

Appendix 3G

Training Memo—Law Enforcement Response to Stalking

What is stalking?

Stalking is a form of **repeated victimizing behavior** constituting a series of incidents rather than a single criminal act. It is defined in part by the fear it induces in the victim. Stalking can consist of both criminal and noncriminal behavior and any type of crime, from vandalism to homicide, could be part of a stalking case. Stalking laws criminalize noncriminal behavior, such as sending letters, making phone calls, and delivering flowers, if that behavior is part of a pattern that causes the victim to feel frightened, threatened, oppressed, persecuted, or intimidated.

In Minnesota, gross misdemeanor harassment/stalking requires that the defendant intended to injure the person, property, or rights of another and that the defendant followed, monitored, pursued, or returned to another's property without consent or the right to be there. It also includes repeated behaviors: making phone calls or causing the phone of another to ring repeatedly; mailing or delivering, including electronically, letters, packages, or other objects. The law requires that the defendant knows or has reason to know that the victim would feel frightened, threatened, oppressed, persecuted, or intimidated, and that the victim actually felt that way. There are certain additional factors that if present will result in an aggravated violation raising the crime to a felony level.¹ There is also a felony level crime of pattern of harassing conduct, which requires two or more criminal acts within a five year period against the victim or the victim's household and the defendant knowing or having reason to know that the victim would feel terrorized or fear bodily harm and the victim did in fact feel that way. *See* Minn. Stat. § 609.749.

Why is it important for law enforcement officers and investigators to recognize and be prepared to investigate stalking?²

Stalking signals danger and the combination of stalking and physical abuse is a higher indicator of lethality than either behavior alone.³ Of female stalking victims, 77% are stalked by a current or former intimate partner or acquaintance.⁴ The majority of stalking victims are also victims of physical abuse. Eighty-one percent of stalking victims who were stalked by a current or former intimate partner reported that they had also been physically assaulted by that partner.⁵ Domestic violence offenders are the most dangerous. They know the victim intimately—where she lives and works, where her parents live, where she takes her children to school—and they have a history of violence. They often feel entitled to track her down and punish her for leaving and may also believe

¹ Aggravating factors include but are not limited to falsely impersonating another or possessing a dangerous weapon at the time of the offense.

² Many of the suggested law enforcement techniques outlined here are adapted from *A Guide to Encourage Best Practices for Law Enforcement in Stalking Investigations*, New Mexico 2006.

³ Stalking: Prevalence, Lethality & Impact, Stalking Resource Center

⁴ Stalking: Creating a Coordinated Community Response, June 2007.

⁵ National Violence Against Women Survey, 1998

they are beyond the law. Seventy-six percent of females murdered by an intimate partner had been stalked by that offender at least once in the year prior to the murder.⁶

What challenges does stalking present to law enforcement?

Stalking cases can appear insignificant to the patrol officer at first because they often manifest as violations of protective orders or harassing phone calls which can be a low priority for response. Often nothing physically has happened yet to the victim. Viewed in isolation, individual stalking incidents often appear innocent, but once identified as part of a pattern of behavior of unwanted contact imposed on the victim by the perpetrator, the seriousness of the behavior becomes apparent. Critical first steps in any stalking investigation are to acknowledge the legitimacy of the victim's fear and recognize that stalking behavior can indeed be the precursor of significant violence.

Stalkers may commit criminal acts in multiple jurisdictions. The victim may live in one city, work in another county, attend school in a third location, and flee to a relative or friend's home because of the harassment. There can be different locations—and sometimes different victims' names on crime reports (e.g., when the friend's or relative's property is vandalized)—which all relate to acts committed by the same stalker, but are not being investigated by the same police officer or even the same department.

It is important to recognize that the law enforcement agency in any jurisdiction where an act of stalking has occurred can exercise jurisdiction over the entire case. Sharing reports, records, and evidence is vital to the successful recognition and pursuit of stalking cases. Evidence collection is essential to the corroboration of the stalking conduct. The investigator needs to learn as much as possible about the stalker's method of operation in order to assess the potential threat posed by the suspect and to provide a solid foundation for successful prosecution.

What is involved in recognizing and investigating stalking?

Law enforcement should consider the possibility of stalking anytime there is a report of harassing behavior, repeated phone calls, violations of orders for protection or harassment restraining orders, following the victim, or appearing at the victim's home, work or school. Inquiring about and paying attention to specific patterns of behavior and risk factors will help law enforcement recognize stalking, contribute to the victim's safety planning, and refer the victim to the Saint Paul Intervention Project for advocacy and services. The following chart includes a list of common stalking and harassing behaviors alongside factors which can signal increased risk of harm or lethality.

