, these orders are given by a judge that require an offender to stay a certain distance from the victim, or in domestic violence cases, it may evict an offender from a shared residence. CIVIL PROTECTION ORDERS, *supra* note 38, at 2. Under the civil protection system, the victim rather than the state must initiate the process by obtaining a protection order from the judge and then seeking to have the order enforced by the police. CRS REPORT, *supra* note 74, at 4.

¹⁸¹ Robeson, *supra*, note 29, at C28 (quoting Sen. Edward Royce of California, who noted that although a temporary restraining order can cost up to \$200, if a stalker violates the order the crime will be punishable as a felony).

¹⁸² See, e.g., N.J. STAT. ANN. § 2C:12-10 (West Supp. 1993) (violation of protective order raises crime from a fourth degree crime to a third degree crime with an enhanced penalty of up to three to five years in prison and/or a \$7500 fine); CAL. PENAL CODE § 646.9 (West Supp. 1992) (violation of restraining order makes stalking a felony with maximum jail term of up to one year); N.C. GEN. STAT. § 14-277.3 (1992) (violation of restraining order increases penalty from up to six months imprisonment and/or \$1000 fine to up to two years imprisonment and/or a \$2000 fine); TENN.

request that the judge set a high bail for the stalker to be released.¹⁸³ This will encourage victims to press criminal charges, as high bail will keep the criminal detained for a longer period of time, thus giving the victim more time to relocate before his or her life is at risk again.¹⁸⁴

V. Society's Reaction to the Antistalking Laws

Since the enactment of antistalking laws around the country, law enforcement officers have not hesitated to use the laws to put an end to the harassing behavior of the stalkers.¹⁸⁵ Police departments have created special units to deal with stalking and harassment cases which enables the officers to become familiar with the law and its provisions.¹⁸⁶

CODE ANN. § 39-17-315 (1992) (violation of a restraining order increases stalking penalty from Class A misdemeanor to Class E felony); WYO. STAT. § 6-2-506 (1993) (violation of restraining order raises penalty from up to six months imprisonment and/or \$750 fine to up to 10 years imprisonment).

¹⁸³ Robeson, *supra* note 29, at C28 (citing Sen. Edward Royce of California who advises victims of stalkers to discuss with prosecutors the possibility of getting a higher bail set). Royce states that judges are required to take into account such factors as the frequency and nature of threats made when setting bail. *Id.* See also *Stalking Laws Proliferate*, *supra* note 147, at 35 (describing Illinois antistalking law that allows a judge to deny bail and hold the stalker in jail for up to 90 days). Joseph V. Collina, an Illinois public defender, argues that the bail provision of the antistalking law is an unconstitutional violation of the Eighth Amendment's prohibition against excessive bail. *Id.* The Eighth Amendment states, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." U.S. CONST. amend. VIII. A trial court in Illinois held that the no-bond provision of the antistalking statute to be unconstitutional because it was in conflict with the Illinois constitution. See Kuzicka, *supra* note 171.

¹⁸⁴ See Robeson, *supra* note 29, at C28. In Illinois, when considering whether to deny a defendant bail, the court will hold a hearing to determine whether the release of the defendant poses a threat of danger to the alleged victim. *Anti-Stalking Proposals*, *supra* note 40 (statement of Ruth Jones, staff attorney for NOW Legal Defense and Education Fund).

¹⁸⁵ See, e.g., W.F. Keough, *Man Charged With Stalking Ex-Girlfriend*, ATLANTIC CITY PRESS, Feb. 2, 1993, at A1 (discussing Pleasantville, N.J. man who was charged with stalking and threatening a former girlfriend); Lewin, *supra* note 51, at B10 (discussing the arrest of a Stratford, N.J. man who was stalking his ex-girlfriend only one day after the law was enacted); *Legal Challenges*, *supra* note 166, at A9 (stating that the Florida antistalking law has produced 977 arrests since it went into effect, resulting in at least 155 convictions).

