

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8485 SENATE STATE AFFAIRS

HB

64

CRS Report for Congress

Anti-Stalking Statutes: Background and Constitutional Analysis

Kenneth R. Thomas
Legislative Attorney
American Law Division



September 26, 1992



Congressional Research Service • The Library of Congress

RESEARCH

ANTI-STALKING STATUTES: BACKGROUND AND CONSTITUTIONAL ANALYSIS

SUMMARY

Over the past two years, twenty-seven state legislatures have passed legislation which prohibits "stalking." These laws have apparently been passed in response to a number of well-publicized cases where criminal assailants repeatedly followed, harassed, or threatened their victims, generally women, prior to an assault on those victims. Although some of the more publicized cases have involved attacks on individuals by strangers, many "stalking" incidents involve attacks on victims by people they know.

This report analyzes the various deficiencies which prevent traditional state legal systems from responding and effectively punishing "stalking." The report will then examine the various approaches that states have taken in passing laws on this issue, and discuss constitutional challenges that might be made to these statutes. Finally, the report discusses legislative phrasing that would be likely to satisfy constitutional concerns.

TABLE OF CONTENTS

I. Traditional Criminal Law Punishments Against Stalking	2
II. Civil Protective Orders and Stalking	4
III. Constitutional Challenges to "Anti-Stalking" Statutes	6
A. Void for Vagueness	6
B. Are Some Anti-Stalking Statutes Unconstitutionally Vague	6
C. Evaluation of Specific Provisions of Existing Statutes	8
1. Various Statutory Formulations Prohibiting Anti-Stalking Behavior	8
2. Intent to a Place a Person in Fear of Physical Injury	10
3. Exclusion of Lawful, Legitimate or Constitutionally Protected Behavior	10
4. Anti-Stalking Legislative Phrasing	11

ANTI-STALKING STATUTES: BACKGROUND AND CONSTITUTIONAL ANALYSIS

Over the past two years, twenty-seven state legislatures have passed legislation which prohibits "stalking."¹ These laws have apparently been passed in response to a number of well-publicized cases where criminal assailants repeatedly followed, harassed, or threatened their victims, generally women, prior to an assault on those victims.² Although some of the more publicized cases have involved attacks on individuals by relative strangers,³ many "stalking" incidents involve attacks on victims by people they know.⁴

Anti-stalking laws appear to have been passed to address various perceived problems with how traditional criminal laws are applied to threatening behavior. Certain stalking behavior, although disturbing to the victim and often indicative of potential future harm, may not rise to the level of criminal activity under traditional criminal statutes, or it may violate laws under which only minimal sanctions can be imposed. Absent statutes specifically prohibiting such

¹ Those states which have passed laws relating to stalking include: Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Mississippi, Nebraska, New York, Oklahoma, Ohio, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin. *Id.* See AZ Legis 241 (Westlaw 1992)(slip) to be codified at Ariz. Rev. Stat. Ann. §13-2921 (1991); Cal. Penal Code §646.9 (1992) & 1991 CA S.B. 1342 (Westlaw 1992); CO LEGIS H.B. 92-1189 (Westlaw 1992) to be codified at Colo. Rev. Stat. §18-9-111; CT LEGIS 92-237 (Westlaw 1992); DE LEGIS 250 (Westlaw 1992) to be codified at Del. Code Ann. tit. 11, §1312A; FL LEGIS 92-208 (Westlaw 1992) to be codified at Fla. Stat. §784.048; ID LEGIS 227 (Westlaw 1992) to be codified at Idaho Code §18-7905; Illinois Public Act 87-870 to be codified at Ill. Rev. Stat. ch. 38, §12-7.3; IA LEGIS H.F. 2025 (Westlaw 1992) to be codified at Iowa Code §708.11; KS LEGIS 298 (Westlaw 1992) to be codified at Kan. Crim. Code Ann §8-1567; KY LEGIS 443 (Westlaw 1992); LA LEGIS 80 (1992) to be codified at La. Rev. Stat. Ann. §40.2; MA LEGIS 31 (Westlaw 1992) to be codified at Mass. Gen. L. ch. 31, §43; MS LEGIS 532 (Westlaw 1992); NE LEGIS 1098 (Westlaw 1992); NY LEGIS 345 (Westlaw 1992) to be codified at New York Penal Law §120.13-.15 & §240.25-.30; OK LEGIS 42 to be codified at Okla. Stat. tit. 22, § 60.1; OK LEGIS 107 (Westlaw 1992) to be codified at Okla. Stat. tit. 21, § 1173; SC LEGIS 417 (Westlaw 1992) to be codified at S.C. Code Ann. §16-3-1070; SD LEGIS 162 (Westlaw 1992); TN LEGIS 795 (Westlaw 1992); UT LEGIS 188 (Westlaw 1992) to be codified at Utah Code Ann. §76-5-106.5; VA LEGIS 888 (Westlaw 1992) to be codified at Va. Code Ann. §18.2-60.3; WA LEGIS 186 (Westlaw 1992); WV LEGIS 52 (Westlaw 1992) to be codified at W. Va. Code. §61-2-91; WI LEGIS 194 (Westlaw 1992) to be codified at Wis. Stat. §29.05. Bills have also been introduced in both the Senate and the House directing that the Attorney General, through the National Institute of Justice, develop model anti-stalking legislation. See S. 2922, 102d Cong., 2d Sess. (1992); H.R. 5876, 102d Cong., 2d Sess. (1992).

² Melinda Beck, *Murderous Obsession*, Newsweek, July 13, 1992, at 60.

³ Marie Puente, *Legislators tackling the terror of stalking*, USA Today, January 21, 1992, at 9A.

⁴ Beck, *supra* note 2, at 61.

activities, law enforcement officials may be disinclined to vigorously respond to "stalking" reports, or they may find that the legal remedies available to prevent such behavior are inadequate.⁶

Anti-stalking statutes may also serve to supplement various civil laws to which individuals turn when subjected to threatening behavior. Individuals who are threatened by another person may seek a "civil protection order" or a "restraining order" under which a court will order an individual to cease harassing behavior against the individual seeking the order. Obtaining a civil protection order, however, is generally the responsibility of the victim of the harassment, and enforcement of such orders has proven problematic. Consequently, anti-stalking statutes may be an additional legal basis on which victims may seek protection from threats or harassment.

The "anti-stalking" statutes which have been passed by the various states vary in the type of behavior which is sanctioned. Some statutes are narrowly drafted, and are restricted to those individuals who make credible threats of serious harm coupled with some overt following or harassment. Other statutes, however, appear to prohibit any repeated unwelcome contact between individuals, regardless of potential threat.⁶ Consequently, concerns have been raised that some of these statutes may punish non-threatening or even constitutionally protected activities, such as picketing.

This report analyzes deficiencies which often prevent traditional state legal systems from responding and effectively punishing "stalking." The report then examines the various approaches that states have taken in passing laws on this issue.

I. Traditional Criminal Law Punishments Against Stalking

Stalking behavior generally refers to harassing or threatening behavior which an individual engages in repeatedly, such as following a person, appearing at a person's home or place of business, making harassing phone calls, leaving written messages or objects or vandalizing a person's property.⁷ These actions may or may not be preliminary steps taken before a stalker commits an act of assault, rape, child molestation or murder.⁸ Although women stalking men is not unknown, and some stalkers are strangers to their victims, the majority of cases reportedly involve women being stalked by former lovers or spouses.⁹ As

⁶ Danielle Bochove, *Living in Fear*, Calgary Herald, July 26, 1992, at A10.

⁶ See *infra* note 35-37 and accompanying text.

⁷ Melinda Beck, *supra* note 2, at 60 (July 13, 1992).

⁸ *Id.*

⁹ *Id.*

many as 90 percent of women killed by their husbands or boyfriends have been stalked prior to the attack.¹⁰

Stalkers generally engage in behavior which is threatening to the victim, but which may not, absent an anti-stalking statute, rise to the level of a criminal violation. For instance, the crime of assault is committed when an individual attempts or places a person in reasonable apprehension of being subjected to immediate physical violence.¹¹ While an individual who is "stalking" another may intend or threaten physical violence, the crime of assault is not generally committed unless there is such "proximity" between the potential assailant and the victim that immediate violence is anticipated. In the words of one court, the "proximity" required is such that "the next movement would . . . complete the battery."¹² Consequently, stalking behavior which threatens a physical harm at some future unspecified time would not generally be considered an "assault."¹³

A "stalker" who follows a person need not necessarily engage in actions which would violate a state criminal law, such as trespass or destruction of property.¹⁴ When a stalker does violate criminal law, they are often misdemeanors, and the penalties imposed are usually fines and probation. More serious criminal violations are not generally available if the "stalker" has made no overt attacks on the person being followed. Consequently, there may be no adequate criminal deterrent to prevent stalking behavior.

II. Civil Protective Orders and Stalking

Courts generally have the authority to order that an individual refrain from contacting or coming within the vicinity of another person, if a sufficient basis for such an order can be established. Such an order is generally referred to as a civil protection order. If a civil protection order is violated, then a court may

¹⁰ *Id.*

¹¹ Perkins & Boyce, *Criminal Law* 163 (1982). The crime of assault, traditionally meant an attempt to complete a simple "battery" or act of physical violence. *Id.* By statute, however, it has been expanded to include numerous other forms of threatened violence such as assault with a deadly weapon and assault with intent to kill. *Id.*

¹² *Fox v. State*, 34 Ohio St. 377 (1878).

¹³ Similarly, laws regarding an "attempt" to commit physical violence could generally not be applied to a stalker, as an attempt to commit a crime generally requires that the assailant has gone beyond preparation, and has acted towards the consummation of the illegal goal. *Id.* at 614.

¹⁴ Harassment by phone, on the other hand, will generally be a violation of federal law. See 47 U.S.C. §223 (1988)(fines of up to \$50,000 or imprisonment for up to six months for making repeated phone calls solely to harass a person).

hold the violator in contempt, and impose fines or incarceration.¹⁶ Some states only provide for the imposition of civil contempt for the violation of a civil protective order, while others mandate criminal sanctions.¹⁶ Most states leave it to the court's discretion whether to hold a violator in civil or criminal contempt.¹⁷

Absent anti-stalking laws, the civil protection order is generally the only basis by which an individual can prevent another individual from approaching her, her home, or her work place. There are inherent problems in obtaining civil protection orders, however, and enforcement of these orders has often proven to be a problem. Although there has been some movement to strengthen these laws, there are questions whether the civil protection order is a sufficient response to the problem of stalking, and whether the criminal law system is a more appropriate avenue for addressing this issue.

There are a number of differences between the operation of the civil protection order system and the criminal law. Under the criminal law system, the police and prosecutors are generally responsible for investigating a crime, initiating legal proceedings, providing evidence, and seeking sanctions against the law breaker. Under the civil protection system the victim, not the state, is responsible for initiating civil protection proceedings, proving her case, obtaining a protection order, and then seeking to have the order enforced. This process often requires the expenditure of significant time and money to hire a lawyer, pay court costs, develop a case, and follow the necessary legal process. These may represent significant emotional, logistical or financial hurdles for women who may need the protection the most.

¹⁶ A contempt of court is a willful disregard of the authority of a court. Wright, Federal Practice and Procedure, Criminal 2d, §702. Although the powers of a court to move against an individual for contempt were originally held to be "inherent" powers of the court, Note, *Civil and Criminal Contempt in the Federal Courts*, 57 Yale L.J. 83, 85 (1947), there is now extensive statutory authorization for the imposition of sanctions against such acts.

¹⁶ Finn, *State-by-State Guide to Enforcement of Civil Protection Order*, 14 Response 3-4 (1991).

¹⁷ *Id.* The distinction between acts which constitute civil contempt and criminal contempt is often unclear, because some conduct can be both criminal and civil contempt. Fundamentally, incarceration or fining for civil contempt is a remedial measure, designed to coerce an individual into compliance with a court order. *Shillitani v. United States*, 384 U.S. 364, 368 (1966). A person incarcerated or fined for civil contempt of court may agree to comply with the court order, at which time he will be released from jail. *In Re Grand Jury Investigations*, 600 F.2d 420, 423 (3rd Cir. 1979). However, an individual convicted of criminal contempt is incarcerated as punishment, and the incarceration or fine is unconditional.

Some other distinctions between the two, as noted by the Supreme Court, include the following: (1) refusal to do an act commanded is civil contempt, while doing a forbidden act is criminal contempt; (2) civil contempt proceedings are entitled as a part of the main cause, while criminal contempt actions are brought in the name of the United States; and (3) the notice in a criminal contempt proceeding must state that the proceeding is criminal in nature. *Gompers v. Buck's Stove & Range Company*, 221 U.S. 418 (1911); See Wright, *supra* note 15, at §2960.

Another difference between the criminal law and civil protection system is how quickly a "stalker" can be sanctioned under each system. A stalker who violates an anti-stalking law can be arrested immediately upon the commission of the stalking behavior. Under the civil protection system, however, a victim of a stalker must first experience some event which would create a sufficient basis for the issuance of a protective order. The victim must then apply for a protection order, which in some cases may take months to obtain. Then, if a violation occurs, the victim will generally have to go back to the court to seek the imposition of sanctions against the stalker.

Arresting an individual in the process of stalking may also differ under the two different systems. If the state only provides for civil contempt, then police may not have the authority to arrest the individual, as the defendant must be given the opportunity by a judge to "undo" his behavior.¹⁸ Even if criminal contempt is available, police are often unaware of their authority to arrest for violation of a protective order, or are reluctant to do so.¹⁹ If the violator has left before the police arrive, the police may then be required to obtain a warrant to effect an arrest.²⁰ Finally, violating a civil protective order is generally a misdemeanor, and the penalties are generally light; incarceration for more than six months is unusual.

III. Constitutional Challenges to "Anti-Stalking" Statutes

Although it does not appear that there are reported decisions regarding constitutional challenges to anti-stalking statutes, similar state laws which punish "harassment" or "phone harassment" have come under constitutional scrutiny by the Court. Generally, these statutes have been challenged as unconstitutionally vague and consequently in violation of the due process clause of the Fourteenth Amendment. An evaluation of these cases may indicate what factors a court will look to in making a determination as to the constitutionality of the anti-stalking statutes.

A. Void for Vagueness

Under the due process clause of the Fourteenth Amendment,²¹ legislation must be written with sufficient specificity so that a person of common intelligence can ascertain the limits of lawful behavior.²² If the language of a particular statute is so vague that an individual cannot ascertain whether or not

¹⁸ See Finn, *supra* note 16, at 5.

¹⁹ *Id.* at 3.

²⁰ As a violation of a civil protective order is often a misdemeanor, a police officer who has not witnessed the offense must obtain a warrant before arresting the individuals. *Id.*

²¹ U.S. Constitution, XIV Amendment. "No State shall . . . deprive any person of life, liberty or property, without due process of law"

²² *Winters v. New York*, 333 U.S. 507 (1948).

his or her behavior constitutes criminal behavior, then that statute will be held unconstitutional. Courts have also been reluctant to enforce statutes whose vague language, if interpreted broadly, bear no reasonable relation to the underlying purpose of the statute.²³

When a court finds that a statute is overly vague "on its face," it may be struck down in its entirety; or, if a court finds that it could be applied properly in some cases, and if its value outweighs its negative effects, it might be held unconstitutional only as "applied" to particular cases. Where a vague statute regulates in the area of the free speech under the First Amendment, it may be found void in its entirety;²⁴ if constitutionally protected conduct is not implicated, however, then a court will be more likely to examine the statute on a case by case basis.

B. Are Some Anti-Stalking Statutes Unconstitutionally Vague

The anti-stalking statutes currently in place range from narrowly drawn laws which restrict clearly dangerous activities to broadly drawn laws which may punish non-dangerous or even constitutionally protected activities. A narrow statute, such as California's anti-stalking law, generally prohibits the following or harassment of an individual when combined with the making of "credible threats."²⁵ Florida, on the other hand, provides that any person who willfully, repeatedly or maliciously follows or harasses another person commits the crime of stalking.²⁶ Further, some of the statutes treat stalking as a misdemeanor, while others treat it as a felony with punishments ranging as high as ten years incarceration for repeated offenses.²⁷

When a state is formulating an "anti-stalking" law, a tension may arise between the desire to punish a broad range of "stalking" behavior, and the desire

²³ See *People v. Dupont*, 486 N.Y.S.2d 169 (A.D. 1 Dept. 1985)(holding that distribution of indecent material about an attorney did not violate harassment statute).

²⁴ *Lewis v. City of New Orleans*, 415 U.S. 130, 133-134 (1948), *But see Broadrick v. Oklahoma*, 413 U.S. 601 (1973)(holding that a statute infringing on the First Amendment is facially invalid only if its overbreadth is "substantial").

