

Domestic Violence Cases

STALKING

2004



ADMINISTRATIVE OFFICE
OF THE COURTS

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Education Division/CJER

VIOLENCE AGAINST WOMEN EDUCATION PROJECT STAFF

Bobbie Welling, Supervising Attorney
Project Manager

Leilah Gilligan
Court Services Analyst
Jenny Tang
Administrative Coordinator

Authors

Jennifer Wyllie-Pletcher
Attorney, Castro Valley
Carolyn Reed
Attorney, Clayton

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Superior Court of California, County of Los Angeles

For additional information about VAWEP activities, editorial comments, and inquiries, please contact: Bobbie Welling, Project Manager 415-865-7822,
e-mail bobbie.welling@jud.ca.gov,
fax 415-865-7217

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Judicial Council of California
Administrative Office of the Courts
Center for Families, Children & the Courts
Attention: Violence Against Women Education Project
(VAWEP)
455 Golden Gate Avenue
San Francisco
California 94102-3660.

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OVERVIEW

The primary objective of this bench handbook is to provide California judicial officers with a comprehensive guide to California and Federal stalking laws. California stalking laws are divided into criminal and civil categories, which include sections on bail/OR considerations, criminal and civil protective orders, jury instructions, sentencing, cyberstalking, firearms, and other laws related to stalking. The federal stalking section includes the federal stalking law and the interstate violation of a protective order. The handbook includes an appendix with a list of resources that judges may reference for information related to stalking.

Stalking is the willful, malicious, and repeated harassment of another person. The victim can either be an intimate partner or a stranger, but it is very common to find stalking in intimate partner relationships. Intimate partner stalking is considered domestic violence. According to the National Center for Victims of Crime, it is difficult to stop a stalker, who is by definition obsessed with his or her victim, and who can continue his or her behavior even after a conviction, incarceration, or release. An abuser who stalks can kill the victim if the stalker feels he or she is losing control over the victim's life. This fear of loss of control is often at its most dangerous when the victim seeks intervention through the courts.

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I. CRIMINAL STALKING LAWS

A. [§1.1] PENAL CODE §646.9(a)

Under Penal Code §646.9(a), any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking.

The following are definitions contained in Pen C 646.9:

Harasses (Pen C §646.9(e)): Engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose.

Course of conduct (Pen C §646.9(f)): Two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of “course of conduct.”

Credible threat (Pen C §646.9(g)): An oral or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of oral, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family, and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. The present incarceration of a person making the threat shall not be a bar to

prosecution under this section. Constitutionally protected activity is not included within the meaning of “credible threat.”

Electronic communication device (Pen C §646.9(h)): Includes, but is not limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers.

Electronic communication (Pen C §646.9(h)): Has the same meaning as the term defined in 18 USC §2510(12): “Electronic communication” means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or part by a wire, radio, electromagnetic, photo electronic or photo optical system that affects interstate or foreign commerce, but does not include:

- Any wire or oral communication;
- Any communication made through a tone-only paging device;
- Any communication from a tracking device (as defined in 18 USC §3117); or
- Electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

Immediate family (Pen C §646.9(l)): Any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person, who regularly resides in the household, or who, within the prior six months, resided in the household.

B. [§1.2] PENAL CODE §646.9(b)

Any person who violates Pen C §646.9(a) when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior described in subdivision (a) against the same party, shall be punished by imprisonment in the state prison for two, three, or four years.

C. APPLICABLE CASES FOR INDIVIDUAL ELEMENTS

1. [§1.3] “Repeatedly”

People v Heilman (1994) 25 CA4th 391, 30 CR2d 422. The term “repeatedly” is not unconstitutionally vague; it means the perpetrator must follow the victim more than one time.

People v McCray (1997) 58 CA4th 159, 67 CR2d 872. Penal Code §646.9(a), the stalking statute, defines two types of conduct upon which a stalking conviction may be based: “willfully, maliciously and repeatedly following” and harassment. Pen C §646.9(e). The words “willfully, maliciously and repeatedly” only modify “following.” “Harasses” is defined in Pen C §646.9(e) as a “knowing and willful course of conduct.” Thus, the statute does not require that harassment be repeated.

2. [§1.4] Vagueness/Unconstitutionality

People v McClelland (1996) 42 CA4th 144, 49 CR2d 587. If the defendant's conduct constitutes repeated following or harassment and he or she has made a credible threat, then the defendant has violated Pen C §646.9(a). If the same conduct is also prohibited by an existing restraining order against the defendant, then Pen C §646.9(b) serves the legislative purpose of providing enhanced punishment to those stalkers who have been ordered to refrain from such conduct in a civil proceeding and therefore have been warned that their behavior is unacceptable. In *McClelland*, the defendant stalked the victim by harassing her and making a credible threat. It is immaterial that the defendant may not have actually intended to carry out these threats.