⁶ McFarlane, et al., *Stalking and Intimate Femicide*, 1999.

Attention to Stalking and Related Risk**Behaviors that may signal stalking**

- ✓ Assaults
- ✓ Violations of protective orders
- ✓ Threats
- ✓ Following or spying on victim
- ✓ Driving by the victim's residence
- ✓ Appearing at a victim's home, workplace, or school
- ✓ Entering victim's home
- ✓ Leaving or delivering items (e.g., flowers, letters)
- ✓ Delivering items meant to cause fear (e.g., dead animals)
- ✓ Injuring or killing pets
- ✓ Annoying or threatening hang-up phone calls, e-mails, or text messages
- ✓ Disabling or tapping the victim's phone
- ✓ Audio- or videotaping the victim without the victim's knowledge
- ✓ Photographing the victim or victim's acquaintances
- ✓ Intercepting mail
- ✓ Ordering products or subscriptions in the victim's name
- ✓ Attempting to obtain information about the victim from others
- ✓ Spreading false rumors or allegations about the victim
- ✓ Vandalizing the victim's property
- ✓ Disabling the victim's vehicle
- ✓ Installing a GPS device on the victim's vehicle

Factors which suggest high risk to a victim

- ✓ Past or present threats to kill this victim or other victims
- ✓ Past incidents of violence against this victim and/or others
- ✓ Use or possession of weapons such as guns, knives, or other potentially lethal weapons
- ✓ High degree of obsession, possessiveness, and/or jealousy regarding the victim
- ✓ Violations of a restraining order with demonstration of little concern for the consequences of arrest and jail time
- ✓ Present or past threats of suicide
- ✓ Access to the victim and/or the victim's family.
- ✓ Hostage-taking
- ✓ Depression or other indications of the stalker's mental illness
- ✓ Stalker's abuse of drugs or alcohol
- ✓ History of prior stalking of this victim or other victims

Patrol Officer and Investigator Roles

A patrol officer's initial investigation helps flag a possible stalking case for follow-up and is an opportunity to collect evidence that might subsequently be unavailable and refer the victim to assistance with safety planning. An investigator probes further, establishes the patterns of stalking behavior in more detail, identifies and collects additional evidence, and contributes to overall safety planning.

Patrol Officers

- Be alert to behaviors that signal stalking.
- As time and resources allow, conduct a preliminary interview of the victim and ask about:
 - Suspect's specific threats to kill or commit suicide
 - Whether the victim believes the suspect has the will and capacity to carry out the threats
 - Any pattern of pursuit or monitoring the victim's whereabouts
 - Any unwanted gifts or written communication
 - Invasions of privacy
 - Information about and knowledge of the victim's daily routines
 - Suspect's access to or fascination with weapons
 - Suspect's history of chemical abuse or mental illness
 - Victim's level of fear
 - Upcoming dates of significance, e.g., anniversaries, court dates, birthdays
 - Impact of stalking behavior on the victim, including whether the victim has:
 - Moved, changed jobs, or changed phone numbers
 - Told friends, family members, or coworkers about the suspect's behavior
 - Stopped visiting places previously frequented
 - Changed driving routes, work schedules, or shopping patterns
 - Attended self-defense classes or purchased pepper spray, alarms systems, or other products to enhance personal safety
 - Purchased a firearm
 - Experienced changes in eating or sleeping habits
- Encourage the victim to document incidents and their effect in a stalking/harassment log.
- Advise the victim to keep all voice mails, e-mails, text messages, letters, and objects from the suspect.
- Encourage the victim to contact a domestic violence advocacy program for assistance in developing a safety plan.

Investigators

The investigator's role is to assemble as complete a picture and understanding of the stalking behavior as possible and the threat presented by that behavior. Sources of information can include patrol officers' reports, interviews with the victim or victims, evidence collected from the victim or at the scene, criminal history records, protection or restraining order records, evidence obtained via a search warrant, and contacts with other jurisdictions.

☐ Threat assessment: basic questions

- Does the victim believe the threat?
This is important information, even if the victim dismisses the danger she or he might face.
- Was the threat made in the presence of other people? In writing? In a recorded telephone conversation?
Willingness to leave evidence or an attitude of "I don't care who knows" may indicate increased danger.
- Is the threat detailed and specific?
Evaluate threats in stalking similar to evaluating a potential suicide: the more thought that has gone into the plan, evidenced by the amount and specificity of the detail, the more likely it will be carried out. A statement such as, "I'm going to kill you," is cause for concern. A statement such as, "Tonight I'm going to rape and strangle you and no one will ever find your body," is cause for even greater alarm.
- Is the threatened act consistent with the suspect's past behavior?
- Does the suspect have the means to carry out the threatened act?
- Has there been any "rehearsal" of the threatened act?
This can be verbal run-through (e.g., "let me tell you what I'm going to do") or partial reenactment (e.g., showing someone the intended weapon or the intended site for the murder or burial).
- Does the threat extend to others, such as children, family members, police, or a new partner?
Fear of harm to others may restrict a victim's willingness to resist the suspect's demands and/or to follow through with police and the courts.
- Does the threat involve murder, suicide, or both?
A substantial percentage of domestic homicides are multiple-victim killings, murder-suicides, or murder-suicide attempts.
- How many times has a protection or restraining order been issued against the suspect? How many times has the suspect violated a protection or restraining order?