²⁵ Cal. Penal Code §646.9 (1992) & 1991 CA S.B. 1342 (Westlaw 1992). In order to punish a person for stalking under California law, a prosecutor must prove two elements: 1) that the person "repeatedly" followed or harassed another person, and 2) that the person has made a "credible" threat with the intent of placing that person in reasonable fear of death or great bodily injury. *Id.* at §646.9(a). In addition, harassment, as used in element one, means to alarm, annoy or harass in a way which serves "no legitimate purpose," and the emotional distress caused must be a reasonable response to the activity. Further, any constitutionally protected activity is not included in the meaning of "course of conduct".

²⁶ FL LEGIS 92-208 (Westlaw 1992) *to be codified at Fla. Stat. §784.048.*

²⁷ Compare, AZ Legis 241 (Westlaw 1992)(slip) *to be codified at Ariz. Rev. Stat. Ann. §13-2921* (1991)(harassment which includes following classified as a misdemeanor) and MA LEGIS 31 (Westlaw 1992) *to be codified at Mass. Gen. L. ch. 31, §43* (Westlaw 1992)(imprisonment for up to ten years for second offense).

to develop a law which does not sweep too wide and consequently punish constitutionally protected or otherwise inoffensive behavior. The California statute for instance, by requiring that the act of stalking be linked to behavior threatening death or serious bodily harm, links stalking behavior with acts which are clearly punishable under criminal law. However, by refraining from making verbal threats, a stalker may apparently still follow or harass a person without falling under the prohibitions of such a law.

A statute such as Florida's, on the other hand, appears to include conduct which may be non-threatening,²⁸ or even constitutionally protected. For instance, under the Florida statute, a person who willfully, maliciously, and repeatedly "follows" another person may be prosecuted for a misdemeanor, even if the following is not threatening.²⁹ Thus, a television camera crew which repeatedly followed a public figure from her home to her work place could arguably be in violation of this statute, although its actions would be otherwise constitutionally protected.

Some of the constitutional problems with anti-stalking statutes appear to stem from inadequate definitions of terms used or from failing to distinguish between behavior which is offensive and that which is not. In some instances, however, the underlying problem is that the legislatures are attempting to prevent aberrant behavior which is indicative of potential future harm; however, such behavior is not easily distinguishable from non-criminal activity. Consequently, as a legislature attempts to expand the scope of an anti-stalking law, it may incrementally lessen the likelihood that the law will pass constitutional muster.

C. Evaluation of Specific Provisions of Existing Statutes

Although there are a variety of anti-stalking statutes, there appear to be a limited number of drafting approaches which have been used. Some of these approaches may raise constitutional issues which are resolvable by redrafting; some of the other approaches, however, are a reflection of a decision to sanction certain behavior which may be difficult to punish constitutionally. What follows is an evaluation of these various provisions.

²⁸ One of the first persons prosecuted under this statute was a sixty-six year old man who, according to the victim "had never threatened her," but who called her repeatedly and appeared uninvited at her door. Ardy Friedberg, *Elderly man may be first charged under Florida stalking law*, The Houston Chronicle, July 12, 1992, at 16.

²⁹ Although, under the Florida law, the term "harassment" requires a showing that emotional distress has been caused, the term "follows" is not similarly limited. FL LEGIS 92-208 (Westlaw 1992) to be codified at Fla. Stat. §784.048. In addition, while the term "harassment" is defined so as not to include constitutionally protected activities, the term "follows" is left undefined. *Id.* Under the language of the Florida statute, it is not even clear whether the victim need be aware that they are being followed. *See id.*

1. Various Statutory Formulations Prohibiting Anti-Stalking Behavior

Some of the existing anti-stalking laws require that the prohibited stalking behavior be linked with a threat of physical violence in order to fall under the provisions of the act.³⁰ This is similar to provisions in other laws which prohibit threats of physical violence,³¹ and there does not appear to be a significant constitutional argument that laws prohibiting threats of physical violence are inherently vague. As this form of anti-stalking statute is only violated when both a threat and some stalking behavior such as following or harassment are present, the law is actually punishing a subset of threatening behavior. As the underlying offense, making threats, is a sufficiently definitive prohibition so as to be constitutional, there is less of a threat of the laws being overbroad or prohibiting innocent behavior; thus the use of the limiting terms "harassment" and "follows" in conjunction with threats of physical violence would be an unlikely basis for a successful constitutional challenge.

Some statutes, however, provide that a person may be found guilty for stalking behavior alone, even if no specific threat is not made. In some cases, if the terms are sufficiently defined, this formulation may also be constitutionally acceptable. For instance, one section of the Delaware anti-stalking statute prohibits harassment, which is defined as a knowing course of conduct which seriously alarms, annoys, or harasses a person, and which would cause a reasonable person substantial emotional distress;³² this provision would appear sufficiently definitive to avoid constitutional challenges on its face.³³ However, this formulation might be held unconstitutional in application in some narrow instances, especially if there are First Amendment issues involved.³⁴

A number of the statutes, however, appear to require that a person be arrested or punished for the mere act of following a person.³⁵ For instance, in Florida, it is a misdemeanor for a person to willfully, maliciously and repeatedly

³⁰ See, e.g., Cal. Penal Code §646.9 (1992) & 1991 CA S.B. 1342 (Westlaw 1992); CO LEGIS H.B. 92-1189 (Westlaw 1992) to be codified at Colo. Rev. Stat. §18-9-111; TN LEGIS 795 (Westlaw 1992); UT LEGIS 188 (Westlaw 1992) to be codified at Utah Code Ann. §76-5-106.5.

³¹ See, e.g., 18 U.S.C. §1951 (prohibiting interference with commerce by threats of physical violence).

³² DE LEGIS 250 (Westlaw 1992)

³³ *People v. Lamb*, 384 N.Y.S.2d 929 (1976)(upholding a statute which prohibits a "course of conduct . . . which alarm[s] or seriously annoy[s] [another] person"

³⁴ See *People v. Dupont*, 486 N.Y.S.2d 169 (A.D. 1 Dept. 1985)(holding that distribution of indecent material about an attorney did not violate harassment statute).

³⁵ See, e.g., ID LEGIS 227 (Westlaw 1992) to be codified at Idaho Code §18-7905; DE LEGIS 250 (Westlaw 1992) to be codified at Del. Code Ann. tit. 11, §1312A; FL LEGIS 92-208 (Westlaw 1992) to be codified at Fla. Stat. §784.048; NY LEGIS 345 (Westlaw 1992) to be codified at New York Penal Law §120.13-.15 & §240.25-.30.

to follow a person.³⁶ The statute does not define "to follow," and thus there is no indication as to how far, or how often, or in what context such a following is prohibited. Thus private detectives, newspaper reporters, policemen, or suspicious neighbors who follow a particular person more than once in order to observe that person might be prosecuted under this law; even so trivial an act as one football player chasing another with "malicious intent" might arguably be covered under this statute.³⁷ Consequently, a court might find that the statutory language at issue was unconstitutional on its face.

2. Intent to a Place a Person in Fear of Physical Injury

An important narrowing feature of a number of the anti-stalking statutes is the requirement that the acts in question were intended to place another person in fear of physical injury.³⁸ This "intent" requirement is to be distinguished from the simple requirement that a person accused of stalking be "willfully" or intentionally following a person; the former intent requirement, unlike the latter, narrows the various statutes so that the nature and context of the action in question would be considered by the court or the jury.³⁹ Thus, under this narrowing language, mere following would not be the basis for a conviction without some evidence that the following was done as part of an intentional scheme to harm the victim.⁴⁰

³⁶ FL LEGIS 92-208 (Westlaw 1992) to be codified at Fla. Stat. §784.048;

³⁷ According to Blacks Law Dictionary, "malice" is present when an act is done with evil intent, or with intent to cause harm. The requirement that the following be "malicious" does little to narrow the statute, as there is no indication as to what type of "malicious" harm must be intended.

³⁸ See, e.g. NY LEGIS 345 (Westlaw 1992) to be codified at New York Penal Law §120.13-.15 & §240.25-.30.

³⁹ This intent requirement can also be used to distinguish stalking laws from those harassment laws which are directed primarily towards protecting individuals from non-physical threats; for instance, law which prohibit actions which threaten of physical injury might provide for more severe punishments than simple harassment. See, e.g., NY LEGIS 345 (Westlaw 1992) to be codified at New York Penal Law §120.13-.15 & §240.25-.30.

⁴⁰ A concern might be raised that some mentally disturbed stalkers do not actually intend to instill fear, but are actually attracted to their victims, and thus might evade the prohibitions of the law. Under most criminal statutes, however, an intent requirement is met if a reasonable person would be aware that his actions would have a prohibited effect. Thus, if a person's actions were likely to place a person in fear of physical violence, a jury would generally be allowed to assume that these actions were intended to convey that intent. However, a legislature might desire to make it clear that the intent requirement was to include those cases where an individual knew or should have known that his behavior would be perceived as threatening; for this reason, such clarification might be set out either in the legislative history or in the text of the statute.

3. Exclusion of Lawful, Legitimate or Constitutionally Protected Behavior

A number of statutes provide exclusions for "constitutionally protected activities" or condition restrictions on harassment or following to those acts which have no "lawful" purpose. These exclusions are to a degree redundant; for instance, if an act is constitutionally protected, then the statute prohibiting that act would be unenforceable. Or, if a person has a "lawful" reason to be harassing a person, then they are by definition not in violation of any statute, including the one being interpreted; thus the phrase "lawful" has a circular meaning. Although these provisions might have the effect of discouraging a law enforcement officer from enforcing the law in marginal cases or cases involving free speech, a sufficiently definitive statute would not need the addition of these narrowing provisions.

Some statutes also use the exclusionary phrase "for no legitimate purpose;" this language, however, might be the partial basis for a court to strike down a statute for unconstitutional vagueness.⁴¹ In one state, where a harassment statute prohibited an act "that alarms or annoys another person and that serves no legitimate purpose," a court found that the phrase "serves no legitimate purpose" was vague and injected uncertainty into the statute.⁴² The court appears to have determined that the phrase "no legitimate purpose" had no defined meaning under the statute and no objective meaning outside of the statute; thus the statute's language invited subjective evaluations of what behavior was prohibited by the law.

4. Anti-Stalking Legislative Phrasing

Although narrow anti-stalking language such as California's may be on the firmest ground constitutionally, a legislature may decide that for policy reasons, a broader statute is desired in order to punish the widest possible range of stalking behavior. Thus, a legislature might need to determine whether broad anti-stalking language can be drawn while still defining the offense with constitutionally definitive language. Following is an example of language which would appear likely to pass constitutional muster.

Any person who repeatedly follows or harasses another person with the intent to place that person in reasonable fear of sexual battery, bodily injury or death; and whose actions would cause a reasonable person to suffer substantial emotional distress; and whose acts induce emotional distress to that person; is guilty of the crime of stalking.

The various terms used in such language would also need to be defined. Thus, for purposes of the above section:

⁴¹ See *People v. Norman*, 703 P.2d 1261 (Colo. 1985).

⁴² 703 P.2d 1266-67.

"Harasses" means a course of conduct directed at a specific person which would cause a reasonable person to fear sexual battery, bodily injury, or death, including but not limited to verbal threats, written threats, vandalism, or unconsented to physical contact.

"Follows" means maintaining a visual or physical proximity over a period of time to a specific person in such a manner as would cause a reasonable person to have a fear of sexual battery, bodily injury, or death.

"Repeatedly" means on two or more separate occasions.



Kenneth R. Thomas
Legislative Attorney
American Law Division

Ms. Cathy

Wingrove

452-6770

29B Eureka

Fairbanks

AK 99701

Date POM Sent 01/26/93

Constituency N

Bill Number SB 11

Response SUPPORTS

Subject

SB 11/ HB 11/ (SB 22) STALKING IS A MAJOR WEAPON OF INTIMIDATION. THE POLICE HAVE BEEN UNABLE TO DO ANYTHING ABOUT IT. PLEASE PROTECT THE CITIZENS OF ALASKA BY SUPPORTING THESE BILLS.

1/26/93

Cathy -

I agree with you & am the sponsor
of SB 22. I plan to hear this bill
in State Affairs next week.

Thanks,

Jerem

Respond

Stalking Bill / SB 22

House Bill 64 - ANTI-STALKING

Information provided by the Legislative Research Agency reports that of the 32 states that have already passed "stalking" laws, 16 have statutory exclusions for "constitutionally protected activity."

Numerous articles and reports have discussed the potential constitutional problems with the various "stalking" laws being considered and implemented throughout the United States.

During deliberations, discussions, and testimony on House Bill 64 and other "stalking" legislation in the Senate State Affairs Committee, it was uniformly stated that constitutionally protected activity is NOT meant to be covered by this legislation, nor was it the intent of the sponsor to include constitutionally protected activity as some kind of criminal offence under HB64.

This section was added simply to clarify that "purely" constitutionally protected activity is not criminal. Free speech and other first amendment rights should be excluded from the definition of "course of conduct" to protect the rights of all citizens, as well as enabling the legislation to withstand Court scrutiny.

This section places the burden on the defence to PROVE that the defendant was involved in a "constitutionally protected activity."

House Bill 64 is a critical piece of legislation needed to protect our citizens against dangerous criminals. Lets pass a good, solid piece of legislation that will help our law enforcement personnel protect Alaskans ~~against~~ criminals.

from

Police say anti-stalking law would protect women

THE ASSOCIATED PRESS

ANCHORAGE — An anti-stalking bill now before the Legislature would stiffen penalties against men who obsessively follow women, a move police and victims say is desperately needed.

Under laws now on the books, police often can only charge stalkers with misdemeanors like trespassing and disorderly conduct, sanctions victims and their families call inadequate.

That may change, however, because lawmakers have introduced legislation this session that would make stalking a felony in certain circumstances.

"This is a major concern," said state Rep. Cynthia Toohey, a sponsor of the stalking bill. "As women get more involved in working and supporting their families, they need more protection."

At least 27 states have passed such laws.

One case involving a 32-year-old Anchorage woman provides a compelling example.

Police say Gary Woodrow Petersen's obsession began in 1990 when he went to a chiropractic clinic and met a woman who looked like his late wife.

For more than a year, he didn't want to let her out

of his sight. Police say he would hang out in the parking lot of the building where she worked. He would follow her home. He would watch her house at night.

On Jan. 18, after the woman had filed six complaints with police; the 56-year-old Federal Aviation Administration employee was arrested and charged with disorderly conduct. He was released from jail four days later after posting \$2,000 bail.

Police won't release the name of the woman in the case.

According to the criminal complaint filed against Petersen, the woman and her husband befriended him until he began following her. At one point, the clinic where she worked issued him a notice not to trespass or bother employees. Then Petersen got a call from Anchorage police.

"The police officer called him and told him to stay away," APD spokeswoman Jo Kaikus said.

But police say that didn't stop Petersen, who continued to wait, follow and stare.

On Jan. 6, 1992, he parked his car in the driveway of the woman's home. Her husband turned on the floodlights outside, approached Petersen with a gun

and fired two warning shots. Petersen finally left, but police later cited him for trespassing.

Almost two weeks later, he called officers to report that one of the bullets fired that day had hit his car. The woman's husband was cited for misconduct involving weapons, police said.

Petersen, reached at his home recently, denied ever bothering the woman. He would not comment further and referred questions to his attorney, who would not talk about the case.

This year, exactly one year after the shooting incident, police say the woman had another confrontation with Petersen. She spotted him watching her when she left work Jan. 6, and he followed her in his car as she tried to speed away.

After a short chase at speeds that reached 80 mph, she was sure she had lost him. But when she got to an intersection near her home, she saw Petersen's car parked in a lot nearby, at South Birchwood and the Old Glenn Highway. Petersen gunned his accelerator and drove straight toward her. She veered out of the way and sped home.

Police arrested Petersen 12 days later.

If found guilty of disorderly conduct, Petersen would face up to 90 days in jail and a \$1,000 fine.

The proposed legislation would carry both misdemeanor and felony penalties. If someone continues to follow and harass a person in violation of a restraining order, he or she could be charged with a felony that carries up to five years in jail and a \$50,000 fine.

Petersen's victim had obtained a restraining order against him, but that failed to stop him.

Police Capt. Shirley Warner, who serves on the Anchorage Domestic Violence Committee and the Task Force on Sexual Assault, says a stalking law would help the efforts of both organizations.

Police generally can't do much if someone is on public property, but a stalking law would prevent someone from hanging around and intimidating the victim, even if the stalker is not violent.

"They are somebody who is just obsessed," Warner said.

Sometimes the obsession turns deadly. In 1990, 21-year-old Andy Nelson of Anchorage was charged and convicted of murder after he stalked his former girlfriend, then shot and killed her.

JUNEAU EMPIRE

JEFFREY A. WILSON
Publisher

LARRY PERSILY
Managing Editor

THOMAS BLUMENSHINE
Production Manager

FRED HOWARD
Circulation Manager

ROBIN HERDMAN PAUL
Advertising Manager

DONNA GRUNOW
Office Manager

'Stalkers' must face punishment

What happens when a man repeatedly follows a woman down the street, lurks outside her house, tails her in his car or waits for her in the office parking lot? In Alaska, too often, the answer is nothing.