People v Halgren (1996) 52 CA4th 1223, 1231–1232, 61 CR2d 176. (1) The provision of the stalking statute prohibiting a person from making credible threats against another person or repeatedly following or harassing that other person was not unconstitutionally vague, (2) the stalking statute was not unconstitutionally overbroad in violation of First Amendment free speech protection (the statute did not punish mere angry or emotional speech) and (3) evidence concerning statements the defendant made to the victim during a series of telephone calls was sufficient to establish that the defendant made credible threats in violation of the felony stalking statute.

3. [§1.5] “Fear”

People v Norman (1999) 73 CA4th 1234, 89 CR2d 806. For the defendant to violate the statute prohibiting stalking, the victim's fear need not be contemporaneous with defendant's threats and harassment.

4. [§1.6] “Credible Threat”

People v Carron (1995) 37 CA4th 1230, 44 CR2d 328. It is not required that the person making the threat actually intended to carry out the threat.

5. [§1.7] “Safety”

People v Falck (1997) 52 CA4th 287, 60 CR2d 624. The term “safety” does not make the statute unconstitutionally vague and uncertain, even though it is not defined by the statute.

6. [§1.8] “Harasses”

People v McCray (1997) 58 CA4th 159, 67 CR2d 872. Penal Code §646.9(a), the stalking statute, defines two types of conduct upon which a stalking conviction may be based: “willfully, maliciously and repeatedly following” and harassment. The words “willfully, maliciously and repeatedly” only modify “following.” “Harasses” is defined in Pen C

§646.9(e) as a “knowing and willful course of conduct.” Thus, the statute does not require that harassment be repeated.

People v Tran (1996) 47 CA4th 253, 54 CR2d 650. The term “harasses,” as defined in the stalking statute as conduct that serves “no legitimate purpose,” was not unconstitutionally vague.

People v Ewing (1999) 76 CA4th 199, 90 CR2d 177. The term “harasses,” as used in the stalking statute and defined as a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes that person, is not unconstitutionally vague, as the latter terms are not too subjective, but have clear and understandable dictionary definitions.

D. [§1.9] BAIL/OR CONSIDERATIONS

TIP: In addition to the standard statutory requirements, there are other risk assessment questions you may want to consider before making your decision: (1) How long has the stalking behavior been occurring? (2) Are there any weapons? (3) Has the violence or contacts accelerated? (4) Has there been a recent separation? (5) Are there prior victims? (6) Have prior court orders been violated?

E. [§1.10] CRIMINAL PROTECTIVE ORDER

CPO—Criminal Protective Order (Pen C §136.2): This order is issued for a victim or witness to whom harm or intimidation or dissuasion has occurred or is reasonable likely to occur. Any court with jurisdiction over a criminal matter may issue orders on its own motion or on the application of the district attorney, victim, or witness to the court. It is available anytime during the criminal case.

For a detailed discussion of a CPO refer to the Bench Handbook, Judges Guide to Domestic Violence Cases, California Protective Orders.

F. [§1.11] CALIFORNIA JURY INSTRUCTIONS

Criminal (CALJIC)

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Crimes Against Security of Person

A. Assault and Battery

2. CALJIC 9.16.11—Stalking (use if crime occurred after January 1, 2003)

Crimes Against Security of Person

A. Assault and Battery

3. CALJIC 9.16.20—Stalking Following Court Order (use if crime occurred before January 1, 2003)

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Civil (BAJI)

BAJI 7.58

Part 7. Intentional Torts

G. Stalking

Civil (CACI)

CACI 1808

Stalking

G. SENTENCING

1. [§1.12] Penalties (Pen C §646.9)

Penal Code §646.9(a). Stalking is punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.

Penal Code §646.9(b). Any person who violates subdivision (a) when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior described in subdivision (a) against the same party, shall be punished by imprisonment in the state prison for two, three, or four years.

Penal Code §646.9(c)(1). Every person who, after having been convicted of a felony under Pen C §273.5 (corporal injury to a spouse or cohabitant), §273.6 (violation of restraining order), or §422 (criminal threats), commits a violation of subdivision (a) shall be punished by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or five years.

Penal Code §646.9(c)(2). Every person who, after having been convicted of a felony under subdivision (a), commits a violation of this section shall be punished by imprisonment in the state prison for two, three, or five years.

2. [§1.13] Mandatory Sentencing Requirements

Penal Code §646.9(j). If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under Pen C §646.9, it shall be a condition of probation that the person participate in counseling, as designated by the court. However, the court, upon a showing of good cause, may find that the counseling requirement shall not be imposed.

3. [§1.14] Discretionary Sentencing Requirements

Penal Code §646.9(d). In addition to the penalties provided in this section, the sentencing court may order a person convicted of a felony under Pen C §646.9 to register as a sex offender under Pen C §290(a)(2)(E). The following shall be required to register under Pen C §290(a)(1)(E): Any person ordered by any court to register under this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration. Pen C §290(a)(2)(E).

Penal Code §646.9(k) (Postconviction stalking protective order). The sentencing court also shall consider issuing an order restraining the defendant from any contact with the victim, that may be valid for up to 10 years, as determined by the court. It is the intent of the legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family.

