



OLR RESEARCH REPORT

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OLR BACKGROUNDER: CYBERSTALKING

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SUMMARY

Laws making cyberstalking a crime represent state and Congressional efforts to keep pace with stalking in the digital age. Cyberstalking has no uniformly-accepted meaning, but generally refers to a perpetrator's repeated use of electronic communication methods, such as email or the Internet, to make a specific target fearful or cause him or her substantial emotional distress.

We cannot determine if cyberstalking is a significant social problem as we were unable to find an evidence-based estimate of how often people are affected by it. A 2002 U.S. attorney general's report suggests that efforts to get reliable numbers for cyberstalking are hampered because victims either do not (1) report it or (2) know that is a crime. Many predict that the number of cyberstalking incidents will rise as the technology becomes less expensive and easier to use.

According to the National Conference on State Legislatures (NCSL), the federal government and 34 states make cyberstalking a crime. But they vary widely with respect to the types of cyberstalking behavior they outlaw. Senior Assistant State's Attorney Kevin Dunn reports that cyberstalking is currently not a crime in Connecticut. He notes that a 2012 amendment to the state's stalking law will allow for such prosecutions. The amended law goes into effect October 1, 2012.

Cyberstalking laws are vulnerable to constitutional challenges under both the U.S. Constitution's First Amendment's Free Speech and 14th Amendment's Due Process clauses. But a Westlaw search of court cyberstalking decisions issued in the past three years yielded only one in which a court struck down a cyberstalking law on constitutional grounds.

WHAT IS CYBERSTALKING?

Black's Law Dictionary (7th Ed., 1999) defines cyberstalking as "the act of threatening, harassing, or annoying someone through multiple email messages, as through the Internet, esp. with the intent of placing the recipient in fear that an illegal act or an injury will be inflicted on the recipient or a member of the recipient's family or household." Attachment 1 shows some of the common forms of electronic technology cyberstalkers use and what they use it for.

According to the literature on cyberstalking, cyberstalkers are commonly motivated by (1) the desire to sexually harass victims, (2) love obsessions, (3) hate and revenge vendettas, and (4) power and ego issues. Several suggest that they choose to pursue their victims electronically because this method is non-confrontational, impersonal, and can be engaged in anonymously. There is evidence, however, that online stalking and threats are predictors of escalating physical violence (*Cyberstalking: A New Challenge for Law Enforcement and Industry* (Office of the Attorney General (2002); *Stalking and Domestic Violence: A Report to Congress*, (2001)).

FEDERAL REPORTS

While there is a wealth of data evaluating stalking behavior and how it affects victims, cyberstalking data is sparse. One source is a 2007 survey of stalking victims commissioned by the U.S. Justice Department's Bureau of Justice Statistics. Among other things, respondents were asked if their stalkers had used any form of electronic technology. More than 25% of the 65,000 participants answered in the affirmative. A majority (83%) reported that they had been victimized via email; 35% reported that their stalker had used instant messaging. And in a number of cases, victims had been subjected to several methods of cyberstalking (*Stalking Victimization in the U.S.* (2009)).

FEDERAL LAWS

Three major federal laws apply to cyberstalking: the (1) 1996 Interstate Stalking and Prevention, (2) Interstate Communications, and (3) 1934 Telephone Harassment acts. The first two have been amended several times by the 1994 Violence Against Women Act (VAWA, PL 103-322). A 1996 VAWA amendment (1) made cyberstalking a federal crime, (2) updated statutory definitions by adding new forms of cybertechnology, and (2) stiffened federal penalties.

The Interstate Stalking and Prevention Act

The 1996 Interstate Stalking and Prevention Act, as amended by VAWA, is the broadest of the federal statutes. It makes it a crime for anyone who travels in interstate or foreign commerce to use the mail, any interactive computer service, or any interstate or foreign commerce facility to engage in a course of conduct that causes substantial emotional distress to a person or causes the person or a relative to fear for his or her life or physical safety (18 USC § 2261A).

The Interstate Communications and Telephone Harassment Acts

Under the Interstate Communications Act, it is a crime to transmit in interstate commerce any communication that threatens to injure anyone (18 USC § 875(c)). It specifically refers to transmissions involving the use of telephones, email, and beepers) The statute appears to be inapplicable to most online stalking incidents because they rarely include physical threats, according to some analysts.

Finally, the Telephone Harassment Act makes it a crime to knowingly use a telephone or the Internet to transmit in interstate or foreign commerce any message to annoy, abuse, harass, or threaten anyone (47 USC § 223(a)(1)(C)). A major limitation of this law is that it applies only to direct communications (for example, email or cell phone calls) between the stalker and victim. It does not appear to cover messages posted on Internet bulletin boards or webpages, social networking sites, or other one-way communications.