Thankfully, there are efforts under way in the Legislature to change that.

Several so-called "anti-stalking" measures are now under consideration. It's a good bet they'll be consolidated into a new law that will stiffen the penalties for such behavior.

That's good news, because stalking is a crime that terrorizes women and, sometimes, their families. On occasion the roles have been reversed, with women following men.

Usually it's a would-be boyfriend or angry ex-lover or estranged husband. Sometimes it's a stranger.

In the worst instances, their threats eventually escalate into violence. Even when they don't, the fear of what might happen is enough to terrify the victims of stalkers. No one should have to live like that.

Under current Alaska law, authorities can't do much to discourage stalking — trespassing and disorderly conduct charges aren't a

strong enough deterrent — until the incident turns violent. In other words, the victim isn't helped until it's too late.

There are seven bills in the Legislature to change the law. Although the proposals are different — some would expand the existing prohibition against terroristic threatening, others would create a new anti-stalking statute — the ideas generally are the same. First-time stalking offenses would be a misdemeanor and, notably, the crime would become a felony if it's repeated, if it's done in violation of a court order or if it involves a weapon.

The intent is clear: With an anti-stalking law on the books, authorities will be able to act before threats become violent.

As many as 30 states have adopted similar legislation in the past couple of years. Alaska needs to do so, too.

TOPIC: Measures that would make 'stalking' a crime

States' new laws include 'stalking bans'

By MITCHELL LANDSBERG
The Associated Press

Laws against "stalking" take effect in several states this week, part of a rapidly spreading effort to protect women from the terrifying advances of obsessed men.

Such statutes in Colorado, Florida and Mississippi are among hundreds of new laws around the country that come into force on July 1. Others include a compromise law on abortion in Kansas, the biggest tax cut in New Jersey's history, an "assault pistol" ban in Hawaii and assorted environmental regulations in several states.

So far this year, laws

against stalking have been enacted in 19 states, a remarkable number considering that only one state had a stalking law on the books at the beginning of the year. Laws in many states take effect on July 1 as well as Jan. 1 of each year.

"This was a very popular thing this year," said Donna Hunzeker, manager of the criminal justice program at the National Conference of State Legislatures in Den-

ver.

The pioneering state, California, passed an anti-stalking law in 1990, a year after four women in Orange County were killed despite temporary restraining orders against men who were following them.

The California bill had added impetus from cases involving Hollywood celebrities who were stalked by obsessed fans.

After that law was

passed, Hunzeker said, stalking victims in other states "started coming forward and saying, 'We have a problem here, too.'"

She said states typically define stalking as "willful, malicious and repeated following and harassing of another person." Most require some "credible threat" of violence against the victim.

Previously, the only weapon against stalking was a restraining order.

Efforts to Protect Women From 'Stalkers' Gain Momentum at State, Federal Levels

By David Holmstrom

Staff writer of The Christian Science Monitor

BOSTON

THE many incidents of domestic violence in the United States, like frayed parts of a fabric, continue to challenge the viability of hundreds of thousands of families and relationships.

In an effort to stop more unraveling, Congress approved a plan in October to create a model antistalking law. The objective is to help states deal effectively with the estimated 200,000 people, mostly men, who stalk someone each year —

usually an estranged wife or girlfriend.

Since 1990, when California passed the first antistalking law after actress Rebecca Schaeffer was shot and killed by a stalker, 29 states have followed suit — despite claims that some of the laws are not constitutional. Five more states are preparing such legislation. Studies indicate that the leading cause of injury today for American women is the result of being beaten by a man.

According to Sen. William Cohen (R) of Maine, the sponsor of the congressional bill, each year in the US an estimated 4 million men kill or violently attack women they live with, date, or were formerly intimate with. "Women who seek protection," he said when the bill was passed, "often

See **STALKING** page 4

THE CHRISTIAN SCIENCE MONITOR

Tuesday, December 22, 1992

STALKING from page 1

face a judicial system that has traditionally viewed such violence as 'domestic disputes.'"

Some argue that a pervasive male attitude that women should be subservient, and a judiciary inclined to see domestic violence not as a crime, but rather as a domestic issue, place many women in peril. Of all those women murdered by their ex-husbands or boyfriends, studies indicate that 90 percent had called the police at least once for protection, and more than half had called five times or more. The Federal Bureau of Investigation reports that 30 percent of female murder victims in 1990 were slain by husbands or boyfriends.

The congressional bill, signed by President Bush, directs the National Institute of Justice - a government criminal-justice research agency - to develop a statute against stalking that will be constitutional and based on recommendations from a number of law enforcement agencies and governmental public interest groups. Many law enforcement agencies could not take action against stalkers until now because they had not committed a crime.

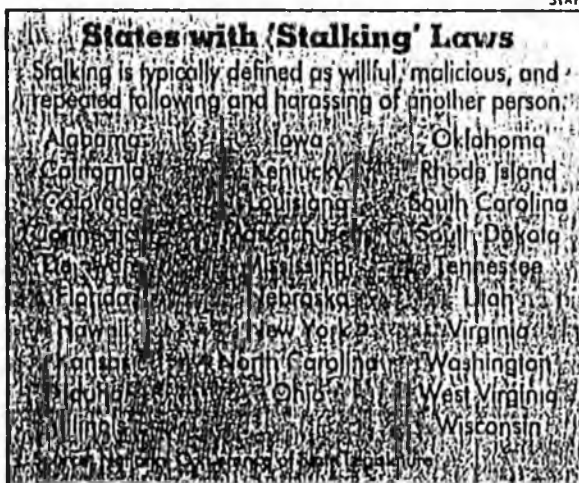
The growing awareness of stalking as a crime is the product of recent, well-publicized deaths of several women. In suburban Boston, 31 year old Kathleen Lardner was shot to death by her ex-boyfriend on the street recently. Last week, two more women were slain here by stalkers.

Earlier this year in Elmhurst, Ill., a couple was shot to death in their driveway by a man who had been stalking the woman.

In Maine, a man who has been in and out

of mental hospitals, and repeatedly violated restraining orders, has been stalking Kimberly Poland for eight years. He first saw her photo in a newspaper and continues to stalk her. (In most cases, the men do not have mental disorders.)

In Massachusetts, officials say at least 40 women have been killed this year because of domestic violence, with several deaths preceded by stalking. In Minnesota last year 26 women were killed in domestic violence in-



idents. Half of the Minnesota women had sought help from the state. "Whenever the woman takes a step to end an abusive relationship," says Janet Fine, chief of the Victim Witness Service in the Suffolk County, Mass., district attorney's office, "she is potentially at greater risk."

Typically, after being regularly battered, a woman obtains a restraining order against her abuser and tries to separate herself from him. In Massachusetts since September, when a new state record-keeping system went into effect, of the 2,000 restraining

orders issued, more than a third had been violated in the first few days. Often the order triggers men to stalk and harass the women.

Michael Paymar, training coordinator with the Duluth, Minn., Domestic Abuse Intervention Project, says: "There are a certain percentage of men who are extremely afraid of the law."

A battered and frightened woman seeking to end such a relationship needs help and support. In Massachusetts, the legislature has earmarked funds for support necessitated by domestic violence.

"In the courts here where the greatest number of restraining orders are issued," Ms. Fine says, "we have a program to assist women and assess their level of risk. We can help them get to a shelter or figure out another safe plan for them and provide other kinds of services. But there are so many victims here, and nationally, too, that we are nowhere near where we should be in terms of services."

In Minnesota, Mr. Paymar says, "the state has committed a lot of money to shelters and legal advocacy for women." Transitional housing is provided to abused women. For some

women a two-year program in an apartment style complex helps them reorient their lives. Duluth also has programs to try to reform perpetrators of violence.

Paymar says: "It has been sanctioned in society for a thousand years that a man has control over his woman.... We confront those beliefs and ask him where does he get the right to do it? What do you want a woman in your life for? You are depersonalizing her, humiliating and injuring her, yet you say you love her. It doesn't make sense. We help them learn how to live differently."

Family keeps watch through murder trial

'Long, hard battle' for victim's kin, friends

By DON HUNTER
Daily News reporter

It was Sandra Pogany who wanted to be a lawyer, not her father.

At 21, she had the tools. She was bright, a good student, a national debate champion. But it is Gary Pogany who has prowled the hallways and offices of the state courthouse the past 10 months, a guy in jeans and a weather-worn brown leather jacket among the suits and wingtips.

"There's not really much a person can say," Pogany said Thursday, a few moments after the state's case against the young man who killed Sandy Pogany last summer went to the jury.

"It's been a long, hard battle. Susan Parkes did a good job with

her presentation. She worked hard, and so did Jim Hanley."

The jury in Andy Nelson's case is deliberating today. Nelson, 22, has conceded firing the shots that killed Pogany and wounded Thomas Van Flein, a law clerk who was dating Pogany for the second time. But his attorneys and a psychiatrist who interviewed him this spring say Nelson was overcome by a psychotic depression and mentally unable to form the intent to kill necessary for a first-degree murder conviction.

At trial, the psychiatrist, Dr. G. Christian Harris, said Nelson was confused and uncertain when he opened fire, but told him he drove home with the sense that a burden

Please see Back Page, **MURDER**



JIM LAVRAKAS / Anchorage Daily News

Gary Pogany listens to opening arguments at the trial of Andy Nelson.

MURDER TRIAL: Victim's family endures long ordeal

Continued from Page A-1

had been lifted from him.

"When he said that he felt relieved after the killing," Gary Pogany said, "any compassion in our family for him was gone at that time." For months, Gary Pogany had prodded and pushed to get the charges against Nelson to trial. He worried when Nelson's family hired Bill Bryson, a sought-after defense attorney with a reputation built on a steady diet of high-profile felony cases, fearing that Parkes, the less-experienced state prosecutor, might be out of her depth.

"I had a lot of concern about that," he said, although Parkes did a good job. "The victim's family should have some rights in

deciding who prosecutes the case."

By the time Nelson came to trial, the patience, and sometimes the composure, of the Pogany family was wearing thin.

Early in the trial, the judge warned that it was important for Sandy's family and friends to mask their feelings in the courtroom. It wasn't easy to keep a mask in place. The trial brought hurts and subtle affronts.

When the attorneys described how Nelson stalked Sandy at a couple of Anchorage nightspots before her death, reporters picked it up; the retelling seemed to make Sandy sound more like a carouser than the dutiful student who occasionally went dancing on weekends.

And then Harris, the defense expert, talked about the relationship between Nelson and Sandy Pogany: "I didn't feel the psychiatrist had a right to call Sandy by her first name when he always called Andy 'Mr. Nelson,'" said Sandy's brother, Steve Pogany. "And when they used the term 'making out,' they made it seem like she'd done a lot of that. She hadn't."

Steve testified early in the case and then joined his father in the first row behind the prosecution table for the duration of the trial.

A couple of days later, one of the alternate jurors complained to the judge that he felt pressured when Steve looked at him. If one juror felt pressured, another

seemed oblivious. An elderly woman who appeared to keep nodding off was eventually excused before deliberations began.

Harris also testified that the attack on Sandy early on the morning of Aug. 5 was one of several options racing through Nelson's mind. He also considered shooting Louise Pogany, Sandy's mother, thinking that hurting her mother would cause Sandy the kind of pain he felt, Harris said.

"We thought we knew him," Gary Pogany said. "But you couldn't read him. He called my wife up on July 15; he called her to wish her a happy birthday. And then in a matter of a couple of weeks later, he's thinking about killing her."



Anchorage Daily News

VOL. XLVII • NO. 88 42 PAGES

ANCHORAGE, ALASKA, THURSDAY, MARCH 26, 1992

Hostage-taker kills

4 freed; blast ends standoff in Chugiak

By PETER BLUMBERG
and LARRY CAMPBELL
Daily News reporters

A man boiling with rage over a woman who left him died amid gunfire and a fiery explosion Wednesday afternoon after holding a family hostage with a gun and a bomb in a Chugiak trailer.

Conn Wayne Duncan, 40, held Bob and Wendy Lydy and their two young daughters for nearly five hours before attempting a desperate bolt to freedom with one of his hostages.

Police bullets and his own bomb stopped him.

The Lydy home had been a refuge for Duncan's ex-girlfriend, who had been fleeing his violent attacks for nearly a month. But that haven turned to hell when Duncan showed up Wednesday morning.

Anchorage Police sharpshooters' bullets dropped Duncan to the ground outside the trailer as he tried to escape to a pickup truck with Bob Lydy. The hostage ran to safety before the plastic explosive clutched by Duncan blew up in his hand.

Lydy's wife, Wendy, and the couple's 10- and 4-year-old daughters, were released earlier unharmed. Lydy's only injury was a cut on the chin.

Duncan's violent death marked the end of a month of terror he inflicted on the 30-year-old woman he once lived with, as documented in court records.

On Feb. 28, the woman was granted a restraining order against Duncan after she told a judge he'd threatened her by holding a gun to her head. A judge issued an arrest warrant for assault.

The following week Duncan, under arrest, appeared in court on a charge of growing some 60 mari-



After the bomb exploded, police officers train their rifles on Conn Duncan in case he is still alive while firefighters move

■ TAKE HIM OUT: Order to fire was first for special city police team. B-1

juana plants at a Spenard trailer he owned. At another hearing later that day, he tried to have the arrest warrant on the assault dropped. He denied ever threatening his ex-girlfriend.

"I'm not a violent person," Duncan told one judge. "I have no record of that. I have no desire to bother (the victim). I'm not going to do that."

Duncan posted a \$2,500 bond March 4 and was freed. Five days later, he allegedly abducted her from work, took her to her South

Anchorage home and, over the next 36 hours, raped her seven times. According to police investigators, the attacks were interspersed with aimless ramblings and violent assaults.

"At one point he bound her to the bed with duct tape. And he threatened her again with a gun. Only when her boss called her at home for missing work did Duncan leave.

"She was definitely a woman living in fear," said Sgt. Gary Apperson, who investigated the assault.

Another arrest warrant was is-

Please see Back Page
HOSTAGE-TAKER



APD Lt. Audie Holloway talks to the 10-year-old g

Captor had violent background



Conn Wayne Duncan

By DAVID HULEN
Daily News reporter

Conn Wayne Duncan, the man who took four people hostage in Chugiak Wednesday before being blown to bits by a bomb he was holding, was no stranger to violence — or explosives.

Five years ago this month, Duncan was arrested for beating up his former wife, Laura Risinger, according to court records. Police seized a 9mm handgun.

Angry about their pending divorce, he had been calling her as often 30 times a day with threats, Risinger recalled in an interview Wednesday.

And, she said, he threatened to kill her with a bomb.

"He was harassing me," Risinger said. "He took to following me around with plastic explosives. He was calling me every 15 minutes telling me how much of the neighborhood he could flatten."

The women obtained a court order requiring Duncan to stay away from her, though prosecutors never filed criminal charges against him. When she got an unlisted phone number, Duncan's threats ended, she said.

Duncan, an auto-body repairman,

Please see Back Page, DUNCAN

Female victim of Oceanview shooting dies

By Jean Lamling

Times Writer

Renee Vega, the 31-year-old woman shot in an Oceanview Insurance office Tuesday afternoon, died Wednesday night and the prosecutor says he will upgrade the charges to first-degree murder against her former boyfriend.

The former boyfriend, William O'Shea, 35, was arraigned on charges of first-degree attempted murder and first-degree misconduct involving weapons in Anchorage Superior Court Wednesday. Assistant District Attorney Stephen Branchflower said he will file a murder charge against O'Shea today.

Alaska State Troopers said Wednesday they had filed complaints from Vega against O'Shea before the attack.

Troopers said there was nothing extraordinary about Vega's complaints against O'Shea or her fear of being attacked by him. But within minutes of the time a trooper left her office Tuesday afternoon she was shot four times and fatally wounded.

Vega died at 8 p.m. Wednesday at Providence Hospital. She suffered from gunshot wounds in her head, chest, shoulder and wrist.

A friend of Vega's said Tuesday the 31-year-old insurance agent was terrified in the hours before she was shot, and was almost expecting a confrontation with O'Shea.

Through the morning and early afternoon O'Shea called her Huffman Road Allstate Insurance Co. office about 20 times, according to Vega's friend Marcel Pritchett. "That was the day she learned he was drinking again," Pritchett said.

Vega had asked him to seek help for a drinking problem, Pritchett said. The two had been girlfriend and boyfriend for several months but she had asked him to move out of her Hillside home.

Friday night, troopers had escorted O'Shea from Vega's house.

Pritchett said a drunken O'Shea ripped up some of her clothing and beat Vega.

Monday, troopers served O'Shea with a restraining order.
See Shooting, page A-8

Shooting: Charges raised to 1st-degree murder

Continued from page A-1

order barring him from seeing her, according to Lt. George

Wednesday, Vega called a friend for help and he sent Pritchett to stay with her until he got to her office. "She was afraid that he might come and get her up again," Pritchett

At 1:30 p.m. Pritchett had stalled himself in the reception area of her office

When a trooper came to take part on the calls shortly before 3 p.m., shooting, Vega told him she was afraid of being

"She was asking him what if he comes in with a gun and shoots me?" Pritchett said. "He (the trooper) was there about 30 minutes before the shooting."