Penal Code §646.9(m). The court shall consider whether the defendant would benefit from treatment under Pen C §2684. If it is determined to be appropriate, the court shall recommend that the Department of Corrections make a certification as provided in Pen C §2684. Upon the certification, the defendant shall be evaluated and transferred to the appropriate hospital for treatment under Pen C §2684.

Penal Code §2684(a). If, in the opinion of the Director of Corrections, the rehabilitation of any mentally ill, mentally deficient, or insane person confined in a state prison may be expedited by treatment at any one of the state hospitals under the jurisdiction of the State Department of Mental Health or the State Department of Development Services, then the Director of Corrections, with the approval of the Board of Prison Terms for persons sentenced under Pen C §1168(b), shall certify that fact to the director of the appropriate department who shall evaluate the prisoner to determine if he or she would benefit from care and treatment in a state hospital. If the director of the appropriate department so determines, the superintendent of the hospital shall receive the prisoner and keep him or her until in the opinion of the superintendent the person has been treated to the extent that he or she will not benefit from further care and treatment in the state hospital.

Penal Code §2684(b). Whenever the Director of Corrections receives a recommendation from the court that a defendant convicted of a violation of Pen C §646.9 and sentenced to confinement in the state prison would benefit from treatment in a state hospital pursuant to Pen C §646.9(a), the director shall consider the recommendation. If appropriate, the director

shall certify that the rehabilitation of the defendant may be expedited by treatment in a state hospital and Pen C §646.9(a) shall apply.

H. [§1.15] EMERGING INFORMATION ON CYBERSTALKING

Definition—Cyberstalking is the use of the Internet, e-mail or other telecommunication technologies to harass or stalk another person. It is a methodical and deliberate course of conduct that takes place over a period of time and involves repeated attempts to cause distress to the victim. Cyberstalking has replaced traditional methods of stalking and harassment. It can often lead to offline incidents of violent crime.

Note: People who do not have access to the Internet or who choose not to go online are not immune from cyber-based crime. Tracing a victim's real name, address, telephone number, and other personal information from the victim's user name by means of databases of personal information available on the Internet. This information can then enable the stalker to harass the victim in person.

How does the stalker use cyber technology?

The National Center for the Victims of Crime, Stalking Resource Center identifies the following methods:

- Using the Internet to identify and track the victim;
- Using electronic sabotage (flooding an Internet chat channel to disrupt the victim's conversation);
- Creating postings about the victim or starting rumors that spread;
- Setting up a web page on the victim with personal or fictitious information or solicitations to readers;
- Assuming the victim's persona online, posting details about the victim or soliciting unwanted contacts from others;
- Using mail bombs (mass messages that shut down the victim's e-mail system);
- Sending computer viruses;
- Sending electronic junk mail (spam); and

The difficulty in identifying cyberstalking.

Complex software and computer technologies make it easy for a stalker to appear anonymous and hard for law enforcement to investigate. Some of these programs include: (1) anonymous re-mailers, which shield the sender's identity, and (2) a software program (Stratford's Shredder), which acts like an electronic paper shredder that overwrites deleted files.

Resources:

- Working to Halt Online Abuse: www.haltabuse.org/

- Cyber Angels: www.cyberangels.org
- Safety Ed International: www.safetyed.org
- Privacy Rights Clearinghouse: www.privacyrights.org
- Online Privacy Alliance: www.privacyalliance.com
- Network Solutions' WHOIS: www.networksolutions.com
- Federal Trade Commission, Consumer Affairs Department: Social Security Fraud Line: 1-800-269-0271

I. [§1.16] FIREARMS

California felony conviction—It is unlawful for any person who (1) has been convicted of a felony under the laws of the United States, the State of California, or any other state government or country; or (2) has been convicted of a Pen C §12001.6(a), (b), or (d) offense (offenses involving violent use of a firearm); or (3) is addicted to the use of any narcotic drug to own, possess or control any firearm. Pen C §12021(a)(1).

Federal felony conviction—Federal law prohibits a person, who has been convicted in any court of a crime punishable by more than one year in prison, from transporting, possessing or receiving any firearm or ammunition. 18 USC §922(g)(1).

Federal felony indictment—Federal law prohibits a person under indictment for a crime punishable by more than one year in prison, from shipping or transporting in interstate or foreign commerce or receiving from interstate or foreign commerce any firearm or ammunition. 18 USC §922(n).

California misdemeanor conviction—It is unlawful for any person convicted of one or more specified misdemeanor crimes (including Pen C §646.9) to own, purchase, receive, possess, or have in his or her custody or control any firearm within 10 years of the conviction. Pen C §12021(c)(1).

Federal misdemeanor conviction—Federal law prohibits a person, who has been convicted in any court of a misdemeanor crime of domestic violence, from transporting, possessing, or receiving any firearm or ammunition. 18 USC §922(g)(9).

California condition of probation—As an express condition of probation a person can be prohibited from owning, possessing, controlling, receiving, or purchasing a firearm. Pen C §12021(d)(1).

Note: A complete discussion of firearms can be found in the Bench Handbook, Judges Guide to Domestic Violence Cases, Firearms and Full Faith and Credit.