ANALYSIS OF SELECTED CHARACTERISTICS OF STATE CYBERSTALKING LAWS

Cyberstalking laws have been described as a “hodgepodge of definitions, requirements, protections, and penalties” (Naomi Harlin Goodno, *Cyberstalking, a New Crime: Evaluating the Effectiveness of*

Current State and Federal Laws, 72 Mo. L. Rev. 125 (1997). The landscape is further blurred by the fact that most statutes commonly referred to as “cyberstalking” laws are actually provisions contained within states’ traditional stalking laws. Thus, some of the state-by-state differences we have identified are the result of differences in states’ traditional stalking laws (for example, provisions designating the requisite criminal state of mind or behavior constituting a prohibited course of conduct), rather than choices made to respond to the unique challenges presented by cyberstalking behaviors.

Six states do have laws that apply only to cyberstalking behavior. They are: Illinois (720 Ill. Comp. Stat. Ann. § [5/12-7.5](#)); Louisiana ([La. Rev. Stat. § 14:40.3](#)); Mississippi ([Miss. Code § 97-45-15](#)); North Carolina ([N.C. Gen. Stat. §§ 14-196, 14-196.3](#)); Rhode Island (R.I. Gen. Laws [§ 11-52-4.2](#)); and Washington (Wash. Rev. Code Ann § [9.61.260](#)).

We examined approximately half of the 34 states’ cyberstalking laws listed in the NCSL report (<http://www.ncsl.org/issues-research/telecom/cyberstalking-and-cyberharassment-laws.aspx>) and compared:

1. the types of electronic communications they covered,
2. criminal intent requirements, and
3. the extent, if any, of victims’ injuries that trigger liability.

Electronic Communications

Definitions. The terms states use to define “electronic communication” or similar terms varied considerably. In one group, the definition is very broad. Oklahoma’s law, for example, uses the phrase “electronic communication” but does not define it (Okla. Stat. tit. 21, § 1173). The Arkansas statute covers messages sent on “an electronic mail or other computerized communication system” (Ark. Code Ann. §5-41-108) and Minnesota’s covers undefined “electronic communications” and “any communication made through other available technologies” (Minn. Stat. Ann. § 609.749).

Massachusetts law, on the other hand, contains a very precise definition: “any electronic device that transfers signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by wire, radio, electromagnetic, photo-electronic, or photo-optical system, including but not limited to, email, Internet, instant messages, or facsimile communications” (MGLA Ch. 265 § 43). Georgia and North Carolina also define the term precisely (Ga. Stat. Ann. §16-9-92; N.C. Gen. Stat. § 14-196).

Scope of Coverage. There is also significant variation in the types of electronic communications covered by state laws. Louisiana and Michigan, for example, cover emails sent to the victim only (La. Rev. Stat. Ann. § 14:402 and Mich. Comp. Laws Ann. § 750.411h). But Alaska’s statute covers (1) email or electronic communications; (2) GPS monitoring; and (3) devices, including computer software for observing, recording, or photographing events occurring in the victim’s residence, vehicle, telephone, or computer (Alaska Stat. § 11.41.270).

Actor’s Criminal Intent

State statutes also vary in the state of mind that makes actors engaging in cyberstalking conduct culpable. The majority of those we examined, including Florida and Oklahoma, require that the stalker’s actions be “willful” or “willful and malicious” (see e.g., Fla. Stat. Ann. § 748.048 and Okla. Stat. tit.21, § 1173). A few others, including Colorado, Kansas, and Louisiana, require that the perpetrator’s conduct be “intentional” or “intentional and malicious” (Colo. Rev. Stat. § 18-9-111; Kan. Stat. Ann. § 3438; and La. Rev. Stat. Ann. §14:40.3) or “knowingly” (see, e.g., Idaho Code Ann. §18-9-11; Ohio Rev. Code § 2903.21 and Wyo. Stat. Ann. § 6-2-506). Finally, we found two states, Montana and North Carolina, that appear to hold the actor strictly liable (i.e., make intent irrelevant) if his or her conduct caused the victim the requisite level of harm (Mont. Code Ann. § 45-5.220; and N.C. Gen. Stat. § 14-196.3).

Victims’ Injuries Triggering Liability

Cyberstalking crimes require proof that the stalker injured his or her victim, often by frightening him or her or causing substantial emotional distress. However, several states use a broader definition. For example, in Minnesota, the harm includes fear, harassment, oppression, persecution, or intimidation (Minn. Stat. Ann. § 609.749).

In most states, this element is established by proving that a reasonable person in the victim’s circumstances would suffer the requisite injuries required under the particular state’s law. These laws

presume that the victim and a reasonable person suffered the same injuries, thus making the victim's trial testimony unnecessary. However, a few require both that the stalker's actions would harm a reasonable person and that the victim was, in fact, injured in this manner (see, e.g., Wyo. Stat. Ann. § 6-2-506).

CONNECTICUT STALKING LAW

Current Law

Connecticut law criminalizes traditional stalking, but not cyberstalking (CGS §§ [53a-181c](#) (1st degree) [-181d](#) (2nd degree), and [-183d](#) (3rd degree)). A person commits 2nd degree stalking when he or she (1) intends to cause another person to fear for his or her physical safety, (2) willfully and repeatedly follows or lies in wait for that person, and (3) causes the person to reasonably fear for his or her physical safety. The crime is elevated to 1st-degree stalking when the offender (1) has a prior conviction for 2nd- or 3rd degree (reckless) stalking, (2) is violating a court order, or (3) targets a person under age 16. Stalking in the 1st, 2nd, and 3rd degrees are class D felonies and A and B misdemeanors, respectively.