A man using O'Shea's name bought a 22-caliber Luger handgun and ammunition at the Fred Meyer Shopping Center on Northern Lights Boulevard after 1:30 p.m. Tuesday, according to the Anchorage District Attorney's office. One of the charges against O'Shea stems from the fact he is a convicted felon and is not allowed to own a firearm.

Just after 3 p.m. a man burst into Vega's office and shot her four times with a Luger while Pritchett tried to wrestle the gun

from him.

"He just ran in and I jumped up and got between them and tried to talk him out," Pritchett said. The man's words were slurred, he said.

Meanwhile Vega called police and was on the phone when the man reached to his back, pulled out a pistol and started firing. The first shot hit Vega in the head, Pritchett said.

The men wrestled about five feet from Vega, and the gun fired at least three more times. At one point Pritchett said the man aimed the gun down his own throat. Pritchett pulled it out.

When he was able to take the pistol from the assailant, the

man, said he had another and reached for something. Pritchett said he pushed the man against a wall and out of the office.

The gunman fled and police immediately closed in on the neighborhood with a helicopter, state and city patrol units, and police dogs. At 6 p.m. they took O'Shea into custody about a mile from the insurance office.

Pritchett said he thought police could have prevented the shooting.

But Lt. Pollitt said that up until the shooting, there had been no impetus to arrest O'Shea.

When a trooper responded to Vega's home at 12:30 a.m. Satur-

injured and she did not ask for O'Shea to be arrested. Troopers told Vega how to apply for a restraining order.

On Saturday, she secured an order from a magistrate and Sunday troopers attempted to serve it. They found O'Shea Monday.

Vega was upset and afraid but never told troopers she feared for her life, Pollitt said. O'Shea's extensive criminal record didn't indicate he should be suspected of murder, Pollitt said.

On March 2, O'Shea was released from probation for a

Police staked out site for week seeking Dore

By KRIS CAPPS
Staff Writer

For one week before Jack Dore killed his wife, Carmen, and then himself, city police officers staked out Carmen's apartment periodically, hoping to catch him.

With an arrest warrant for harassment in hand, they searched the woods and alleys near her South Fairbanks home. They made sure he wasn't lurking in a nearby vacant house.

"No one was taking him lightly," said Lt. Victor Gunn, who kept a log on Jack's activities when he began publicly threatening his wife. "We simply hadn't found him."

Early last Tuesday morning, Jack shot and killed his wife of nearly 10 years outside her 17th Avenue apartment building, as she and a neighbor got into her car to drive to the store. Her friend Carl Emery, who was shot in the head and upper back shoulder, was released from Fairbanks Memorial Hospital a few days ago.

Then Jack, 33, drove his taxi cab to the parking lot behind the Maranatha Inn. As an intoxicated passenger slept beside him, he pointed

Courts filled with domestic violence cases. Page A-3

the .22 weapon at his head and pulled the trigger.

Police conducted an investigation this week to doublecheck their own actions in the case. The detective doing the report made two recommendations—that one police officer be assigned to serve warrants, and that all records be computerized.

Computerization is already under way. But because records are not yet centralized, police did not discover that Jack obtained a chauffeur's license last February. They didn't know he had started working for King Cab six days before the shooting.

Had they known, however, a check of cab companies would have occurred several days before Jack was actually hired, according to Acting City Police Chief Richard Cummings.

"We did everything reasonable we could do, given our manpower," Cummings said.

(See DORE, back page)

by
Donna Hunzeker

January 1993

Volume 1, No. 4

Stalking Laws

States have enacted "stalking" laws to punish people who repeatedly watch, follow, harass or threaten someone with physical harm or death. Stalking laws criminalize these activities and give police recourse before an attack takes place.

*Restraining orders
inadequate*

States passing stalking laws determined there were inadequate provisions in existing law to protect stalking victims. In drafting and considering laws, legislatures in many states heard about victims who were brutally attacked and sometimes killed after enduring months and even years of threats and intimidation. Civil restraining or protective orders were nearly always in place but inadequate to deter the stalker from committing an act of violence. A third of female murder victims in 1990 were slain by husbands or boyfriends, according to the FBI.

*Twenty-nine states
with stalking laws*

Twenty-nine states now have stalking laws. California passed the first in 1990, creating (and coining) stalking as a crime. States enacting similar laws in 1992 were: Alabama, Colorado, Connecticut, Delaware, Florida, Hawaii, Kansas, Idaho, Illinois, Iowa, Kentucky, Louisiana, Massachusetts, Mississippi, Nebraska, New York, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia and Wisconsin.

States with stalking measures pending on November 1, 1992, include Michigan, New Jersey and Pennsylvania. Other states, including Texas and Indiana, are preparing legislation to be introduced in 1993.

In other states, laws called something other than stalking have similar intent and purpose. Since 1987, Minnesota has had trespass and harassment laws on the books to apply to stalking situations that include "intent to harass, abuse or threaten." Minnesota law also has felony penalties for "terroristic threats" which can apply to stalking situations. Similarly in Maine, "terrorizing" is a Class D or Class C crime when threats of violence are made. Arizona created misdemeanor classifications of harassment last year.

*Stalking defined,
classified*

States typically have defined stalking as willful, malicious and repeated following and harassing of another person. Most stalking laws require that the perpetrator make a "credible threat of violence" against the victim, and in many states, it includes threats against the immediate family of the victim. Many provisions require that the victim have "reasonable fear of death or great bodily injury."

The 1990 California measure was enacted following the murders of five Orange County women the year before. In each case, the victim had been stalked and threatened and had a temporary restraining order against her assailant. The California measure was hailed by victims' and women's groups, and had support from the entertainment community because of cases in which celebrities are stalked and threatened by obsessed fans.

Nineteen states have both misdemeanor and felony classifications of stalking with up to one year of jail typical for first offenses. Tougher penalties of up to three, five and even six years often apply to second or subsequent stalking offenses. Enhanced penalties also apply in 18 states where a stalker violates a protective order.

In some states with a felony stalking provision, bail can be established to increase the likelihood or duration of detention of alleged stalkers. Stalking laws in Iowa, Ohio and Illinois deal more specifically with the bail issue.

Constitutionality

Stalking laws in Florida and Ohio provide for warrantless arrest of alleged stalkers. Defense attorney groups and others have questioned the appropriateness, if not constitutionality, of warrantless arrest of stalkers, but other observers point out that such provisions in domestic violence laws have been found permissible.

A report last fall by the federal Congressional Research Service discussed whether some state stalking laws are too vague to be constitutional. In particular, that report questioned constitutionality of state laws in which following and harassing are considered stalking without also requiring credible threats of violence.

The U. S. Congress last year approved legislation under which the National Institute of Justice will work with states to monitor constitutionality and other outcomes of state stalking laws. Model provisions will be developed to help states adapt or enact laws.

STALKING CRIME CLASSIFICATIONS

Felony only:	Delaware, Florida, Illinois
Misdemeanor only:	Colorado, Kansas, Hawaii, Utah, South Carolina, West Virginia
Both Felony and Misdemeanor crimes:	California, Connecticut, Idaho, Iowa, Kentucky, Louisiana, Massachusetts, Mississippi, Nebraska, New York, North Carolina, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Virginia, Washington, Wisconsin.

(Where both felony and misdemeanor classifications can apply, felony treatment is generally for when a protective order is violated and for second or subsequent stalking convictions.)

Selected References

Thomas, Kenneth B. *Anti-Stalking Statutes: Background and Constitutional Analysis*. Washington, D.C.: Congressional Research Service, Library of Congress, September 26, 1992.

Resnick, Rosalind. "States Enact 'Stalking' Laws." *The National Law Journal* (May 11, 1992): 3 and 27.

Contacts for Further Information

Donna Hunzeker
NCSL
(303) 830-2200



NATIONAL CONFERENCE OF STATE LEGISLATURES

1560 BROADWAY SUITE 700 DENVER, COLORADO 80202
303-830-2200 FAX: 303-863-8003

ART HAMILTON
HOUSE OF REPRESENTATIVES
ARIZONA
PRESIDENT, NCSL

DON SCHNEIDER
CHIEF CLERK OF THE SENATE
WISCONSIN
STAFF CHAIR, NCSL

WILLIAM POUND
EXECUTIVE DIRECTOR

"STALKING" LEGISLATION UPDATE

December 18, 1992
Donna Hunzeker

Thirty states have "stalking" laws as of this writing. California passed the first law in 1990, creating (and coining) "stalking" as a crime. States known to have added similar laws this year are: Alabama, Colorado, Connecticut, Delaware, Florida, Hawaii, Kansas, Idaho, Illinois, Iowa, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, Nebraska, New York, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia and Wisconsin.

New Jersey and Pennsylvania considered, but did not pass, stalking measures in 1992. A number of states, Arkansas, Indiana and Texas among them, are preparing stalking legislation to be introduced next year.

In other states, laws called something other than "stalking" have similar intent and purpose. For example, "terrorizing" in Maine is either a Class D crime or Class C crime when threats of violence are made. Since 1987, Minnesota has had "trespass" and "harassment" laws to apply to stalking situations that include "intent to harass, abuse or threaten." Multiple acts of harassment are punishable through enhanced penalties, and in the 1992 omnibus crime bill, Minnesota increased penalties for repeat offenses. Minnesota law also has felony penalties for "terroristic threats" which can apply to stalking situations. Arizona created misdemeanor classifications of harassment this year.

States typically have defined "stalking" as willful, malicious, and repeated following and harassing of another person. Most stalking laws require that the perpetrator make a "credible threat of violence" against the victim, and in many states, credible threat includes threats against the immediate family of the victim. Many provisions require that the victim have "reasonable fear of death or great bodily injury." Stalking laws generally apply to cases where women allegedly are terrorized by former boyfriends or husbands. Cases where women (or men) are stalked by casual acquaintances or even strangers have brought about some state laws and are applicable under most stalking laws. Statute language in most states broadly provides that the victim could be any person or circumstance in which following, threats and intimidation are present.

Many states have both misdemeanor and felony classifications of stalking, with up to one year of jail typical for first offenses. Tougher penalties (up to three, five and even six years) often apply to second or subsequent stalking offenses. Enhanced penalties also apply in many states where a stalker violates a protective order.

California amended its original stalking law this year, redefining "credible threat" of harm to include threats against immediate family, and increasing penalties for second or subsequent stalking convictions. The new law also allows restraining orders for up to 10 years.

For more information, please contact NCSL Marketing/Book Order Department at 303-830-2200 for "Stalking Laws" State Legislative Report.

HB64



Official Business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE CYNTHIA D. TOOHEY

DISTRICT 13

State Capitol
Juneau, AK 99801-1182

March 16, 1993

Senator Loren Leman
Capitol, Room 113
Juneau, AK 99811-1182

MAR 17 1993

Dear Loren,

Thank you for cross-sponsoring my anti-stalking bill, House Bill 64. I appreciate your support and your help. The bill will hopefully have quick passage through the Senate. I have had several individuals comment to me about the importance of this legislation. These individuals either have been stalked themselves or know someone who has been stalked. Several work in this building.

As you may know, the bill passed the House unanimously. Again, thanks, Loren.

Sincere regards,

Cynthia

*I appreciate your
working on this with
me - Loren -
C.*

Mrs. Sandra Street 776-3577 Distribution 60
PO Box 835
Kenai AK 99611 Date POM Sent 03/17/93
Constituency N Bill Number HB 64 Response OPPOSES
Subject LL Back?

I FEEL IT IS A DEEP TRAVESTY THAT WE WANT TO DESIGN A BILL THAT WOULD TAKE AWAY OUR CIVIL RIGHTS AND PROTECT THE RIGHTS OF THOSE WHO WOULD TAKE LIVES.

Ms Vicky Armstrong 225-1329 Distribution 20
450 Washington St
Ketchikan AK 99901 Date POM Sent 03/17/93
Constituency N Bill Number HB 64 Response SUPPORTS
Subject LL Back?

I ASK FOR YOUR SUPPORT FOR HB 64. IT IS IMPORTANT TO ASSIST INNOCENT PERSONS WHO ARE VICTIMS OF THIS CRIME.

Miss Krista Francois 543-2319 Distribution 28
PO Box 1765
Bethel AK 99559 Date POM Sent 03/17/93
Constituency N Bill Number HB 64 Response SUPPORTS
Subject LL Back?

PLEASE SUPPORT HB64. ANTI-STALKING LAWS ARE IMPORTANT FOR PROTECTING VICTIMS OF DOMESTIC VIOLENCE.

Mrs. Michele Hall NONE Distribution 28
PO Box 2025
Bethel AK 99559 Date POM Sent 03/17/93
Constituency N Bill Number HB 64 Response SUPPORTS
Subject LL Back?

PLEASE SUPPORT HB64. ANTISTALKING LAWS ARE IMPORTANT TO PROTECT VICTIMS OF DOMESTIC VIOLENCE.

Ms. Hollis Hamel 543-5566 Distribution 28
PO Box 1184
Bethel AK 99559 Date POM Sent 03/17/93
Constituency N Bill Number HB 64 Response SUPPORTS
Subject LL Back?

PLEASE SUPPORT HB64 ANTI-STALKING LEGISLATION. STALKING IS A COMMON FORM OF ABUSE IN OUR STATE, OF WHICH VICTIMS CURRENTLY HAVE NO RECOURSE. THIS BILL WILL HELP SEND A CLEAR MESSAGE TO OFFENDERS THAT WE WILL NOT ACCEPT THIS TYPE OF ABUSE.

Ms. Irma Hooper 543-3444 Distribution 28
PO Box 1537
Bethel AK 99559 Date POM Sent 03/17/93
Constituency N Bill Number HB 64 Response SUPPORTS
Subject LL Back?

PLEASE SUPPORT HB64. ANTISTALKING LAWS ARE VERY IMPORTANT FOR THE PROTECTION OF VICTIMS OF DOMESTIC VIOLENCE.

Ms. Tracy Merriam NONE Distribution 28
PO Box 1547
Bethel AK 99559 Date POM Sent 03/17/93
Constituency N Bill Number HB 64 Response SUPPORTS
Subject LL Back?

I AM WRITING IN SUPPORT OF THE ANTI-STALKING BILL, HB64. IT BEHOOVES ALL TO SUPPORT HB64. A LARGE PERCENTAGE OF STALKERS END UP SERIOUSLY INJURING THEIR VICTIMS OR KILLING THEM. THE SERIOUSNESS OF THIS CRIME REQUIRES SERIOUS MEASURES.

Mr. Al Neimeyer 376-8864 Distribution 20
PO Box 2541
Palmer AK 99645 Date POM Sent 03/17/93
Constituency N Bill Number HB 64 Response SUPPORTS
Subject LL Back?

I STRONGLY URGE YOU TO SUPPORT HB 64. PRESENTLY THERE IS LITTLE OR NO PROTECTION FROM THOSE WHO STALK OTHERS. PASSAGE OF THIS BILL WILL GREATLY HELP ONE TO DEFEND HIMSELF/HERSELF AGAINST IRRATIONAL AND CRIMINAL BEHAVIOR THAT ALL TOO OFTEN CULMINATES INTO A VIOLENT ACT.

Ms. Nastasia Nick 543-5609 Distribution 28
PO Box 864
Bethel AK 99559 Date POM Sent 03/17/93
Constituency N Bill Number HB 64 Response SUPPORTS
Subject LL Back?

PLEASE SUPPORT HB64. THE ANTI-STALKING BILL IS IMPORTANT TO PROTECT VICTIMS OF DOMESTIC VIOLENCE.

Ms. Helen Sorenson 543-3444 Distribution 28
PO Box 1537
Bethel AK 99559 Date POM Sent 03/17/93
Constituency N Bill Number HB 64 Response SUPPORTS
Subject LL Back?

PLEASE SUPPORT HB64. ANTI-STALKING LAWS ARE IMPORTANT FOR PROTECTING VICTIMS OF DOMESTIC VIOLENCE.

Ms. Norma Wong NONE Distribution 28
PO Box 2063
Bethel AK 99559 Date POM Sent 03/17/93
Constituency N Bill Number HB 64 Response SUPPORTS
Subject LL Back?

PLEASE SUPPORT HB64. ANTI-STALKING LAWS ARE IMPORTANT TO PROTECT VICTIMS OF DOMESTIC VIOLENCE.

Mrs. Bridgett
P.O. Box 3461

Barrett

encl

AK 99611

262-4441

date COM sent 04/22/93

distribution 60

N

bill No. HB 64 position SUPPORTS. subject

PLEASE PASS THIS BILL, BECAUSE IN CASE 3KN-93-302 MY HUSBAND HAS THREATENED TO KILL ME AND HE STALKS ME. I NEED THIS LAW PASSED BEFORE THE END OF THIS SESSION. PLEASE HELP ME.