II. CIVIL STALKING LAWS

A. [§1.17] TORT REMEDIES

This section provides information about tort remedies for damages incurred as a result of criminal conduct in cases involving stalking. This does not preclude a person from bringing any other civil action that may be appropriate that may not be mentioned here, such as a tort action for intentional infliction of emotional distress, sexual harassment, trespass assault, or invasion of privacy.

1. Tort of Stalking (CC §1708.7)

a. [§1.18] Elements of Proof (CC §1708.7(a))

A person is liable for the tort of stalking when the plaintiff proves all of the following elements of the tort:

- The defendant engaged in a pattern of conduct the intent of which was to follow, alarm, or harass the plaintiff. In order to establish this element, the plaintiff shall be required to support his or her allegations with independent corroborating evidence.
- As a result of that pattern of conduct, the plaintiff reasonably feared for his or her safety, or the safety of an immediate family member.
- One of the following:
 - The defendant, as a part of the pattern of conduct specified in the first bulleted paragraph above, made a credible threat with the intent to place the plaintiff in reasonable fear for his or her safety, or the safety of an immediate family member and, on at least one occasion, the plaintiff clearly and definitively demanded that the defendant cease and abate his or her pattern of conduct and the defendant persisted on the pattern of conduct.

Note: In *People v Carron* (1995) 37 CA4th 1230, 44 CR2d 328, the court mentioned CC §1708.7 and held that it is not required that the person making the threat actually intends to carry out the threat.

- The defendant violated a restraining order, including, but not limited to, any order issued under CCP §527.6, prohibiting any act described in CC §1708.7(a) (see Judges Guide to Domestic Violence Cases, California Protective Orders).

b. [§1.19] Definitions

Immediate family—A spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any person who regularly resides, or, within the six months preceding any portion of the conduct, regularly resided, in the plaintiff’s household. CC §1708.7(a)(2).

Pattern of conduct—Conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. CC §1708.7(b)(1).

Credible threat—A verbal or written threat, including that communicated by means of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent and apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family.

Electronic communication device—Includes, but is not limited to, telephones cellular telephones, computers, video recorders, fax machines, or pagers. “Electronic communication” has the same meaning as the term defined in 18 USC §2510(12). CC §1708.7(b)(3). See §2.3 of this handbook for federal definition of electronic communication.

Harass—A knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, torments, or terrorizes the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the person. CC §1708.7(b)(4).

c. [§1.20] Remedies

A person who commits the tort of stalking upon another is liable to that person for damages, including, but not limited to, general damages, special damages, and punitive damages under CC §3294. CC §1708.7(c).

In an action under CC §1708.7, the court may grant equitable relief, including, but not limited to an injunction. CC §1708.7(d).

The rights and remedies provided in this section are cumulative and in addition to any other rights and remedies provided by law. CC §1708.7(e).

d. [§1.21] Other Points of Law

This section shall not be construed to impair any constitutionally protected activity, including, but not limited to, speech, protest, and assembly. CC §1708.7(f).

2. The Tort of Domestic Violence (CC §1708.6)

a. [§1.22] Elements of Proof (CC §1708.6(a)(1)–(2))

A person is liable for the tort of domestic violence if the plaintiff proves both of the following elements (CC §1708.6(a)(1)–(2)):

- The infliction of injury upon the plaintiff resulting from abuse, as defined in Pen C §13700(a).

Pen C §13700(a). Intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another.

- The abuse was committed by the defendant, a person having a relationship with the plaintiff as defined in Pen C §13700(b).

Pen C §13700(b). Domestic violence means abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this subdivision, “cohabitant” means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.

b. [§1.23] Remedies

A person who commits an act of domestic violence upon another is liable to that person for damages including, but not limited to, general damages, special damages, and punitive damages under CC §3294. CC §1708.6(b).

The court, in an action under CC §3294, may grant to a prevailing plaintiff equitable relief, an injunction, costs, and any other relief that the court deems proper, including reasonable attorneys’ fees. CC §1708.6(c).

The rights and remedies provided in CC §3294 are in addition to any other rights and remedies provided by law. CC §1708.6(d).

c. [§1.24] Other Points of Law

The time for commencement of an action under this section is governed by CCP §340.15. CC §1708.6(e).

CCP §340.15. In any civil action for recovery of damages suffered as a result of domestic violence, the time for commencement of the action shall be the later of the following: (1) Within three years from the date of the last act of domestic violence by the defendant against the plaintiff. (2)

Within three years from the date the plaintiff discovers or reasonably should have discovered that an injury or illness resulted from an act of domestic violence by the defendant against the plaintiff.