2012 Amendment

A 2012 law broadens the scope of the 2nd degree stalking statute in a manner that clearly encompasses cyberstalking (PA 12-114 § 12). Beginning October 1, 2012, a person can be charged with, and prosecuted for, 2nd degree stalking if he or she knowingly engages in a course of conduct that would cause a reasonable person to fear for his or her physical safety or the safety of a third person. A "course of conduct" is two or more acts, including those in which a person directly, indirectly, or through a third party, by any action, method, device, or means (1) follows, lies in wait for, monitors, observes, surveils, threatens, harasses, or communicates with or sends unwanted gifts to a person or (2) interferes with a person's property.

The 2nd degree crime is elevated to 1st degree stalking in the same manner as under current law and the penalties remain unchanged.

CONSTITUTIONAL ISSUES

Cyberstalking statutes are especially vulnerable to court challenges because they criminalize both the content of speech and the manner in which it is expressed. The most common challenges are based on the U.S. Constitution's 1st Amendment's Free Speech or 14th Amendment's Due Process clauses.

Free Speech

The free speech claims assert that the statutes are overbroad because they criminalize a substantial amount of speech that is constitutionally protected. The overbreadth doctrine is designed to protect free speech from laws so broadly written that the fear of punishment might discourage people from taking advantage of their constitutionally protected rights. The U.S. Supreme Court has ruled that the doctrine should be used sparingly and only when the overbreadth is substantial (*Grayned v. City of Rockford*, 408 U.S. 114 (1972)). The Court has also noted that in public debate, people must tolerate insulting and even outrageous language to provide adequate breathing space to freedoms protected by the 1st Amendment.

14th Amendment's "Void for Vagueness" Doctrine

Challenges to the vagueness of laws regulating speech or its expression are frequently made in conjunction with challenges that the law is overbroad. Litigants challenging statutes as being unconstitutionally vague argue that their statutory language is such that (1) a person of ordinary intelligence would not have a reasonable opportunity to understand what the statute authorizes or (2) it authorizes or encourages arbitrary enforcement (*Hill v. Colorado*, 530 U.S. 703, 732 (2000)). The doctrine excludes terms that are impossible to define with specificity but whose meanings are commonly understood.

Court Holding Cyberstalking Law Unconstitutional

We found one court ruling in the past three years that found a cyberstalking law to be unconstitutional. In *U.S. v. Cassidy*, the accused was arrested and charged with violating the Interstate Stalking and Prevention Act. He argued that the case should be dismissed because the act was both overbroad and void for vagueness (814 F. Supp. 2nd 574, D. Md. 2011, *interpreting* 18 USC § 2261)).

The basis of the charges was the accused's use of Twitter and a blog to post messages impugning the character and qualifications of a religious leader with whom he had had a falling out. Prosecutors characterized the messages as constituting harassment and alleged that they had caused the victim substantial emotional distress.

The accused challenged the stalking statute's use of the terms "harass" and "cause substantial emotional harm." The court agreed, finding that the (1) statute regulated the content of speech because the speech it limited included that which was emotionally distressing, (2) defendant's speech was constitutionally protected, and (3) and statute could have been more narrowly drawn to meet the state's objectives.

FURTHER READING

I. Federal Government Reports

- Katrina Baum et al., *Stalking Victimization in the United States*, U.S. Dept. of Justice (2009).
- Patricia Tjades and Thoennes, Nancy, *Stalking in America: Findings from the Violence Against Women's Act (VAWA) Survey*, U.S. Dept. of Justice (1998).
- *Cyberstalking: A New Challenge for Law Enforcement and Industry*, Office of the Attorney General (2002).

II. Law Review Articles

- Ashley Beagle, *Stalking Laws: A Survey of State Anti-Stalking Statutes Considering Modern Mediums and Constitutional Challenges*, 14 Chap. L. Rev. 457 (2011).
- Amy Fukuchi, *A Balance of Convenience: The Use of Burden-Shifting Devices in Criminal Cyberharassment Law*, 52 B.C. L. Rev. 289 (2011).
- Naomi Harlin Goodno, *Cyberstalking, a New Crime: Evaluating the Effectiveness of Current State and Federal Laws*, 72 Mo. L. Rev. 125 (2007) (<http://www.law.missouri.edu/lawreview/docs/72-1/Goodno.pdf>).

III. National Conference of State Legislatures Reports

- *State Cyberstalking and Cyberharassment Laws* (<http://www.ncsl.org/issues-research/telecom/cyberstalking-and-cyberharassment-laws.aspx>) (last updated March 23, 2012).

IV. Office of Legislative Research Reports

- Laura Cummings, *Charges and Convictions under Cyberstalking Laws*, [OLR Report 2009-R-012](#).
- Veronica Rose, *Cyberstalking*, [OLR Report 2009-R-0117](#)

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