Sunday April 23

Dear Senators —

I beg of you — Don't play politics
with this bill — This is a life and
death situation.

Stella Looney

HB64

VERBATIM TRANSCRIPT OF THE TESTIMONY OF DEBORAH LUPER
HOUSE JUDICIARY COMMITTEE
FEBRUARY 19, 1993
1:00 P.M.
HOUSE BILL 64

DEBORAH LUPER: Thank you Chairman. First of all, let me say that, I am in full support of this...the concept of this bill. And as you probably know, I...the Senator that I work for also sponsored a bill...is the prime sponsor of a bill on the Senate side, Senate Bill 22. But I have some concerns about a few portions of the bill that I think need to be addressed. First of all, I would like to see a definition of the word "repeated." Does repeated mean more than once? Does it mean three or four times?

My other concern is, as Representative Phillips so kindly brought up, I would like to play devil's advocate for a moment. And let's consider the case of the Greens Creek Mine. You have a potential there that was a managerial decision to close down that mine and shut down effectively about 230 jobs. Conceivably, that could raise a lot of concern and anger among those workers. They have the Constitutionally protected right of being able to assemble and to picket and to protest. My concern is that in the course of this protest you might have some high feelings there. And the manager approaches the building where the assembly is and there is a lot of screaming, shouting picketers. This bill says where a person knowingly engages in a course of conduct...and "course of conduct" ...there's a definition there that says "approaching or confronting that person in a public place or on private property." The Greens Creek Mine property would fall under that. And it goes on to say that recklessly places another person in the fear of death or physical injury.

Now, when I worked...I was a police officer in Fairbanks for some time and the definition of physical injury then and I checked it again in the statute and what it means now is if your toe gets stepped on and you feel pain, then it qualifies for physical injury. So, conceivably, the manager of the Greens Creek Mine might be approaching his building and there's picketers there and they're screaming and shouting and he has to push his way through. Conceivably, if he's placed in fear of having his toe stepped on, he could have someone arrested for stalking. Now if you looked again, say this person is released and he goes right back out there...and he commits the crime again the next day or the next week or whatever, he's up for a felony. And I think that's a very dangerous precedent to set.

I think that portion needs to be worked on...that this bill will allow all Constitutionally...or will very clearly state that Constitutionally protected acts are allowed. And in fact, on line, or excuse me, page 2, on lines 18 and 19, I would advocate that instead of just simple physical injury, that we use the verbiage "serious physical injury." That, of course, is much worse. It involves broken limbs, et cetera.

We may also wish to, as was mentioned earlier, have a definition of "fear." And perhaps go into...a little bit more into the intent of delivering an object onto property. This bill does address husbands and boyfriends and conceivably a husband and wife will own the same property. And if he delivers an object to his property, even though perhaps he has a court order not to be there when his wife is there...but say he delivers a car and parks it on the property, or whatever...an object. We want to make certain that an innocent act will not be penalized.

HB64

BY FAX 907-465-3810

February 22, 1993

Hon. Loren Leman
State Capitol
Juneau, Alaska 99811

Dear Senator Leman:

Enclosed is a copy of Nebraska L.B. 425, which your assistant, Deborah Luper, requested. In regard to C.S. for House Bill 64, the bill should be amended in several respects:

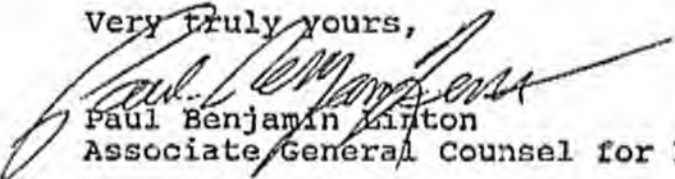
The definition of the offense in §11.41.270(a) should be amended to include the term "serious" before the phrase "physical injury" where that phrase appears on p. 2, lines 18 and 19. "Serious physical injury" is defined in Alaska law at §11.81.900(a)(51). This will limit the scope of the bill to conduct that creates a fear of death or serious physical injury, not merely a fear of any physical injury, which is very broadly defined in §11.81.900(a)(41), Alaska Statutes.

The "second-offense" felony enhancement in §11.41.260(4) should be eliminated. "Stalking" laws are new in the United States, and until their constitutionality and scope are tested in appropriate cases, it seems the better part of wisdom not to make the offense a felony.

In defining the scope of the stalking law, that the "fear" referred to in §11.41.270(a) be a reasonable one. Perhaps the word "reasonably" should be used in place of the word "recklessly" on p. 2, line 18.

The same changes should be made in S.B. 11, p. 2, lines 13 and 14 (serious physical injury, not just any physical injury), p. 2, lines 2 and 3 (deleting felony enhancement provision), and p. 2, lines 13 (substituting "reasonably" for "recklessly"). Also, the language in S.B. 11 (p. 2, lines 15 and 16), "engaging in conduct similar to following or lying in wait" is arguably vague and should be deleted.

Very truly yours,


Paul Benjamin Linton
Associate General Counsel for Litigation

Encs.



*Public Interest
Law & Education*

343 S. Dearborn Street
Suite 1804
Chicago, IL 60604
312.786-9494

OFFICERS

Chairman
Victor C. Rosenblum, Ph.D.
*Law and Political Science
Northwestern University*

Vice Chairman
Kenneth L. Constar, Esq.

Erma Churdy Craven

Robert Harvey

President

Cuy M. Condon, M.A.

General Counsel

Clark D. Forsythe, Esq.

Secretary-Treasurer

Thomas G. Murray

BOARD OF DIRECTORS

G. Robert Blakey, Esq.

Notre Dame Law School

Rev. Dr. Ralph A. Boltmann
President, Lutheran Church-Missouri Synod

Felge Constance Cunningham, Esq.

Robert A. Deane, Esq.
Catholic University of America Law School

Eugene F. Diamond, M.S.
Loyola University, School of Medicine

Thomas J. Donnelly, Esq.

Arthur J. Dyck, Ph.D.
Population Ethics, Harvard University

Dulores Volini Huran, Esq.

Rep. Henry J. Hyde

Member of Congress

Mildred F. Jefferson, M.D.

Virginia L. Johnson, M.S.

Kenneth M. Mitner, Ph.D.

Rev. Richard John Neuhaus
Director, Inst. on Religion & Public Life

Herbert Rutter, M.D.
Publisher, Child and Family Quarterly

Rep. Christopher L. Smith
Member of Congress

Lynn D. Wardle, Esq.
Higham Young University Law School

Richard Withke, Ph.D.
The Withke Group

Right Rev. Msgr. John Woolsey
Archdiocese of New York

AUL FAX COVER SHEET

To: Deborah Laper

From: Paul Linton

Date: 2/22/93 Pages (Incl. Cover Sheet) 19

Comments: See letter (61)

If there are problems with this transmission call: 312. 786-9494 or FAX: 312. 786-2131



343 S. Dearborn Street
Suite 1804
Chicago, IL 60604

House passes bill to outlaw stalking

By ERIC S. AVBE
The Associated Press

JUNEAU — Legislation to make it a crime to stalk another person passed the House on Monday without opposition.

Outlawing stalking, rather than the most popular bill, seven anti-stalking bills have been filed.

House Bill 64 would make stalking a felony or misdemeanor, depending on circumstances surrounding the crime. The bill defines stalking as "conduct that recklessly places another person in fear of death or physical injury, or in fear of the death or physical injury of a family member."

The threat can involve following a person, lying in

wait, or contacting a person by telephone, mail or other means.

Supporters of the legislation cited cases in which police may have been able to prevent a murder had they had the power to arrest someone under an anti-stalking law.

"This bill is long overdue," said Rep. Gal Phillips, R-Hoonah. "We should have passed it many years ago."

makers said. "People have no recourse nothing they can do to solve the problem," said Rep. John Davila, D-Fairbanks.

"This bill makes one step in the right direction," Rep. Cynthia Toohy, R-Anchorage, said. The bill's primary sponsor, said the legislation is based on a Michigan law passed last year and considered one of the strongest in the nation. She said more than 30 states have

stalking laws.

She noted that stalkers are not limited to former boyfriends or husbands. "Bitter can be and have been stalked by someone," she said.

The bill was referred to the Senate.

Rep. Jerry Mackie, D-Craig and a former village public safety officer, recalled his difficulty dealing with a victim of domestic violence who was being stalked by her estranged spouse or boyfriend.

"I don't know how many times I was asked, 'Do I have to be killed first before you can do anything?'" Mackie said.

Restraint orders usually are inadequate to stop someone from stalking, law-

New Senate bill would regulate Alaska Railroad

The Associated Press

3.16.93

JUNEAU — A bill before the Senate would make the state-owned Alaska Railroad more like a private entity when it comes to taxes, but more like a government entity when it comes to accountability and spending.

The railroad, which has been criticized for getting into the hotel business, would have to pay taxes on railroad land that is leased to businesses.

Its top officials would have to file reports with the Alaska Public Offices Commission on potential conflicts of interest, and its board meetings would be subject to the public meetings law.

Senate Bill 148, introduced by the Senate Finance Committee, also would require the railroad to get legislative approval before incurring more than \$1 million in debt, according to Sen. Drus Pearce's office. Pearce, R-Anchorage, is a committee co-chairman.

Bob Hatfield, board member and chief operating officer of the railroad, said too much legislative oversight would hamper the railroad's ability to respond to market conditions.

He said an upturn in the gravel market might make it necessary for the railroad to suddenly buy side-dump cars and lease new locomotives at \$1.2 million each.

"If we can't finance our capital improvements without waiting for legislative approval, I'm afraid that ultimately it's going to put us on the state dole," Hatfield said.

Hatfield said a sentence in the bill defining the railroad's purpose as providing "railroad-related transportation services in the state" might place too strict limits on the railroad's activities.

Ralph Nogal, general manager of the Anchorage Hilton, said he wants to see more limits. Nogal said the railroad's foray into the hotel business represents unfair competition.

The Alaska Railroad owns 40 percent of the Comfort Inn in Anchorage and the land under it.

17B64



SENATOR LOREN LEMAN

Northwest Anchorage

3111 "C" Street Anchorage, AK 99503 561-7614 During Session: State Capitol Juneau, AK 99801 465-2095

March 24, 1993

Ms. Karen Berg
PO Box 4177
Soldotna AK 99669

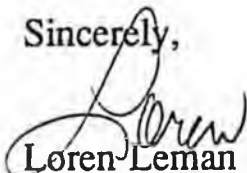
Dear Ms. Berg:

Thank you for your March 19 Public Opinion Message opposing HB64 and urging swift passage of anti-stalking legislation.

I believe anti-stalking legislation is long overdue. I sponsored SB22 in the Senate to create the crime of stalking. I share your concern with HB64 regarding its possible restrictions on the right to assemble. I will work to incorporate changes to the bill now that it has been assigned to the Senate.

Anti-stalking legislation has strong support. I expect that it will pass this session, without restrictions on the right to assemble.

Sincerely,


Loren Lemman
Senator

LL/rw



SENATOR LOREN LEMAN

Northwest Anchorage

3111 "C" Street Anchorage, AK 99503 561-7614 During Session: State Capitol Juneau, AK 99801 465-2095

March 24, 1993

Mr. Burt Neimeyer
PO Box 900638-UAF
Fairbanks AK 99775

Dear Mr. Neimeyer:

Thank you for your March 22 Public Opinion Message supporting HB64 and urging swift passage of anti-stalking legislation.

I also believe that stalking needs to be addressed. I am the prime-sponsor of SB22, which criminalizes stalking. Two other versions have also been introduced in the Senate. However, I expect that HB64 will be the vehicle that the Senate will use.

Anti-stalking legislation has strong support. I expect that it will pass this session.

Sincerely,

A handwritten signature in cursive script, appearing to read "Loren Lemman".

Loren Lemman
Senator

LL/rw



SENATOR LOREN LEMAN

Northwest Anchorage

3111 "C" Street Anchorage, AK 99503 561-7614 During Session: State Capitol Juneau, AK 99801 465-2095

March 24, 1993

Ms. Rachel James
PO Box 264
Seward AK 99664

Dear Ms. James:

Thank you for your March 22 Public Opinion Message supporting HB64 and urging swift passage of anti-stalking legislation.

I also believe that stalking needs to be addressed. I am the prime-sponsor of SB22, which criminalizes stalking. Two other versions have also been introduced in the Senate. However, I expect that HB64 will be the vehicle that the Senate will use.

Anti-stalking legislation has strong support. I expect that it will pass this session.

Sincerely,

A handwritten signature in cursive script, appearing to read "Loren Lemman".

Loren Lemman
Senator

LL/rw



SENATOR LOREN LEMAN

Northwest Anchorage

3111 "C" Street Anchorage, AK 99503 561-7614 During Session: State Capitol Juneau, AK 99801 465-2095

March 24, 1993

Ms. Lori Barker
PO Box 2604
Seward AK 99664

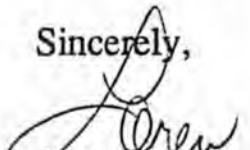
Dear Ms. Barker:

Thank you for your March 22 Public Opinion Message supporting HB64 and urging swift passage of anti-stalking legislation.

I also believe that stalking needs to be addressed. I am the prime-sponsor of SB22, which criminalizes stalking. Two other versions have also been introduced in the Senate. However, I expect that HB64 will be the vehicle that the Senate will use.

Anti-stalking legislation has strong support. I expect that it will pass this session.

Sincerely,


Loren Lemman
Senator

LL/rw



SENATOR LOREN LEMAN

Northwest Anchorage

3111 "C" Street Anchorage, AK 99503 561-7614 During Session: State Capitol Juneau, AK 99801 465-2095

March 31, 1993

Ms. Carol Smith
PO Box 1474
Seward AK 99664

Dear Ms. Smith:

Thank you for your March 24 Public Opinion Message supporting HB64 and urging swift passage of anti-stalking legislation.

I also believe that stalking needs to be addressed. I am the prime-sponsor of SB22, which criminalizes stalking. Two other versions have also been introduced in the Senate. However, I expect that HB64 will be the vehicle that the Senate will use.

Anti-stalking legislation has strong support. I expect that it will pass this session.

Sincerely,


Loren Lemman
Senator

LL/rw

AP-AL-Campus Shooting
P AK-Campus Shooting, TOPS<

! Alaska News !

one dead, one injured in shooting at UAA.<

(Anchorage) -- Anchorage police say a man is dead and his wife wounded in a shootout with campus police at the University of Alaska Anchorage early today (Tuesday).

Police spokeswoman Jo Katkus identified the dead man as 37-year-old Robert Fletcher of Anchorage.

Katkus said the wounded woman -- university employee Ann Fletcher -- was taken to Providence Hospital. Her condition was upgraded this afternoon from critical to serious.

Katkus said the incident started at about 9-30 this morning when the woman was heard screaming for help in front of the university's Sports Center.

She said a passerby notified campus security, which sent a guard to the scene.

Katkus said an exchange of shots between Robert Fletcher and the security officer then followed before the man apparently shot himself.

It wasn't (not) clear how Ann Fletcher was shot -- but university spokesman Mel Kalkowski says the woman has said she was shot by Robert Fletcher.

Police are still investigating.
(Update from Jerry Ritter, KENI)
APNP-04-06-93 1543PDT<

*TO: Senator Leman
From: Sara Mirabito*

H264

7800ak-n

n AP-AK--CampusShooting

P-AK--Campus Shooting, TOPSK

! Alaska News !

one dead, one injured in shooting at UAA.<

(Anchorage) -- Anchorage police say a man is dead and his wife wounded in a shootout with campus police at the University of Alaska Anchorage early today (Tuesday).

Police spokeswoman Jo Kattus identified the dead man as 37-year-old Robert Fletcher of Anchorage.

Kattus said the wounded woman -- university employee Ann Fletcher -- was taken to Providence Hospital. She was reported in critical condition.

Kattus said the incident started at about 8-30 this morning when the woman was heard screaming for help in front of the university's Student Center.

She said a passerby notified campus security, which sent a guard to the scene.

Kattus said an exchange of shots between Robert Fletcher and the security officer then followed before the man apparently shot himself.

It wasn't (not) clear whether Ann Fletcher was shot by her husband or in the crossfire.

Police are still investigating at the crime scene.

(Update from Dave Taylor, KYAK)

APNF-04-06-93 1517PDT<

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 11

Revision Date: February 1, 1993
Title: "An Act relating to the crime of terroristic
threatening."
Sponsor: Senator Kerttula
Requestor: Senator Kerttula

Department Affected: Department of Law
BRU: Prosecution
Component: All
COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
-------------------------	--	--	--	--	--	--

FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Prepared by: Richard I. Peques, Director
Division: Administrative Services Division
Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law

Phone: 465-3672
Date: February 1, 1993
Date: February 1, 1993

PREPARER TO PREPARE FISCAL NOTE FOR LEGISLATIVE OFFICE

For

FISCAL NOTE

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 11

ANALYSIS (Continued):

This bill amends the state's existing terroristic threatening law, AS 11.56.810, to make stalking a criminal act. The bill does this by dividing terroristic threatening into two levels, terroristic threatening in the first degree and terroristic threatening in the second degree. The first degree would be a class C felony and the second degree would be a class A misdemeanor.