3. [§1.25] Gender Violence (CC §52.4)

Any person who has been subjected to gender violence may bring a civil action for damages against any responsible party. CC §52.4(a).

a. [§1.26] Definitions

“Gender violence” is a form of sex discrimination and means any of the following (CC §52.4(c)):

- One or more acts that would constitute a criminal offense under state law that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, committed at least in part based on the gender of the victim, whether or not those acts have resulted in criminal complaints, charges, prosecution, or conviction.
- A physical intrusion or physical invasion of a sexual nature under coercive conditions, whether or not those acts have resulted in criminal complaints, charges, prosecution, or conviction.

b. [§1.27] Statute of Limitations

An action brought under CC §52.4 shall be commenced within three years of the act, or if the victim was a minor when the act occurred, within eight years after the date the plaintiff attains the age of majority or within three years after the date the plaintiff discovers or reasonably should have discovered the psychological injury or illness occurring after the age of majority that was caused by the act, whichever date occurs later. CC §52.4(b).

c. [§1.28] Remedies

The plaintiff may seek actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief. CC §52.4(a).

A prevailing plaintiff may also be awarded attorneys’ fees and costs. CC §52.4(a).

d. [§1.29] Other Points of Law

Notwithstanding any other laws that may establish the liability of an employer for the acts of an employee, this section does not establish any civil liability of a person because of his or her status as an employer, unless the employer personally committed an act of gender violence. CC §52.4(d).

B. [§1.30] CIVIL PROTECTIVE ORDERS

The following is a list of protective orders available in civil court for stalking. For a detailed discussion of all these orders refer to the Bench Handbook, Judges Guide to Domestic Violence Cases, California Protective Orders.

1. [§1.31] Emergency Protective Order (EPO)

The following are characteristics of an EPO in a non-domestic violence stalking case that are different from characteristics in a domestic violence EPO. For a full discussion of an EPO in a domestic violence situation, see the detailed discussion of on EPOs in the Judges Guide to Domestic Violence Cases, California Protective Orders.

A peace officer, as defined in Pen C §830.1 or §830.2, may seek an emergency protective order relating to stalking under Pen C §646.91 if the requirements of that section are complied with. Pen C §646.91(c)(1)–(2). The officer contacts the on-call judicial officer by phone and fills out the EPO form on site. See Pen C §646.91(c)(1)–(4).

When there is no personal relationship between the parties (non-domestic violence), a judge may issue an ex parte EPO when a peace officer asserts reasonable grounds to believe that an immediate and present danger of stalking, as defined in Pen C §646.9, exists. Pen C §646.91(a).

The judge may issue an EPO only if he or she finds that both:

- Reasonable grounds have been asserted to believe that an immediate and present danger of stalking, as defined in Pen C §646.9, exists (Pen C §646.91(d)(1)); and
- An emergency protective order is necessary to prevent the occurrence or reoccurrence of the stalking activity (Pen C §646.9(d)(2)).

An EPO when there are no personal relationships may include a Civil Harassment Protective Order as described in CCP §527.6; see Judges Guide to Domestic Violence Cases, California Protective Orders, and/or Workplace Violence Protective Order as described in CCP §527.8.

2. [§1.32] Temporary Restraining Order and Order After Hearing (DVPA)

This order is self-initiated by the petitioner in civil court. The relationship of the petitioner with the respondent must fall within one of the following categories (Fam C §6211):

- Spouse or former spouse
- Cohabitant or former cohabitant
- A dating or engagement relationship (past or present)

- Parties who have a child together, and the male parent is the presumed father
- Child of the party, or child subject to a paternity action
- Any other person related by consanguinity or affinity in the second degree

Note: If the stalking case is between people who have no personal relationship, this order does not apply. Refer to a civil harassment protective order.

3. [§1.33] Juvenile Court Protective Order

After a petition has been filed to declare a child a dependent or ward of juvenile court, the court may issue ex parte orders. These orders can enjoin any person from stalking the child. Welf & I C §§213.5, 304, 362.4, 726.5.

4. [§1.34] Workplace Violence Protective Order

An employer may obtain a temporary restraining order and an injunction for an employee who has suffered an unlawful act of violence or a credible threat of violence, which occurred at the workplace. Among other factors, the court may include in the order that the defendant not stalk the employee. CCP §527.8.

5. [§1.35] Civil Harassment Protective Order

A person who has suffered harassment as defined in CCP §527.6(b) which includes stalking, may seek a temporary restraining order and an injunction to prevent harassment. No special relationship between the applicant and respondent is required.

6. [§1.36] Elder and Dependent Adult Protective Order

An elder or dependent adult who has suffered abuse as defined in Welf & I C §15610.07 may seek protective orders. The abuse is defined as physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm, pain, or mental suffering. The orders may enjoin the party from stalking.

III. OTHER LAWS RELATED TO STALKING

A. [§1.37] PENAL CODE

Criminal threats (Pen C §422): A person who threatens to commit a crime resulting in death or great bodily injury to another person with the specific intent that the statement is to be taken as a threat even if there is no intent of carrying it out. This threat causes the person threatened to

reasonably be in sustained fear for his or her safety or for his or her immediate family.

Intensive parole (Pen C §646.94): Contingent upon the budget, any parolee convicted of violating Pen C §646.9 after January 1, 2002, who is deemed a high risk, should be placed on an intensive and specialized parole supervision program for a period not to exceed the period of parole.

Intent to annoy by electronic communication (Pen C §653m): This section addresses the use of the telephone or an electronic communication device to annoy another person.