¹⁸⁶ *Antistalking Legislation*, *supra* note 20, at 69 (statement of Lt. John Lane, Los Angeles Police Department). The Los Angeles Police Department developed a Threat Management Unit, which deals specifically with long-term threat and harass-

Although antistalking laws have been adopted in almost every state in the nation, the victims of stalkers still remain terrified of their assailants.¹⁸⁷ Because of this ongoing fear, many victims have taken precautionary measures to ensure that the stalkers will not harass their families nor themselves.¹⁸⁸ Others have started support groups for stalking victims which enable them to share their traumatic experiences, as well as to learn how to protect themselves from their relentless assailants.¹⁸⁹

VI. Conclusion

The New Jersey antistalking law was enacted to let people know that the horrifying conduct of stalkers will no longer be tolerated. By giving people the authority to act while the stalking is taking place, the antistalking law will assure victims that they no longer have to be physically harmed before the police can apprehend the assailant.¹⁹⁰ The law should help prevent unnecessary violent attacks upon both unsuspecting members of the public, as well as those involved in domestic disputes.

ment cases. *Id.* The unit is designed to manage stalking, harassment and domestic violence cases before they become criminal acts. *Id.*

¹⁸⁷ See *Mind Of A Stalker*, *supra* note 22, at 22. One woman, whose husband was in jail for assaulting her, was soon to be released from prison. *Id.* Although the state in which she resided had enacted a stalking law, the police said they would not arrest him for stalking because the law was "too new." *Id.* This woman is terrified of what her husband may do to her when he is released from prison. *Id.*

¹⁸⁸ See Beck et al., *supra* note 13, at 62. A committee of the chief justice's office in Massachusetts is studying the effectiveness of electronic monitoring devices which would be worn by stalking victims. *Id.* When the stalker comes within a certain distance of the victim, the victim would press a button that would sound an alarm at a monitoring station, which in turn alerts police that assistance is needed. *Id.* Victims have also resorted to carrying handguns to protect themselves from their assailants. *Id.*

¹⁸⁹ *Antistalking Legislation*, *supra* note 20, at 54 (statement of Jane McAllister, stalking victim). McAllister, a resident of Virginia, started a support group for victims of stalkers. The group has worked with the press, domestic violence groups and local representatives in getting an antistalking law enacted in Virginia. The group also shared techniques on how to protect themselves from their stalkers. *Id.* See also *Antistalking Legislation*, *supra* note 20, at 86. In a letter from Marty McIntyre, Executive Chair of the Maine Coalition Against Rape, to Senator William Cohen, McIntyre noted that the group works with victims of sexual violence and that tougher, more enforceable laws are needed to prevent acts of violence from occurring. *Id.*

¹⁹⁰ See John Froomjian, *Bill Making 'Stalking' A Crime Moves In N.J. Senate*, ATLANTIC CITY PRESS, May 5, 1992, at B1.

Due to the infancy of the law, it remains to be seen how the courts will interpret and apply the language of the law. Despite the fact that the future of the antistalking law may see the need for some improvements,¹⁹¹ the law thus far has served as an essential tool for police around the state and the country. Hopefully, both the police and the judiciary will utilize the antistalking law so as to have a positive impact on the lives of victims who have been living in a nightmare of despair and hopelessness.

The antistalking law may very well be the long-awaited answer to many victims' prayers. Supreme Court Justice Louis Brandeis identified the "right to be left alone [as] the most comprehensive of rights and the right most valued by civilized man."¹⁹² The victims of stalkers can be assured that their right to be left alone is now protected and that their assailants will no longer receive a simple slap on the wrist as their punishment for unwarranted and obsessive behavior.

¹⁹¹ See *Legislation Approved*, *supra* notes 174-176 and accompanying text.

¹⁹² See 138 CONG. REC. S9520, S9527, (daily ed. July 1, 1992) (statement of Sen. Cohen) (quoting *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting)).