Terroristic threatening in the first degree includes the criminal conduct contained in the existing law. It also includes conduct that constitutes terroristic threatening in the second degree when the conduct violates a court order, or when the person who commits the crime of terroristic threatening in the second degree has been convicted of the crime of terroristic threatening in the second degree within seven years before committing the new crime.

Terroristic threatening in the second degree would cover situations where a person recklessly places another person in fear of death or physical injury, or in the fear of the death or physical injury of a family member, by knowingly and repeatedly following or lying in wait for the person or family member, or engaging in conduct similar to following or lying in wait for the person or family member.

Although this bill will cause some new prosecutions, it will probably also prevent some more serious crimes from being committed. We cannot predict how many new prosecutions will occur. However, the prevention of one murder will certainly outweigh the prosecution of several terroristic threatening crimes, both in human and monetary terms.

Last, including the anti-stalking provisions in the existing terroristic threatening law will also help the state defend against legal challenges to overturn the amended law, because it helps demonstrate that these provisions are part of a broader legislative plan to protect the general population from the fear of death or physical injury at the hands of another person.

BILL NO: SB 11

DATE: January 26, 1993

TITLE: An Act relating to the
Crime of Terroristic
Threatening

CONTACT: C.E. Swackhammer
Deputy Commissioner
465-4322

SB 11 amends AS 11.56.810 Terroristic Threatening and defines two levels of terroristic threatening. Existing statute provides for a class C felony; this is amended by defining the class C felony as Terroristic Threatening in the First Degree to include violation of a court order, covers individuals who have been previously convicted of terroristic threatening in the Second Degree and also changes the individuals who are covered from the individuals' "immediate family" to "family member." Terroristic Threatening in the First Degree, a Class C Felony, carries a penalty of fine of up to \$50,000 and 0-5 years in jail. Additionally, SB 11 provides for Terroristic Threatening in the Second Degree, a class A misdemeanor, which addresses placing a person in fear by following or lying in wait for the person.

The Department of Public Safety suggests the following amendments:

The Department recommends that definition of "family member" (lines 18-23) be amended and broadened to include "...a person who ...is in or has been in a dating, courtship of engagement relationship...". Lack of this language may eliminate a substantial number of victims from recourse under the proposed statute.



Richard L. Burton
Commissioner

1-28-93

Alaska Association Chiefs of Police



January 25, 1993

Senator Jay Kerttula
State Capital Building
Room 427
Juneau, Alaska 99811-1182

Dear Senator Kerttula:

On behalf of the Alaska Association of Chiefs of Police I would like to express our support for Senate Bill 11. A Criminal Statute that identifies "Stalking" as a crime is long overdue in the State of Alaska.

All Chiefs from around the State can cite repeated examples from their communities of persons who have been seriously beaten, injured, or killed as a result of "family" or "domestic" violence. For many of these victims their injuries were preceded by periods of time wherein the offender stalked, harassed, threatened and intimidated before acting. Being able to intervene during this earlier conduct would be a welcome relief for law enforcement as well as the hundreds of victims.

If we can be of any assistance in the passage of your bill, please let me know.

Very truly yours,

Ronald L. Otte
President

RLO/lp



Official Business

Alaska State Legislature

Senate

Committee on Finance

Pouch V
State Capitol
Juneau, Alaska 99811

January 25, 1993

Senator Loren Lemman, Chairman
Senate State Affairs Committee
State Capitol Building, Room 113
Juneau, Alaska 99811-1182

Dear Chairman Lemman: *Loren*

I respectfully request that you schedule Senate Bill 11, relating to the crime of stalking, for public hearing by the Senate State Affairs Committee. *Thanks*

Pursuant to your memorandum of January 13, 1993, I have enclosed with this request:

- 1) a copy of S.B. 11;
- 2) a sectional analysis of the bill as it is currently written;
- 3) a legal opinion on S.B. 11 from the Department of Law's Criminal Division;
- 4) letters supporting an anti-stalking law from various private support groups;
- 5) background material, including newspaper and magazine articles; and
- 6) a review of anti-stalking laws by the National Conference of State Legislatures.

Mr. Richard Pegues, of the Department of Law, is having a fiscal note on the bill prepared, this will be provided to the committee as soon as it is completed.

A departmental position paper on anti-stalking laws has been drafted by the Dept. of Public Safety and, according to the department's legislative liaison, Mr. Swackhammer, has been forwarded to the Governor's office for review.

Sen. Loren Leman, Chairman
Senate State Affairs Committee
Page 2

I have requested supporting material and statements from the Palmer Police Dept., the Anchorage Domestic Violence Committee, and other groups. I will provide the committee copies of these additional documents as soon as they arrive.

My thanks in advance for your consideration of this request.

Sincerely,

Jay Kerttula
State Senator

JK:whk

Enclosures

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 19, 1993

SUBJECT: Sectional Analysis of SB 11 (Work Order No. 18-LS0200\A)

TO: Senator Jay Kerttula
Attn: Bill

FROM: Jerry Luckhaupt *JL*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill amends AS 11.56.810, terroristic threatening, to create the crime of terroristic threatening in the first degree. The bill retains the existing forms of terroristic threatening as violations of terroristic threatening in the first degree and adds that a person commits a violation of terroristic threatening in the first degree if the person commits a violation of terroristic threatening in the second degree and that conduct violates a court order or occurs within seven years of a previous conviction for terroristic threatening in the second degree. The bill retains terroristic threatening's classification as a class C felony.^{1/}

Section 2 of the bill creates the crime of terroristic threatening in the second degree, a class A misdemeanor.^{2/} A person commits terroristic threatening in the second degree if the person

- (1) recklessly places another person in fear of death or bodily injury, or in fear of death or bodily injury of a family member;
- (2) by knowingly and repeatedly following or lying in wait for the person of family member or similar conduct.

^{1/} A class C felony is punishable as provided in AS 12.55.125(e).

^{2/} A class A misdemeanor is punishable as provided in AS 12.55.135(a).

Senator Jay Kerttula

January 19, 1993

Page 2

Section 3 of the bill amend AS 12.25.030(b) to provide a peace officer with the authority to arrest a person the peace officer has reasonable cause to believe has committed the types of terroristic threatening in the first or second degrees added in section 1 and 2 of the bill, or similar ordinance, when the victim is in a domestic relationship, as defined in AS 12.25.030(b)(2), with the defendant.

GPL:gc

93-038.glc

ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

*Copy in file
all BIC up*

January 22, 1993

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P. O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 W. 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

JAN 22 1993

The Honorable Jay Kerttula
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: SB 11, "An Act relating to the crime of terroristic threatening"

Dear Senator Kerttula:

By letter dated January 19, 1993, you have requested our opinion as to whether SB 11, "An Act relating to the crime of terroristic threatening," presents any legal difficulties. The purpose of this bill is to criminalizing "stalking." Although some stalking laws are subject to challenge on the basis that they are constitutionally vague or overbroad, SB 11 has been carefully drafted and we do not believe that it presents either of these problems.

We note that this bill creates the crime of stalking by amending Alaska's existing terroristic threatening statute and adding terroristic threatening in the second degree. We believe that this is the best method of addressing stalking and, in particular, that this method is least likely to inadvertently jeopardize the state's existing offenses relating to terroristic threatening.

For your general information, we have just been advised of a Library of Congress publication entitled "Anti-Stalking Statutes: Their Background and Constitutionality." We have requested a copy of this report, which was published in September 1992. Please let us know if you would like a copy, as well; if so, we will provide one to you when we receive it.

Finally, we have also just learned that the National Criminal Justice Association will be coordinating a "stalking laws project," to be undertaken by the National Institute of Justice for the purpose of considering and drafting model legislative options. This project is to be initiated within the next two months or so and its work is expected to be completed within six or eight months.

The Honorable Jay Kerttula

January 22, 1993
Page 2

Thank you for the opportunity to comment on SB 11. If you have any further questions, or if we may be of assistance in any other fashion, please do not hesitate to contact me.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: Margot Q. Knuth
Margot Q. Knuth
Assistant Attorney General

MOK/sf

cc: Deborah Behr
Legislation Attorney
Department of Law

Kris Lethin
Legislative Liaison

Bruce Botelho
Deputy Attorney General

Charles Cole
Attorney General

C.E. Swackhammer
Deputy Commissioner
Department of Public Safety

ALASKA NETWORK
ON
DOMESTIC VIOLENCE
AND
SEXUAL ASSAULT

419 6th Street, No. 116 • Juneau, Alaska 99801 • (907) 586-3650

Abused Women's Aid in Crisis (AWAIC); Advocates for Victims of Violence (AVV);
Aiding Women in Abuse and Rape Emergencies (AWARE);
Alaska Women's Resource Center (AWRC); Arctic Women in Crisis (AWIC);
Bering Sea Women's Group (BSWG); Emmonak Women's Shelter;
Kodiak Women's Resource & Crisis Center (KWRCC);
Manilaq Regional Women's Crisis Program; Parent Aid Family Support Center;
Safe & Fear-Free Environment (SAFE); Seward Life Action Council (SLAC);
Sitkans Against Family Violence (SAFV); South Peninsula Women's Services (SPWS);
Standing Together Against Rape (STAR);
Tongass Community Counseling Center; Tundra Women's Coalition (TWC);
Unalaska Against Sexual Assault & Family Violence (USAFV);
Valley Women's Resource Center (VWRC);
Women in Crisis Counseling & Assistance (WCCA);
Women in Safe Homes (WSH); Women's Resource & Crisis Center (WRCC)

January 15, 1993

The Honorable Jay Kerttula
Alaska Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Kerttula:

The Alaska Network on Domestic Violence and Sexual Assault is pleased to write in support of SB11, which creates the crime of stalking, and provides police with the ability to make arrests for this offense based on probable cause.

The Alaska Network on Domestic Violence and Sexual Assault is a statewide non-profit organization comprised of 22 member programs from around Alaska which work with victims and their families. Every Network program has worked with victims of domestic violence or sexual assault who are being stalked, know their lives are in danger and are unable to gain protection for themselves or their families under current statutes.

Currently twenty-seven states have passed legislation similar to Senate Bill 11. Stalking is commonly recognized by victim's advocates and police as potentially lethal behavior. Ironically, victims are told over and over that nothing can be done unless they're injured or killed. And each year, they are. I enclose some clippings from recent cases that ended in death here in Alaska.

In reviewing your bill, the Network would request that two changes be considered. They are:

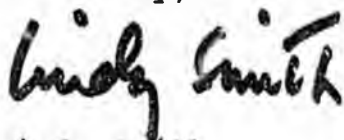
1. An additional aggravating factor should be added that causes the crime to be charged as a felony if the offender stalks the victim and is in possession of a deadly weapon. This is clearly a very dangerous combination. Such a change was made two years ago to the restraining order provisions in recognition of the higher risk of lethality this behavior presents.

Senator Kerttula
Page Two

2. In Section 1(3)(B), the provision should be broadened to include the conviction of any violent crime against a person. In domestic violence and sexual assault cases, while there may be no prior record of stalking (and there certainly won't be for some time) there may be repeated convictions for assault or sexual assault. A past history of violence is another strong indicator of potential lethality.

Thank you for your sponsorship of this important legislation. Please let me know if you need other information or if the Network can be of any assistance in the passage of this bill.

Sincerely,

A handwritten signature in cursive script that reads "Cindy Smith". The signature is written in dark ink and is positioned above the typed name.

Cindy Smith
Executive Director

c.c. Council on Domestic Violence and Sexual Assault
Network programs

D. Elizabeth Cuadra
P. O. Box 33678
Juneau, AK 99803

February 16, 1993

The Honorable Loren Lemam
Alaska House of Representatives
State Capitol
Juneau, AK 99801-1182

Re: Anti-Stalking Legislation

Dear Senator Lemam:

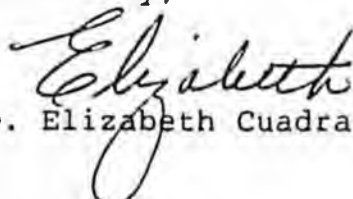
Thank you for sponsoring legislation that would make stalking another person unlawful.

Enclosed is an article from a national newspaper, which I thought might be of help to you in presenting the problem to committees which will be considering your legislation.

If you are looking for personal testimony, please feel free to call on me. I can testify from personal experience (in Kansas) as to the terror such a situation causes. I can also testify as to my own attempts (in Virginia) to save my daughter (then newly graduated from high school) from a stalker who eventually gave her a broken nose and threatened to kill her if she reported it to the police. Needless to say, I shipped her out of the State of Virginia (to the west coast) immediately, in order to place her out of further danger from this man who was already awaiting trial for felonious assault (with a deadly weapon) against another person. The police had been of no help whatsoever, indicating that they could do nothing with respect to a stalker, nor could they provide any sort of help unless she could overcome her fear sufficiently to file a complaint.

I applaud what you are doing and wish you every success. I suspect there are many women who could provide personal testimony concerning similar events here in Alaska, and similarly "helpless" police absent a law that makes stalking a criminal offense.

Sincerely,


D. Elizabeth Cuadra

DEC/k11.212
Enclosure

8-LS0283NR
Luckhaupt
2/16/93

CS FOR HOUSE BILL NO. 64()
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES TOOHEY, Phillips, Olberg, Ulmer, Hudson, Porter, B.Davis,
Mackie, Carney

A BILL

FOR AN ACT ENTITLED

1 "An Act creating the crimes of stalking in the first and second degrees and
2 providing penalties for their violation; providing a peace officer with the authority
3 to arrest without a warrant a person the peace officer has reasonable cause to
4 believe has committed stalking; relating to the release before trial of a person
5 accused of stalking; prohibiting the suspension of imposition of sentence of a
6 person convicted of stalking; and relating to the crime of assault in the third
7 degree."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 11.41 is amended by adding new sections to article 2 to read:

10 Sec. 11.41.260. STALKING IN THE FIRST DEGREE. (a) A person commits
11 the crime of stalking in the first degree if the person violates AS 11.41.270 and

12 (1) the actions constituting the offense are in violation of an order
13 issued under AS 25.35.010(b) or 25.35.020;

(2) the actions constituting the offense are in violation of a condition of probation, release before trial, release after conviction, or parole;

(3) the victim is under 16 years of age;

(4) the defendant has been previously convicted of a crime under this section, AS 11.41.270, or AS 11.56.740, or a law or ordinance of this or another jurisdiction with elements similar to a crime under this section, AS 11.41.270, or AS 11.56.740; or ~~deadly weapons~~ ^{or firearm}

(5) the defendant has been previously convicted of (A) a crime, or an attempt or solicitation to commit a crime, under AS 11.41.100 - 11.41.250, 11.41.300 - 11.41.460, AS 11.56.810, AS 11.61.120, or (B) a law or an ordinance of this or another jurisdiction with elements similar to a crime, or an attempt or solicitation to commit a crime, under AS 11.41.100 - 11.41.250, 11.41.300 - 11.41.460, AS 11.56.810, or AS 11.61.120, involving the same victim as the present offense.

(b) Stalking in the first degree is a class C felony.

(c) In this section, "victim" has the meaning given in AS 11.41.270(c).

Sec. 11.41.270. STALKING IN THE SECOND DEGREE. (a) A person commits the crime of stalking in the second degree if the person knowingly engages in a course of conduct that recklessly places another person in fear of death or physical injury, or in fear of the death or physical injury of a family member.

(b) Stalking in the second degree is a class A misdemeanor.

(c) In this section,

(1) "course of conduct" means a pattern of conduct directed toward a victim, that is composed of repeated acts of nonconsensual contact involving the victim or a family member of the victim;

(2) "family member" means

(A) a spouse, child, grandchild, parent, grandparent, or sibling;

(B) a person who lives in a spousal relationship; or

(C) a person who lives in the same household;

(3) "nonconsensual contact" means any contact with another person that is initiated or continued without that person's consent, that is beyond the scope of the consent provided by that person, or that is in disregard of that person's expressed

robbery firearm

stalking

physical injury

repeated acts

deadly weapons? or firearm

stalking

in laws?

in laws?

dating - engaged relationship

1 desire that the contact be avoided or discontinued; "nonconsensual contact" includes

2 (A) following or appearing within the sight of that person;

3 (B) approaching or confronting that person in a public place or
4 on private property;

5 (C) appearing at the workplace or residence of that person;

6 (D) entering onto or remaining on property owned, leased, or
7 occupied by that person;

8 (E) contacting that person by telephone;

9 (F) sending mail or electronic communications to that person;

10 (G) placing an object on, or delivering an object to, property
11 owned, leased, or occupied by that person;

12 (4) "victim" means a person who is the target of a course of conduct.