Recording a communication (Pen C §633.5): Allows a party to record confidential communications for the purpose of obtaining evidence reasonably believed to relate to the commission by another party to the communication of the crime for extortion, kidnapping, bribery, any felony involving violence against the person, or a violation of §653m (annoying telephone calls).

Permitting a victim of domestic violence to record a communication (Pen C §633.6): Allows a victim of domestic violence to record prohibited communication made to him or her. This is done when the victim requests a judge issuing the domestic violence restraining order to include a provision in the order that permits the victim to record any prohibited communication made to him or her by the perpetrator.

Conditions of parole for offense of stalking per victim's request (Pen C §3053.2): Upon the request of a victim of stalking, the parole authority shall impose upon a person released from prison certain restrictions. Among these is a protective order with numerous restrictions, victim notification of when offender is released from prison, and the name of the parole agent. This statute sets out a number of restrictions for the offender while on parole.

Continuance for stalking in a criminal case (Pen C §1050(g)(2)–(3)): A continuance for a criminal case is permitted for stalking. Pen C §646.9.

Stalking parolee can't be released within 35 miles of the victim (Pen C §3003(h)): An inmate released for an offense involving stalking shall not be returned to within 35 miles of the victim's residence or place of employment if the victim requests and the Department of Corrections or the Board of Prison Terms finds that there is a need.

Terms of probation including stalking (Pen C §1203.097): This section includes the terms of probation when the victim is a person defined in Fam C §6211.

B. [§1.38] FAMILY CODE

EPO/Stalking (Fam C §6274): A peace officer may seek an emergency probation order relating to stalking.

Ex parte order for stalking (Fam C §6320): The court may issue an ex parte order enjoining a party from stalking.

C. [§1.39] GOVERNMENT CODE

Request for public records without disclosing name or location of victim of stalking (Govt C §6205): State and local agencies cannot disclose the name and locations of a victim of stalking or domestic violence when responding to requests for public records.

Definition of stalking (Govt C §6205.5): This section defines stalking as found in Pen C §646.9.

Applying for an address (Govt C §6206): This section deals with how to apply for an address designated by the Secretary of State for an adult person or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitate person who is a victim of stalking and/or domestic violence.

Agencies that provide counseling and shelter services for stalking and domestic violence (Govt C §6208.5): The Secretary of State shall designate state and local agencies and nonprofit agencies that provide counseling and shelter services to victims of domestic violence or stalking to assist persons applying to be program participants.

Custody/Visitation orders regarding stalking (Govt C §6209.7): Custody or visitation orders in effect before a person participates in Govt C §6208.5 are not affected. A person who falsifies his or her location in order to unlawfully avoid custody or visitation orders is subject to termination from the program and is guilty of a misdemeanor.

D. [§1.40] WELFARE AND INSTITUTIONS CODE

Ex parte orders in stalking for a dependent child (Welf & I C §213.5): After a petition has been filed to declare a child a dependent child of the juvenile court, the juvenile court may issue ex parte orders enjoining a person from stalking the child

Definition of abuse includes stalking (Welf & I C §11495.12): This section defines abuse, which includes stalking.

Elder/Dependent adult order for stalking (Welf & I C §15657.03(b)(1)): An elder or dependent adult who has suffered abuse may seek a protective order enjoining a party from stalking.

E. [§1.41] CODE OF CIVIL PROCEDURE

TRO for harassment, which includes stalking (CCP §527.6): A person who has suffered harassment, which includes stalking, may seek a temporary restraining order and an injunction prohibiting harassment. There is no filing fee.

TRO for an employee for stalking (CCP §527.8): An employer, whose employee has suffered unlawful violence (includes stalking) that was carried out at the workplace, may seek a temporary restraining order and an injunction on behalf of the employee. There is no filing fee.

Victim of stalking name change (CCP §1277(b)): When a person files for a name change and is a victim of stalking and/or domestic violence and is a participant in the confidentiality program (Govt C §6205), the name change remains confidential.

No disclosure of name change unless compelling evidence that name change petition is false (CCP §1278(b)): The court will not disclose the name change (if the provisions of CCP §1277(b) apply to the name change) unless there is clear and convincing evidence that the allegations of stalking and/or domestic violence in the petition are false.

F. [§1.42] VEHICLE CODE

Confidentiality of registration/driver's license if subject of stalking (Veh C §1808.21(d), (i)): Any registration or driver's license record may be suppressed if the person is the subject of stalking.

Issuance if new license plates for victim of domestic violence (Veh C §4467(5)(a)): A victim of domestic violence and/or stalking shall be issued immediately a new and different license plate if he or she shows required proof of ownership and a copy of a police report, court documentation, or other law enforcement documentation identifying the registered owner as the victim of stalking or domestic violence.

