

## National Stalking Awareness Month: Prosecutors Can Save Lives

January is National Stalking Awareness Month, and this January, the Stalking Resource Center is raising awareness about the crime of stalking among professionals who work with victims and offenders. Prosecutors who understand the nature and dynamics of stalking can help save lives. In this blog post, we will discuss the importance of charging perpetrators with stalking.

### Stalking and Prosecution

Stalking is a crime under Federal law and the laws of all 50 states, the District of Columbia, the U.S. Territories, and many Tribal codes. 7.5 million people are stalked in the United States each year. Furthermore, 15 percent of women and 6 percent of men are stalked in their lifetime.<sup>1</sup> Despite the prevalence of stalking, it is a crime that is seldom charged or prosecuted. 72 percent of stalking victims report that charges were not filed in their cases after reporting to law enforcement.<sup>2</sup> In cases where police have all the information they need to charge stalking, stalking is only charged 5 to 16 percent of the time.<sup>3</sup>

One of the reasons for the low charging and prosecution rates is that stalking is seen as a difficult crime to prove. Many of the acts that make up the crime of stalking may not be criminal as a single incident, and are, therefore, not obvious. Because of this seeming ambiguity, stalking is often misunderstood, minimized, or missed entirely by law enforcement, prosecutors, and even the victims themselves. However, it is one of the few crimes for which timely prosecution can save lives. Below are a few important things to remember when evaluating whether or not to charge stalking.

#### What is stalking?

Stalking is a unique crime because it involves a course of conduct rather than a single incident. Therefore, context is absolutely critical when identifying stalking behaviors. Many stalking behaviors appear innocuous and may even be legal in a different context. For example, it typically is not illegal to call or text someone or to send them gifts. However, when done repeatedly, under circumstances that instill fear or distress in the victim, then the conduct may constitute the crime of stalking.

#### How is stalking connected to domestic violence and sexual assault?

The majority of stalking victims know the offender in some capacity. Sixty-one percent of female sexual violence victims and 44 percent of male sexual violence victims are stalked by a current or former intimate partner.<sup>4</sup> Eighty-one percent of victims who were stalked by a current or former intimate partner had been physically assaulted by that partner.<sup>5</sup> Among women who had been stalked by an

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<sup>1</sup> Matthew J. Breiding et al., "Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization – National Intimate Partner and Sexual Violence Survey, United States, 2011," Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report 63, No. 8 (2014): 7.

<sup>2</sup> Katrina Baum et al., "Stalking Victimization in the United States," (Washington, DC: Bureau of Justice Statistics, 2009).

<sup>3</sup> Andrew Klein et al., "A Statewide Study of Stalking and Its Criminal Justice Response," (Advocates for Human Potential, Inc., 2009).

<sup>4</sup> Matthew J. Breiding, "Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization."

<sup>5</sup> Patricia Tjaden and Nancy Thoennes, "Stalking in America: Findings from the National Violence Against Women Survey," National Institute for Justice Centers for Disease Control Research in Brief (1998): 8.

intimate partner, 31 percent had also been sexually assaulted by that partner.<sup>6</sup> Additionally, a stalker might make threats to sexually assault the victim or attempt to get someone else to sexually assault the victim.

### **How does stalking intersect with other crimes?**

24 percent of stalking cases involve damage to property, 21 percent involve a direct attack on the victim, and 15 percent involve an attack on another person close to the victim or on a pet.<sup>7</sup> There is also a correlation between stalking and economic crimes, such as identity theft. 52 percent of stalking cases involve the stalker taking money from the victim's bank accounts, 54 percent involve the stalker's opening or closing bank accounts in the victim's name, and 30 percent involve unauthorized charges to the victim's credit card.<sup>8</sup>

### **How does a stalking charge help the victim?**

If you are working a case that is not charged as stalking and you recognize stalking behaviors, consider amending the charging document to include a count for stalking. First, charging stalking may lead to enhanced penalties, greater plea-bargaining options, and increased sentencing options. A conviction for stalking also can be important for future cases should the stalking behavior continue. In many jurisdictions, second or subsequent offenses of stalking incur enhanced penalties.

Second, there are benefits to charging stalking even when you are dealing with a more serious crime such as homicide or sexual assault. By charging stalking you can present additional evidence typically prohibited by Federal Rule of Evidence 404(b) (Character Evidence, Crimes or Other Acts).<sup>9</sup> Because you have to prove a course of conduct or pattern of behavior as an element of stalking, you are allowed to recreate that timeline, going as far back as necessary to bring in all of the behaviors. For the most part, if you are dealing with an incident-based crime such as battery, robbery, or sexual assault, the rules of evidence do not allow you to introduce evidence of other crimes to show conformity. However, since those other crimes are part of the course of conduct you must prove in a stalking case, you will be able to admit that evidence without justifying its admission under Rule 404(b).

For more information about prosecuting stalking cases, see the Stalking Resource Center's "Responding to Stalking: A Guide for Prosecutors" on their website at [www.victimsofcrime.org/src](http://www.victimsofcrime.org/src).

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<sup>6</sup> Ibid.

<sup>7</sup> Katrina Baum, "Stalking Victimization in the United States."

<sup>8</sup> Ibid.

<sup>9</sup> State rules of evidence vary but most are modeled after the Federal Rules of Evidence. This recommendation is based primarily on the Federal Rules of Evidence.