13 * Sec. 2. AS 11.41.220(a) is amended to read:

14 (a) A person commits the crime of assault in the third degree if that person

15 (1) recklessly

16 (A) [(1)] places another person in fear of imminent serious
17 physical injury by means of a dangerous instrument;

18 (B) [(2)] causes physical injury to another person by means of
19 a dangerous instrument; or

20 (C) [(3)] while being 18 years of age or older

21 (i) [(A)] causes physical injury to a child under 10 years
22 of age and the injury reasonably requires medical treatment;

23 (ii) [(B)] causes physical injury to a child under 10 years
24 of age on more than one occasion; or

25 (2) with intent to place another person in fear of death or serious
26 physical injury to the person or the person's immediate family makes repeated
27 threats to cause death or serious physical injury to another person.

28 * Sec. 3. AS 11.56.810(a) is amended to read:

29 (a) A person commits the crime of terroristic threatening if the person

30 [(1)] knowingly makes a false report that a circumstance dangerous to
31 human life exists or is about to exist and

1 (1) [(A)] places a person in fear of physical injury to any
2 person;

3 (2) [(B)] causes evacuation of a building; or

4 (3) [(C)] causes serious public inconvenience [; OR

Revised

5 (2) WITH INTENT TO PLACE ANOTHER PERSON IN FEAR OF
6 DEATH OR SERIOUS PHYSICAL INJURY TO THE PERSON OR THE PERSON'S
7 IMMEDIATE FAMILY, MAKES REPEATED THREATS TO CAUSE DEATH OR
8 SERIOUS PHYSICAL INJURY TO ANOTHER PERSON].

9 * Sec. 4. AS 12.25.030(b) is amended to read:

10 (b) In addition to the authority granted under (a) of this section, a peace officer
11 without a warrant may arrest a person when the peace officer has reasonable cause for
12 believing that the person has committed a crime under

13 (1) AS 11.41.270 or AS 11.55.740; or

14 (2) AS 11.41, AS 11.46.330, or AS 11.61.120, or has violated an
15 ordinance with elements substantially similar to the elements of a crime under
16 AS 11.41, AS 11.46.330, or AS 11.61.120, when the victim is a spouse or former
17 spouse of the person who committed the crime; a parent, grandparent, child, or
18 grandchild of the person who committed the crime; a member of the social unit
19 comprised of those living together in the same dwelling as the person who committed
20 the crime; or another person who is not a spouse or former spouse of the person who
21 committed the crime but who previously lived in a spousal relationship with the person
22 who committed the crime or is in or has been in a dating, courtship, or engagement
23 relationship with the person who committed the crime.

24 * Sec. 5. AS 12.30.025 is amended to read:

25 Sec. 12.30.025. RELEASE BEFORE TRIAL IN CASES INVOLVING
26 DOMESTIC VIOLENCE OR STALKING. (a) In determining the conditions of
27 release under AS 12.30.020 in cases involving domestic violence or stalking, the court
28 shall consider the following conditions and impose one or more conditions it considers
29 reasonably necessary to protect the alleged victim of the domestic violence or
30 stalking, including ordering the defendant

31 (1) not to subject the victim to further domestic violence or stalking;

1 (2) to vacate the home of the victim;

2 (3) not to contact the victim other than through counsel;

3 (4) to engage in counseling; if the court directs the defendant to engage
4 in personal counseling, the court shall provide in the order that the counseling must
5 propose alternatives to aggression if that type of counseling is available; if the court
6 directs the defendant to participate in family counseling, it shall make a finding that
7 family counseling will not result in additional domestic violence or stalking;

8 (5) to refrain from the consumption of alcohol or the use of drugs.

9 (b) As used in this section,

10 (1) "domestic violence" means a crime specified in AS 11.41 when the
11 victim is a spouse or a former spouse of the defendant; a parent, grandparent, child,
12 or grandchild of the defendant; a member of the social unit comprised of those living
13 together in the same dwelling as the defendant; or a person who is not a spouse or
14 former spouse of the defendant but who previously lived in a spousal relationship with
15 the defendant or is in or has been in a dating, courtship, or engagement relationship
16 with the defendant;

17 (2) "stalking" means a violation of AS 11.41.260 or 11.41.270.

18 * Sec. 6. AS 12.55.085(f) is amended to read:

19 (f) The court may not suspend the imposition of sentence of a person who

20 (1) is convicted of a violation of AS 11.41.410 - 11.41.455;

21 (2) uses a firearm in the commission of the offense for which the
22 person is convicted; or

23 (3) is convicted of a violation of AS 11.41.210 - 11.41.270
24 [AS 11.41.210 - 11.41.250] or 11.41.510 - 11.41.530, and the person has, within the
25 10 years preceding the commission of the offense for which the person has been
26 convicted, one or more prior convictions for a violation of AS 11.41 or for a violation
27 of a law in this or another jurisdiction having substantially similar elements to an
28 offense defined in AS 11.41; for the purposes of this paragraph, a person shall be
29 considered to have a prior conviction even if that conviction has been set aside under
30 (e) of this section or under the equivalent provision of the laws of another jurisdiction.

31 * Sec. 7. AS 12.55.090(c) is amended to read:

1 (c) Except as provided in (f) of this section, the [THE] period of probation,
2 together with any extension, shall not exceed five years.

3 * Sec. 8. AS 12.55.090 is amended by adding a new subsection to read:

4 (f) Notwithstanding (c) of this section, for a violation of AS 11.41.260 the
5 period of probation may not be less than five years nor more than 99 years.

6 * Sec. 9. APPLICABILITY. AS 11.41.260 and 11.41.270, enacted by sec. 1 of this Act,
7 apply to acts committed on or after the effective date of this Act.

HOUSE BILL NO. 64

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES TOOHEY, Phillips, Olberg, Ulmer, Hudson

Introduced: 1/15/93

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act creating the crimes of stalking in the first and second degrees and
2 providing penalties for their violation; providing a peace officer with the authority
3 to arrest without a warrant a person the peace officer has reasonable cause to
4 believe has committed stalking; relating to the release before trial of a person
5 accused of stalking; and prohibiting the suspension of imposition of sentence of
6 a person convicted of stalking."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 11.41 is amended by adding new sections to article 2 to read:

9 Sec. 11.41.260. STALKING IN THE FIRST DEGREE. (a) A person commits
10 the crime of stalking in the first degree if the person violates AS 11.41.270 and
11 (1) the actions constituting the offense are in violation of an order
12 issued under AS 25.35.010(b) or 25.35.020 and the defendant has received actual
13 notice of the order;

1 (2) the actions constituting the offense are in violation of a condition
2 of probation, release before trial, release after conviction, or parole;

3 (3) the course of conduct engaged in by the defendant includes the
4 making of one or more credible threats against the victim, a member of the victim's
5 immediate family, or another person living in the victim's household; or

6 (4) the defendant has been previously convicted of a violation of this
7 section, AS 11.41.270, or AS 11.56.740.

8 (b) Stalking in the first degree is a class C felony.

9 (c) In this section,

10 (1) "course of conduct" has the meaning given in AS 11.41.270(e);

11 (2) "credible threat" means a threat to kill another person or a threat
12 to inflict physical injury upon another person that is made in any manner or context
13 that causes the person hearing or receiving the threat to reasonably fear for the
14 person's safety or the safety of another person;

15 (3) "victim" has the meaning given in AS 11.41.270(e).

16 Sec. 11.41.270. STALKING IN THE SECOND DEGREE. (a) A person
17 commits the crime of stalking in the second degree if the person knowingly engages
18 in a course of conduct that would cause a reasonable person to feel threatened or
19 harassed, and that actually causes the victim to feel threatened or harassed.

20 (b) In a prosecution under this section, evidence that the defendant continued
21 to engage in a course of conduct involving repeated nonconsensual contact with the
22 victim after having been requested by the victim to discontinue the same or a different
23 form of nonconsensual contact, and to refrain from any further contact without the
24 consent of the victim, shall give rise to a rebuttable presumption that the continuation
25 of the course of conduct caused the victim to feel threatened or harassed.

26 (c) It is an affirmative defense to a prosecution under this section that the
27 course of conduct engaged in by the defendant is constitutionally protected or serves
28 a legitimate purpose. If a defendant affirmatively shows that an act of the defendant
29 is a constitutionally protected activity or serves a legitimate purpose, that act may not
30 be considered in finding that a defendant engaged in a course of conduct in violation
31 of this section.

*Constitutionally
Protected Activity - excluded!*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

(d) Stalking in the second degree is a class A misdemeanor.

(e) In this section,

(1) "course of conduct" means a pattern of conduct directed toward a victim, evidencing a continuity of purpose, that is composed of a series of two or more separate noncontinuous acts of nonconsensual contact involving the victim, a member of the victim's immediate family, or another person living in the victim's household;

(2) "nonconsensual contact" means any contact with another person that is initiated or continued without that person's consent, that is beyond the scope of the consent provided by that person, or that is in disregard of that person's expressed desire that the contact be avoided or discontinued; "nonconsensual contact" includes

(A) following or appearing within the sight of that person;

(B) approaching or confronting that person in a public place or on private property;

(C) appearing at the workplace or residence of that person;

(D) entering onto or remaining on property owned, leased, or occupied by that person;

(E) contacting that person by telephone;

(F) sending mail or electronic communications to that person;

(G) placing an object on, or delivering an object to, property owned, leased, or occupied by that person;

(3) "victim" means a person who is the target of a course of conduct.

* Sec. 2. AS 12.25.030(b) is amended to read:

(b) In addition to the authority granted under (a) of this section, a peace officer without a warrant may arrest a person when the peace officer has reasonable cause for believing that the person has committed a crime under

(1) AS 11.41.270 or AS 11.56.740; or

(2) AS 11.41, AS 11.46.330, or AS 11.61.120, or has violated an ordinance with elements substantially similar to the elements of a crime under AS 11.41, AS 11.46.330, or AS 11.61.120, when the victim is a spouse or former spouse of the person who committed the crime; a parent, grandparent, child, or grandchild of the person who committed the crime; a member of the social unit

1 comprised of those living together in the same dwelling as the person who committed
2 the crime; or another person who is not a spouse or former spouse of the person who
3 committed the crime but who previously lived in a spousal relationship with the person
4 who committed the crime or is in or has been in a dating, courtship, or engagement
5 relationship with the person who committed the crime.

6 * Sec. 3. AS 12.30.025 is amended to read:

7 Sec. 12.30.025. RELEASE BEFORE TRIAL IN CASES INVOLVING
8 DOMESTIC VIOLENCE OR STALKING. (a) In determining the conditions of
9 release under AS 12.30.020 in cases involving domestic violence or stalking, the court
10 shall consider the following conditions and impose one or more conditions it considers
11 reasonably necessary to protect the alleged victim of the domestic violence or
12 stalking, including ordering the defendant

13 (1) not to subject the victim to further domestic violence or stalking;

14 (2) to vacate the home of the victim;

15 (3) not to contact the victim other than through counsel;

16 (4) to engage in counseling; if the court directs the defendant to engage
17 in personal counseling, the court shall provide in the order that the counseling must
18 propose alternatives to aggression if that type of counseling is available; if the court
19 directs the defendant to participate in family counseling, it shall make a finding that
20 family counseling will not result in additional domestic violence or stalking;

21 (5) to refrain from the consumption of alcohol or the use of drugs.

22 (b) As used in this section,

23 (1) "domestic violence" means a crime specified in AS 11.41 when the
24 victim is a spouse or a former spouse of the defendant; a parent, grandparent, child,
25 or grandchild of the defendant; a member of the social unit comprised of those living
26 together in the same dwelling as the defendant; or a person who is not a spouse or
27 former spouse of the defendant but who previously lived in a spousal relationship with
28 the defendant or is in or has been in a dating, courtship, or engagement relationship
29 with the defendant;

30 (2) "stalking" means a violation of AS 11.41.260 or 11.41.270.

31 * Sec. 4. AS 12.55.085(f) is amended to read:

1 (f) The court may not suspend the imposition of sentence of a person who
2 (1) is convicted of a violation of AS 11.41.410 - 11.41.455;
3 (2) uses a firearm in the commission of the offense for which the
4 person is convicted; or
5 (3) is convicted of a violation of AS 11.41.210 - 11.41.270
6 [AS 11.41.210 - 11.41.250] or 11.41.510 - 11.41.530, and the person has, within the
7 10 years preceding the commission of the offense for which the person has been
8 convicted, one or more prior convictions for a violation of AS 11.41 or for a violation
9 of a law in this or another jurisdiction having substantially similar elements to an
10 offense defined in AS 11.41; for the purposes of this paragraph, a person shall be
11 considered to have a prior conviction even if that conviction has been set aside under
12 (e) of this section or under the equivalent provision of the laws of another jurisdiction.

13 * Sec. 5. AS 12.55.090(c) is amended to read:

14 (c) Except as provided in (f) of this section, the [THE] period of probation,
15 together with any extension, shall not exceed five years.

16 * Sec. 6. AS 12.55.090 is amended by adding a new subsection to read:

17 (f) Notwithstanding (c) of this section, for a violation of AS 11.41.260 the
18 period of probation may not be less than five years nor more than 99 years.

19 * Sec. 7. AS 12.55.100 is amended by adding a new subsection to read:

20 (d) In addition to any other condition of probation permitted under this section,
21 a defendant convicted of a violation of AS 11.41.260 or 11.41.270 may be required to
22 (1) refrain from stalking any person during the term of probation;
23 (2) refrain from any contact with the victim of the offense;
24 (3) be evaluated to determine the need for psychiatric, psychological,
25 or social counseling, and if determined appropriate by the court, receive psychiatric,
26 psychological, or social counseling at the defendant's expense.

27 * Sec. 8. APPLICABILITY. AS 11.41.260 and 11.41.270, enacted by sec. 1 of this Act,
28 apply to acts committed on or after the effective date of this Act.

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 11
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY SENATOR KERTTULA

Introduced: 2/10/93
Referred: STA, JUD, FIN

"Stalking"

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to the crime of terroristic threatening."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 11.56.810 is amended to read:

11.41.....

4 Sec. 11.56.810. TERRORISTIC THREATENING IN THE FIRST DEGREE.

5 (a) A person commits the crime of terroristic threatening in the first degree if the
6 person

7 (1) knowingly makes a false report that a circumstance ~~dangerous~~ to
8 human life exists or is about to exist and

9 (A) places a person in fear of physical injury to a [ANY]
10 person;

11 (B) causes evacuation of a building; or

12 (C) causes serious public inconvenience; [OR]

13 (2) with intent to place another person in fear of death or serious
14 physical injury to the person or a [THE PERSON'S IMMEDIATE] family member.

under 110
Violent history
deadly weapon

1 makes repeated threats to cause death or serious physical injury to another person; or
2 (3) commits the crime of terroristic threatening in the second
3 degree and

(A) the conduct that constitutes the crime violates a court
order; or

(B) within seven years before the commission of the crime
the person has been convicted of the crime of terroristic threatening in the
second degree.

(b) Terroristic threatening in the first degree is a class C felony.

* Sec. 2. AS 11.56 is amended by adding new sections to read:

Sec. 11.56.812. TERRORISTIC THREATENING IN THE SECOND

DEGREE. (a) A person commits the crime of terroristic threatening in the second
degree if the person recklessly places another person in fear of death or physical
injury, or in fear of the death or physical injury of a family member, by knowingly and
repeatedly following or lying in wait for the person or family member, or engaging in
conduct similar to following or lying in wait for the person or family member.

(b) Terroristic threatening in the second degree is a class A misdemeanor.

Sec. 11.56.814. DEFINITION. In AS 11.56.810 - 11.56.814, "family member"
of a person means:

- (1) a spouse, child, grandchild, parent, grandparent, or sibling of the person;
- (2) a person who lives in a spousal relationship with the person;
- (3) a person who lives in the same household as the person; or
- (4) a person who is in a dating, courtship, or engagement relationship with the person.

* Sec. 3. AS 12.25.030(b) is amended to read:

(b) In addition to the authority granted under (a) of this section, a peace officer without a warrant may arrest a person when the peace officer has reasonable cause for believing that the person has committed a crime under -

- (1) AS 11.56.740; or
- (2) AS 11.41, AS 11.46.330, AS 11.56.810(a)(3) - 11.56.814, or

1-3

2

Police in FBIS likes this.

"serious"
how long do we want this.

this means current

In laws

"current" (AST would support this)

put in section one

get from Margo Knuth.

1 AS 11.61.120, or has violated an ordinance with elements substantially similar to the
2 elements of a crime under AS 11.41, AS 11.46.330, AS 11.56.810(a)(3) - 11.56.814.
3 or AS 11.61.120, when the victim is a spouse or former spouse of the person who
4 committed the crime; a parent, grandparent, child, or grandchild of the person who
5 committed the crime; a member of the social unit comprised of those living together
6 in the same dwelling as the person who committed the crime; or another person who
7 is not a spouse or former spouse of the person who committed the crime but who
8 previously lived in a spousal relationship with the person who committed the crime or
9 is in or has been in a dating, courtship, or engagement relationship with the person
10 who committed the crime.