Chapter 2

FEDERAL STATUTES PERTAINING TO STALKING

I. [§2.1] Introduction

II. Federal Crimes

A. [§2.2] Interstate Stalking (18 USC §2261A)

1. [§2.3] Important Definitions

2. [§2.4] Penalties

B. [§2.5] Interstate Violation of Protective Order (18 USC §2262)

I. [§2.1] INTRODUCTION

The following is a summary of federal laws that apply to stalking. If a California court finds that a person traveled across state or tribal lines to stalk someone or crossed state lines using mail, e-mail or the Internet to stalk someone, then it is a federal crime and the case may be heard in a federal court. Information on federal law may also be important if a jurisdiction is near a military installation or tribal land where federal law on stalking may apply.

II. FEDERAL CRIMES

A. [§2.2] INTERSTATE STALKING (18 USC §2261A)

Whoever:

Travels in interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States, or enters or leaves Indian country with the intent to kill, injure, harass, or intimidate another person, and, in the course of, or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury to, that person, a member of the immediate family (as defined in 18 USC §115) of that person, or the spouse or intimate partner of that person; or

With the intent:

- To kill or injure a person in another State or tribal jurisdiction or within the special maritime and territorial jurisdiction of the United States; or
- To place a person in another State or tribal jurisdiction, or within the special maritime and territorial jurisdiction of the United States, in reasonable fear of the death of, or serious bodily injury to

- That person;
- A member of the immediate family (as defined in 18 USC §115) of that person; or
- A spouse or intimate partner of that person, uses the mail or any facility of interstate or foreign commerce to engage in a course of conduct that places that person in reasonable fear of the death of, or serious bodily injury to, any of the persons described above, shall be punished as provided in 18 USC §2261(b).

1. [§2.3] Important Definitions

Serious Bodily Injury (18 USC §§1365(g)(3)–(4), 1864(d)(1)): Bodily injury (see below) that involves (A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty. This includes any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States would violate 18 USC §2241 (aggravated sexual abuse) or §2242 (sexual abuse).

Bodily Injury (18 USC §§1365(g)(4), 1864(d)(2)) that involves:

- A cut, abrasion, bruise, or disfigurement;
- Physical pain;
- Illness;
- Impairment of the function of a bodily member, organ, or mental faculty; or
- Any other injury to the body, no matter how temporary

Immediate Family (18 USC §115(c)(2)): Immediate family includes the individual's spouse, parents, siblings, children, or any other person living in the individual's household related by blood or marriage.

Course of Conduct (18 USC §2266(2)): A pattern of conduct composed of two or more acts, evidencing a continuity of purpose.

Spouse or Intimate Partner (18 USC §2266(7)(a)(ii)):

- A spouse or former spouse of the target of the stalking;
- A person who shares a child in common with the target of the stalking;
- A person who cohabits or has cohabited as a spouse with the target of the stalking; or
- Any person similarly situated to a spouse who is protected by the domestic and family violence laws of the state or tribal jurisdiction where the injury occurred or the victim resides.

Enter or leave Indian country (18 USC §2266(3)): This section includes leaving the jurisdiction of one tribal government and entering the jurisdiction of another tribal government.

Travel in interstate or foreign commerce (18 USC §2266(9)): This does not include travel from one state to another by an individual who is a member of an Indian tribe and who remains at all times in the territory of the Indian tribe of which the individual is a member.

- *U.S. v Helem* (4th Cir 1997) 186 F3d 449. A defendant caused the victim to cross a state line by “force, coercion, duress, or fraud.” The court held that coercion or duress exist when an individual is subject to actual or threatened force of such a nature as to induce a well-founded fear of impending death or serious bodily harm from which there is no reasonable opportunity to escape.
- *U.S. v Hayes* (2d Cir 1998) 135 F3d 133. There is mandatory restitution for interstate domestic violence and interstate stalking.
- *U.S. v Page* (6th Cir 1999) 167 F3d 325. The Violence Against Women Act (VAWA) which prohibited movement of victims of domestic violence across state lines, did not exceed Congress’ authority under the Commerce Clause.

Electronic Communication (18 USC §2510(12)): Any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include:

- Any wire or oral communication,
- Any communication made through a tone-only paging device,
- Any communication from a tracking device (as defined in 18 USC §3117), or
- Electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

2. [§2.4] Penalties

A person who violates 18 USC §2261(b) or §2261A shall be fined under this title, imprisoned (1) for life or any term of years, if death of the victim results; (2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results; (3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense; (4) as provided for the applicable conduct under 18 USC §109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison) (18 USC §109A, Sexual Abuse

(§§2241-2248)); and (5) for not more than 5 years, in any other case, or both fined and imprisoned.

- *U.S. v Brown* (D Me 1999) 74 F Supp 2d 44. The penalty provisions of the stalking statute (18 USC §2261) were sentencing factors, not elements of the offense.

B. [§2.5] INTERSTATE VIOLATION OF PROTECTIVE ORDER (18 USC §2262)

Offenses (18 USC §2262(a)):

- *Travel or conduct of offender*: A person who travels in interstate or foreign commerce, or enters or leaves Indian country, with the intent to engage in conduct that violates the portion of a protective order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protective order in the jurisdiction in which the order was issued, and subsequently engages in such conduct, shall be punished as provided in subsection (b).
- *Causing travel of victim*: A person who causes another person to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and in the course of, as a result of, or to facilitate such conduct or travel engages in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, shall be punished as provided in subsection (b).