☐ Threat assessment: firearms and other weapons

Weapons include firearms and other dangerous weapons such as compound bows, swords, large hunting knives, or martial arts weapons

- Does the suspect have access to weapons? Does the suspect keep weapons in more than one place?
- Does the suspect have access to weapons owned by others? Is he or she trained in the use of those weapons?

- Is having and being willing to use weapons part of the suspect's self-image? This is particularly important to determine when the suspect is employed by or affiliated with law enforcement, corrections, the military, or the criminal justice system.
- Has the suspect's past violence involved the display, use, or threatened use of firearms or other weapons?
- Does the victim possess weapons? What kind? Is the victim trained in their use?
- Threat assessment: escalation of stalking behaviors
 - Does the suspect enlist others in monitoring the victim's behavior? Others could include the suspect's friends, family, coworkers, and cell mates; also, the victim's friends, family, and coworkers.
 - Has the suspect contacted or threatened the victim's friends, relatives, or coworkers?
 - Has the suspect followed, spied on, staked out, or otherwise monitored the victim?
 - Has the suspect made unwanted attempts to communicate by mail, e-mail, text messages, telephone, or through third parties? These communications do not have to be threats. They can include sending flowers, gifts, or messages of apology or reconciliation, such as "can you ever forgive me; let's work it out together." They can include messages carried by or involving children that the suspect and victim have in common, such as "you know the children miss me" or "I want us to be a family again."
- Collaborate with the victim to gather evidence and support safety
 - Review evidence collected by patrol officers; obtain any additional tangible items of evidence from the victim that supports the claim of stalking behavior.
 - Letters or notes written by the suspect to the victim
Keep latent print and DNA possibilities in mind when handling these items.
 - Objects sent to or left for the victim, including gifts or flowers
 - Answering machine tapes, voice mail, or other forms of recorded phone messages. Document time and date; make a recording of these messages to document content and tone of communication.
 - Text messages and e-mails
 - Telephone call trace or phone trap information from the telephone company (e.g., Call Trace/Caller ID/*57 records for the victim's phone)
 - Entries in a log/journal/diary kept by the victim which shows any dates, times, and locations of suspect encounters and the nature of the encounter
 - Encourage the victim to contact you or other investigative officers with any new information, evidence, or additional contacts involving the suspect.
 - Encourage the victim to document future contact from the offender by using a contact log, or retaining answering machine, voice mail, e-mail, and text messages.
 - Inquire whether the victim has changed her or his life as a result of the suspect's actions.

- Encourage the victim to keep a journal of how the stalking has affected her/his life and well-being (e.g., loss of sleep or appetite, missed work, need to seek counseling, security and safety measures, feelings or thoughts of fear or dread) in order to help establish the fear, intimidation, and persecution elements of the crime. NOTE: Inform the victim that the suspect/defendant will have the right to review the journal during the prosecution process.
- Encourage the victim and others documenting contacts or collecting evidence to protect evidence collected from theft or destruction by the suspected offender.
- Establish, review, and revise safety plans and response strategies as needed to provide optimal protection.

Safety Planning and Strategies for Victims of Stalking

- ✓ On each subsequent law enforcement contact with the victim, assess the likelihood of continued violence by the suspect toward the victim or others.
 - ✓ Re-evaluate risk as the circumstances of the case change.
 - ✓ Encourage the victim to inform neighbors, family members, co-workers, and friends of the situation and provide them with a description of the suspect and/or suspect's car so that they can warn the victim and/or the authorities if the suspect appears.
 - ✓ Encourage the victim to discourage any third party from intervening with the offender (other than in situations of assisting in self-defense) without the knowledge and assent of the law enforcement and victim service professionals involved with the case.
 - ✓ Consider providing the victim with a home safety or welfare check.
 - ✓ Suggest measures to increase security (e.g., locks and lighting, home security systems with panic buttons, emergency cell phone, reduce obstacles around the residence that might provide cover for an intruder).
 - ✓ Identify measures that will help the victim avoid face-to-face contact with the suspect (e.g., vary daily routines, routes traveled, and shopping locations; avoid making predictable appointments; arrange for escorts when in public, at work, or outside the immediate residence.)
 - ✓ Where the suspect has visitation rights to children in common, if possible arrange for supervised visitation or a transfer of the children through other third parties to avoid face-to-face confrontation.
 - ✓ Encourage the victim to call law enforcement immediately if the suspect violates any existing court orders including, OFPs, HROs and DANCOS.
- Thorough evidence-gathering

According to the circumstances of the stalking case, review and consider all possible sources of evidence, in addition to that provided directly by the victim.