SENATE BILL NO. 23

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY SENATOR ZHAROFF

Introduced: 1/11/93
Referred: STA, JUD, FIN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the crime of terroristic threatening."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 11.56.810 is amended to read:

4 Sec. 11.56.810. TERRORISTIC THREATENING IN THE FIRST DEGREE.

5 (a) A person commits the crime of terroristic threatening in the first degree if the
6 person

7 (1) knowingly makes a false report that a circumstance dangerous to
8 human life exists or is about to exist and

9 (A) places a person in fear of physical injury to a [ANY]
10 person;

11 (B) causes evacuation of a building; or

12 (C) causes serious public inconvenience; [OR]

13 (2) with intent to place another person in fear of death or serious
14 physical injury to the person or a [THE PERSON'S IMMEDIATE] family member.

1 makes repeated threats to cause death or serious physical injury to another person or
2 (3) is convicted of the crime of terroristic threatening in the second
3 degree and knowingly contacts, except as allowed by court order, the victim or
4 a family member of the victim while the person is serving, including being on
5 probation, the sentence for the crime, or within seven years after the person
6 completes serving the sentence.

7 (b) Terroristic threatening in the first degree is a class C felony.

8 * Sec. 2. AS 11.56 is amended by adding new sections to read:

9 Sec. 11.56.812. TERRORISTIC THREATENING IN THE SECOND
10 DEGREE. (a) A person commits the crime of terroristic threatening in the second
11 degree if the person recklessly places another person in fear of death or physical
12 injury, or in fear of the death or physical injury of a family member, by knowingly and
13 repeatedly following or lying in wait for the person or family member, or engaging in
14 conduct similar to following or lying in wait for the person or family member.

15 (b) Terroristic threatening in the second degree is a class A misdemeanor.

16 Sec. 11.56.814. DEFINITION. In AS 11.56.810 - 11.56.814, "family member"

17 of a person means

18 (1) a spouse, child, grandchild, parent, grandparent, or sibling of the
19 person;

20 (2) a person who lives in a spousal relationship with the person; or

21 (3) a person who lives in the same household as the person.

22 * Sec. 3. AS 12.25.030(b) is amended to read:

23 (b) In addition to the authority granted under (a) of this section, a peace officer
24 without a warrant may arrest a person when the peace officer has reasonable cause for
25 believing that the person has committed a crime under

26 (1) AS 11.56.740; or

27 (2) AS 11.41, AS 11.46.330, AS 11.56.810(a)(3) - 11.56.814. or
28 AS 11.61.120, or has violated an ordinance with elements substantially similar to the
29 elements of a crime under AS 11.41, AS 11.46.330, AS 11.56.810(a)(3) - 11.56.814,
30 or AS 11.61.120, when the victim is a spouse or former spouse of the person who
31 committed the crime; a parent, grandparent, child, or grandchild of the person who

1 committed the crime; a member of the social unit comprised of those living together
2 in the same dwelling as the person who committed the crime; or another person who
3 is not a spouse or former spouse of the person who committed the crime but who
4 previously lived in a spousal relationship with the person who committed the crime or
5 is in or has been in a dating, courtship, or engagement relationship with the person
6 who committed the crime.

SENATE BILL NO. 22

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY SENATORS LEMAN, Pearce

Introduced: 1/11/93
Referred: STA, JUD, FIN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the crime of terroristic threatening."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 11.56.810 is amended to read:

4 Sec. 11.56.810. TERRORISTIC THREATENING IN THE FIRST DEGREE.

5 (a) A person commits the crime of terroristic threatening in the first degree if the
6 person

7 (1) knowingly makes a false report that a circumstance dangerous to
8 human life exists or is about to exist and

9 (A) places a person in fear of physical injury to a [ANY]
10 person;

11 (B) causes evacuation of a building; or

12 (C) causes serious public inconvenience; [OR]

13 (2) with intent to place another person in fear of death or serious
14 physical injury to the person or a [THE PERSON'S IMMEDIATE] family member.

1 makes repeated threats to cause death or serious physical injury to another person; or
2 (3) commits the crime of terroristic threatening in the second
3 degree and

4 (A) the conduct that constitutes the crime violates a court
5 order; or

6 (B) within seven years before the commission of the crime
7 the person has been convicted of the crime of terroristic threatening in the
8 second degree.

9 (b) Terroristic threatening in the first degree is a class C felony.

10 * Sec. 2. AS 11.56 is amended by adding new sections to read:

11 Sec. 11.56.812. TERRORISTIC THREATENING IN THE SECOND
12 DEGREE. (a) A person commits the crime of terroristic threatening in the second
13 degree if the person recklessly places another person in fear of death or physical
14 injury, or in fear of the death or physical injury of a family member, by knowingly and
15 repeatedly following or lying in wait for the person or family member, or engaging in
16 conduct similar to following or lying in wait for the person or family member.

17 (b) Terroristic threatening in the second degree is a class A misdemeanor.

18 Sec. 11.56.814. DEFINITION. In AS 11.56.810 - 11.56.814, "family member"
19 of a person means

20 (1) a spouse, child, grandchild, parent, grandparent, or sibling of the
21 person;

22 (2) a person who lives in a spousal relationship with the person; or

23 (3) a person who lives in the same household as the person.

24 * Sec. 3. AS 12.25.030(b) is amended to read:

25 (b) In addition to the authority granted under (a) of this section, a peace officer
26 without a warrant may arrest a person when the peace officer has reasonable cause for
27 believing that the person has committed a crime under

28 (1) AS 11.56.740; or

29 (2) AS 11.41, AS 11.46.330, AS 11.56.810(a)(3) - 11.56.814, or
30 AS 11.61.120, or has violated an ordinance with elements substantially similar to the
31 elements of a crime under AS 11.41, AS 11.46.330, AS 11.56.810(a)(3) - 11.56.814,

1 or AS 11.61.120, when the victim is a spouse or former spouse of the person who
2 committed the crime; a parent, grandparent, child, or grandchild of the person who
3 committed the crime; a member of the social unit comprised of those living together
4 in the same dwelling as the person who committed the crime; or another person who
5 is not a spouse or former spouse of the person who committed the crime but who
6 previously lived in a spousal relationship with the person who committed the crime or
7 is in or has been in a dating, courtship, or engagement relationship with the person
8 who committed the crime.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

JAN 21 1993

MEMORANDUM

January 21, 1993

SUBJECT: Sectional Summary of HB 64 (Work Order 18-LS0283\A))

TO: Representative Cynthia Toohey
Attn: Marveen

FROM: Jerry Luckhaupt *JLB*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill creates the crimes of stalking in the first and second degrees. Stalking in the first degree is a class C felony and stalking in the second degree is a class A misdemeanor.

Section 2 of the bill amends AS 12.25.030(b) to provide a peace officer with the authority to arrest without a warrant a person the peace officer has reasonable cause to believe has committed stalking in the second degree.

Section 3 of the bill amends AS 12.30.025 to extend the provisions of that section that relate to conditions of release before trial in cases involving domestic violence to stalking cases.

Section 4 of the bill amends AS 12.55.085(f) by extending the provisions of that subsection, that prohibit the suspension of imposition of sentence, to stalking cases.

Section 5 of the bill amends AS 12.55.090(c) to conform to section 6 of the bill.

Section 6 of the bill provides that for a conviction of stalking in the first degree a probationary term may not be less than five years nor more than 99 years.

Representative Cynthia Toohey
January 21, 1993
Page 2

Section 7 of the bill provides specific conditions of probation that may be imposed by the court in stalking cases.

Section 8 of the bill is an applicability section.

GPL:pl
93-032.plm

D. Elizabeth Cuadra
P. O. Box 33678
Juneau, AK 99803

February 16, 1993

The Honorable Loren Leman
Alaska House of Representatives
State Capitol
Juneau, AK 99801-1182

Re: Anti-Stalking Legislation

Dear Senator Leman:

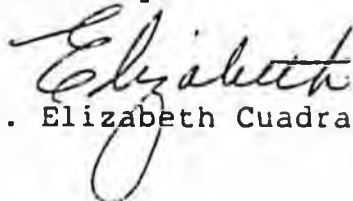
Thank you for sponsoring legislation that would make stalking another person unlawful.

Enclosed is an article from a national newspaper, which I thought might be of help to you in presenting the problem to committees which will be considering your legislation.

If you are looking for personal testimony, please feel free to call on me. I can testify from personal experience (in Kansas) as to the terror such a situation causes. I can also testify as to my own attempts (in Virginia) to save my daughter (then newly graduated from high school) from a stalker who eventually gave her a broken nose and threatened to kill her if she reported it to the police. Needless to say, I shipped her out of the State of Virginia (to the west coast) immediately, in order to place her out of further danger from this man who was already awaiting trial for felonious assault (with a deadly weapon) against another person. The police had been of no help whatsoever, indicating that they could do nothing with respect to a stalker, nor could they provide any sort of help unless she could overcome her fear sufficiently to file a complaint.

I applaud what you are doing and wish you every success. I suspect there are many women who could provide personal testimony concerning similar events here in Alaska, and similarly "helpless" police absent a law that makes stalking a criminal offense.

Sincerely,


D. Elizabeth Cuadra

DEC/k11.212
Enclosure

Efforts to Protect Women From 'Stalkers' Gain Momentum at State, Federal Levels

By David Holmstrom

Staff writer of The Christian Science Monitor

BOSTON

THE many incidents of domestic violence in the United States, like frayed parts of a fabric, continue to challenge the viability of hundreds of thousands of families and relationships.

In an effort to stop more unraveling, Congress approved a plan in October to create a model antistalking law. The objective is to help states deal effectively with the estimated 200,000 people, mostly men, who stalk someone each year —

usually an estranged wife or girlfriend.

Since 1990, when California passed the first antistalking law after actress Rebecca Schaeffer was shot and killed by a stalker, 29 states have followed suit — despite claims that some of the laws are not constitutional. Five more states are preparing such legislation. Studies indicate that the leading cause of injury today for American women is the result of being beaten by a man.

According to Sen. William Cohen (R) of Maine, the sponsor of the congressional bill, each year in the US an estimated 4 million men kill or violently attack women they live with, date, or were formerly intimate with. "Women who seek protection," he said when the bill was passed, "often

See **STALKING** page 4

THE CHRISTIAN SCIENCE MONITOR

Tuesday, December 22, 1992

STALKING from page 1

face a judicial system that has traditionally viewed such violence as 'domestic disputes.'

Some argue that a pervasive male attitude that women should be subservient, and a judiciary inclined to see domestic violence not as a crime, but rather as a domestic issue, place many women in peril. Of all those women murdered by their ex-husbands or boyfriends, studies indicate that 90 percent had called the police at least once for protection, and more than half had called five times or more. The Federal Bureau of Investigation reports that 30 percent of female murder victims in 1990 were slain by husbands or boyfriends.

The congressional bill, signed by President Bush, directs the National Institute of Justice - a government criminal-justice research agency - to develop a statute against stalking that will be constitutional and based on recommendations from a number of law enforcement agencies and governmental public interest groups. Many law enforcement agencies could not take action against stalkers until now because they had not committed a crime.

The growing awareness of stalking as a crime is the product of recent, well-publicized deaths of several women. In suburban Boston, 21 year old Kristin Lardner was shot to death by her ex-boyfriend on the street recently. Last week, two more women were slain here by stalkers.

Earlier this year in Elmhurst, Ill., a couple was shot to death in their driveway by a man who had been stalking the woman.

In Maine, a man who has been in and out

of mental hospitals, and repeatedly violated restraining orders, has been stalking Kimberly Poland for eight years. He first saw her photo in a newspaper and continues to stalk her. (In most cases, the men do not have mental disorders.)

In Massachusetts, officials say at least 40 women have been killed this year because of domestic violence, with several deaths preceded by stalking. In Minnesota last year 26 women were killed in domestic violence in-

orders issued, more than a third had been violated in the first few days. Often the order triggers men to stalk and harass the women.

Michael Paymar, training coordinator with the Duluth, Minn., Domestic Abuse Intervention Project, says: "There are a certain percentage of men who are extremely afraid of the law."

A battered and frightened woman seeking to end such a relationship needs help and support. In Massachusetts, the legislature has earmarked funds for support necessitated by domestic violence.

"In the courts here where the greatest number of restraining orders are issued," Ms. Fine says, "we have a program to assist women and assess their level of risk. We can help them get to a shelter or figure out another safe plan for them and provide other kinds of services. But there are so many victims here, and nationally, too, that we are nowhere near where we should be in terms of services."

In Minnesota, Mr. Paymar says, "the state has committed a lot of money to shelters and legal advocacy for women." Transitional housing is provided to abused women. For some women a two-year program in an apartment style complex helps them reorient their lives. Duluth also has programs to try to reform perpetrators of violence.

Paymar says: "It has been sanctioned in society for a thousand years that a man has control over his woman... We confront those beliefs and ask him where does he get the right to do it? What do you want a woman in your life for? You are depersonalizing her, humiliating and injuring her, yet you say you love her. It doesn't make sense. We help them learn how to live differently."

States with 'Stalking' Laws

Stalking is typically defined as willful, malicious, and repeated following and harassing of another person.

Alabama	Iowa	Oklahoma
California	Kentucky	Rhode Island
Colorado	Louisiana	South Carolina
Connecticut	Massachusetts	South Dakota
Delaware	Mississippi	Tennessee
Florida	Nebraska	Utah
Hawaii	New York	Virginia
Kansas	North Carolina	Washington
Idaho	Ohio	West Virginia
Illinois		Wisconsin

Source: National Conference of State Legislatures

cidents. Half of the Minnesota women had sought help from the state. "Whenever the woman takes a step to end an abusive relationship," says Janet Fine, chief of the Victim Witness Service in the Suffolk County, Mass., district attorney's office, "she is potentially at greater risk."

Typically, after being regularly battered, a woman obtains a restraining order against her abuser and tries to separate herself from him. In Massachusetts since September, when a new state record-keeping system went into effect, of the 2,000 restraining

NOV 10 1992

Stalking Legislation Sweeps the Nation

Violent, harassing and threatening behaviors toward innocent citizens have always been a serious problem particularly for victims of domestic violence and sexual abuse. Yet it has taken a series of high profile cases during the last few years — often involving celebrity victims — to focus public attention on stalking as a serious crime problem.

While laws such as protective injunctions and stay-away orders do exist to protect victims from violent pursuers, law enforcement officers may not intervene until such orders have been violated. By then, it is usually too late to prevent the offenders from harming or even killing those whom such orders were designed to protect.

In recognition of the ineffectiveness of such orders and in response to a series of tragic crimes committed by perpetrators who stalked and harassed their victims before turning to violence, California passed the nation's first "stalking" law in 1990. In simple terms, the law makes it a crime to engage in a pattern of behavior that harasses and/or threatens other people. Its purposes are twofold: to eliminate behaviors which disrupt normal life for the victim, and to prevent such behaviors from escalating into violence.

In July 1991, the Center included the concept of stalking laws in its *Crime Victims and Corrections* training and technical assistance project sponsored by the U.S. Department of Justice Office for Victims for Crime. Two months later, Center staff appeared on NBC's *The Today Show* and *A Closer Look with Faith Daniels* to emphasize the importance of stalker laws. In September 1992, Center staff joined journalist Ted Koppel on ABC's *Nightline* to defend the constitutionality of such legislation.

California's landmark legislation has led to an unprecedented deluge of "anti-stalking" legislation nationwide. To date, twenty-seven states have passed laws based on the California model this year alone.

In most states, stalking is defined as the "willful, malicious and repeated following or harassing of another person, and requires the existence of a credible threat of violence." Penalties for violation vary; however, most carry a penalty of one year in jail and/or a \$1000 fine.

Senator Bill Cohen (R-ME) has introduced legislation which charges the National Institute of Justice with developing a model stalking law which should pass constitutional muster. This model would then be made available to state legislators.

In Los Angeles, stalking laws have led to the creation of the four-member *Threat Management Division* of the Los Angeles Police Department. In the last year and a half, the Division has handled more than 150 stalking cases. In other states, law enforcement officials are already making arrests under these newly passed statutes.

The National Victim Center has acted as an information clearinghouse regarding stalking laws. By providing interested legislators with information and technical assistance, and heightening public awareness through the media, the Center has assisted many states in drafting and passing anti-stalking laws. The Center intends to keep abreast of all aspects of this significant and expedient legislative trend.

For additional information, please contact the Center's Director of Public Affairs, David Beatty, at (703) 276-2880.

States With Anti-Stalking Laws

- California
- Colorado
- Connecticut
- Delaware
- Florida
- Idaho
- Iowa
- Illinois
- Hawaii
- Kentucky
- Louisiana
- Massachusetts
- Mississippi
- Nebraska
- New York
- North Carolina
- Ohio
- Oklahoma
- South Carolina
- South Dakota
- Tennessee
- Utah
- Virginia
- Washington
- West Virginia
- Wisconsin