Penalties (18 USC §2262(b)): A person who violates this section shall be fined under this title, imprisoned (1) for life or any term of years, if death of the victim results; (2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results; (3) for not more than 10 years if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense; (4) as provided for the applicable conduct under 18 USC §109A if the offense would constitute an offense under 18 USC §109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison) (18 USC §109A, Sexual Abuse (18 USC §§2241–2248)); and (5) for not more than 5 years, in any other case, or both fined and imprisoned.

APPENDIX A: TYPES OF STALKERS AND DANGER ASSESSMENT

The following is both a list of types of stalkers and a danger assessment. It is intended to be used to help further the understanding of stalkers and the risk of danger stalkers pose to their victims and to the public safety. *It is not intended to be used as a checklist for judicial determination.*

Reviewing the following factors can help assess the level of risk for victims, which can lead to the best intervention strategy in a stalking case:

1. Danger Assessment or the Lethality of the Case: (*Danger Assessment*, Jacquelyn C. Campbell, Ph.D., R.N.)
 - a. Has the physical violence increased in frequency over the past year?
 - b. Has the physical violence increased in severity over the past year and/or has a weapon or threat with a weapon ever been used?
 - c. Does he or she ever try to choke you?
 - d. Is there a gun in the house?
 - e. Has he or she ever forced you to have sex when you did not wish to do so?
 - f. Does he or she use drugs? Drugs mean “uppers,” amphetamines, speed, angel dust, cocaine, “crack,” street drugs or mixtures.
 - g. Does he or she threaten to kill you and/or do you believe he or she is capable of killing you?
 - h. Is he or she drunk every day or almost every day? (Give amount of alcohol consumed.)
 - i. Does he or she control most or all of your daily activities? For example, does he or she tell you with whom you can be friends, how much money you can take when you go shopping, or when you can take the car?
 - j. Have you ever been beaten by him or her while you were pregnant? If you have never been pregnant by him, check here__.
 - k. Is he or she violently and constantly jealous of you? For example, does he or she say “If I can’t have you, no one can”?
 - l. Have you ever threatened or tried to commit suicide?

- m. Has he or she ever threatened or tried to commit suicide?
 - n. Is he or she violent toward your children?
 - o. Is he or she violent outside the home?
2. Types of Stalkers: It may be helpful to understand a stalker's behavior before sentencing that stalker. The following is a brief outline of the different types of stalkers.
- a. *The intimate partner stalker*
This is the type of stalker who refuses to believe that a relationship has really ended. This type of stalker's sense of self-worth depends on the fact that "she or he loves me," and any evidence to the contrary is seen as merely an inconvenience to overcome. Over half of stalkers fall into this category.
 - b. *The delusional stalker*
This type of stalker frequently has little if any contact with his or her victim. The stalker may have a major mental illness such as schizophrenia, manic-depression, or erotomania. These stalkers all have in common a false belief that keeps them tied to their victims, who are often in the helping professions, and who are most vulnerable to delusional stalkers. Such a stalker may have delusions of intimacy resulting from having blown out of proportion the kindness shown to him or her by a professional, because that kindness may be the only kindness he or she has ever known. The delusional stalker is often the most tenacious of stalkers.
 - c. *The vengeful stalker*
These stalkers become angry with their victims over a real or imagined slight. For example, a vengeful stalker could be a disgruntled ex-employee or someone who stalks a politician because of a piece of legislation. These stalkers stalk to get even.

APPENDIX B: RESOURCES

The National Center for Victims of Crime, Stalking Resource Center
www.ncvc.org

Civil Causes for Action for Stalking Victims, Marnie Shiels, Esq.
www.vaw.umn.edu/library/stalk

Los Angeles County Anti-Stalking Program
www.lovemenot.org

Danger Assessment, Jacquelyn C. Campbell, Ph.D., R.N.
www.son.jhmi.edu/research/CNR/HOMICIDE

Violence Against Women's Office, stalking resources and articles
www.vaw.umn.edu

Stalking Behavior Profile
www.antistalking.com

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JUDGES GUIDE TO DOMESTIC VIOLENCE CASES
Stalking

Evaluation/Questions

Optional Information:

Name: _____

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Jurisdiction: _____

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We would appreciate your candid comments on the *Judges Guide to Domestic Violence Cases: Stalking*. We are especially interested in any errors or omissions you may have detected in the text.

1. The following pages or sections contain mistakes as follows (*please describe and provide page or section reference*):

2. Further information about stalking is needed in a subsequent revision of the guide as follows (*please describe in detail*):

3. I have the following questions regarding the material presented:

4. Overall, I would rate this handbook as:

- Excellent
- Very Good
- Average
- Needs Improvement

Please fax or mail to:

Ms. Bobbie Welling
Supervising Attorney
Center for Families, Children & the Courts
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102
Tel: 415-865-7822
Fax: 415-865-7217
E-mail: bobbie.welling@jud.ca.gov

Thank you!