- Consider a search warrant for suspect's residence, vehicle, and workplace. Be alert for:
 - Photographs of the victim
 - Photographs, diagrams, or drawings of the victim's home or workplace
 - Writings, journals, logs, or diaries kept by the suspect

- Personal items belonging to the victim
- Video or cassette tapes that might have information, such as surveillance footage
- Books describing stalking techniques or having a subject matter dealing with stalking, harassment, or violence
- Keys that fit the victim's house or vehicle
- Equipment that appears to have been used to stalk the victim, such as cameras, binoculars, video recorders, computers, fax machines
- Collect videotape surveillance or still photography of the offender generated by law enforcement officers.
- Collect security video (from grocery stores, banks, parking lot/workplace security cameras) that is evidence of the suspect stalking the victim.
- Obtain the suspect's telephone records; consider seizing the suspect's cellular phone.
- Obtain certified copies of police reports from other jurisdictions; convictions sheets; all prior NCOs, OFPs and HROs, including affidavits
- Evidence gathering in cases of cyberstalking:
 - Retain all e-mail or other electronic messages which target the victim.
 - Work with Internet service providers to trace the source of such communications to the suspect.
 - Consider contacting allied law enforcement officials with expertise in computer forensics to assist with the investigation.
 - Look for hard copies of any communications, pictures, or prints that the suspect may have sent to the victim.
 - Consider search warrants for seizing computer equipment used by the suspect at home and at work.
- If not already completed by patrol officers, photograph any items vandalized, damaged, rearranged, altered, or written on.
- Check for fingerprints or DNA on vandalized items or other objects sent to or left for the victim.
- Ask the victim to contact the phone company to have a phone trap installed.
- Interview witnesses to the harassment or stalking. Often friends, family members, coworkers, employees, employers, or neighbors have information regarding the suspect's behavior.
- Research the suspect's whereabouts during the times of alleged acts to deter alibi defenses.
- If there is a serious risk of harm to the victim, consider surveillance of the suspect. This may be particularly useful in a case where there appears to be a specific pattern to the suspect's conduct.

- Identify and obtain statements from any additional witnesses not interviewed at the scene and collect all pertinent information.
- Based on information gathered during the investigation, identify and contact other potential victims of the suspect (e.g., previous partners of the stalking suspect).
- Suspect interview
 - Conduct a non-custodial interview with the suspect once the investigation and background research on the suspect is complete in order to fully address and assess any issues and/or responses the suspect may offer. The objectives in conducting a suspect interview are to:
 1. Determine criminal activity.
 2. Determine the suspect's current state of mind.
 3. Attempt to assess the threat posed by the suspect.
 - **Always take precautions, including safety planning with the victim, whenever a suspect interview is conducted.** In some cases interviewing the suspect may serve to intensify the offender's interest in the victim and provoke more extreme action.
 - Record the interview on audio or videotape.
 - Research the suspect's background in advance of the interview, if possible, with attention to criminal history via state and local database checks; and interviews with those that may provide relevant information about the suspect, such as family, friends, employers, and school officials.
 - Use two investigators to interview any stalking suspect and be aware of officer safety.
 - Begin the interview using an objective approach (i.e., non-accusatory questions, non-judgmental responses to the suspect's answers) to encourage as much voluntary information as possible regarding the suspect's conduct toward the victim.
 - Obtain as many details as possible and thoroughly document the interview.
 - Provide the suspect a chance to view his or her actions and intentions as misunderstood by the victim and others.
 - Question the suspect about other potential victims or crimes.
 - Encourage the suspect to change his or her behavior. Advise the suspect that the behavior is unwanted, unacceptable, and must stop immediately.
- Supervisory oversight
 - Review incident reports and investigator files to ensure that thorough investigation procedures are being followed in potential stalking cases.
 - Determine and identify the need for additional officer training or supervision.
 - Review case classification practices and procedures to ensure that stalking cases are being properly classified.
 - Provide a method to track cases that are initially charged or filed as stalking cases, regardless of how they may later be reclassified as the result of a plea or recharging decisions.