

# Calhoun County Domestic Violence Coordinating Council

## Investigation of Stalking Cases



## A Protocol for Calhoun County Law Enforcement Officers

### Acknowledgments

The Accountability Committee of the Calhoun County Domestic Violence Coordinating Council adapted this protocol from "Investigation of Stalking Cases - A Model Protocol for Maryland Law Enforcement Officers".

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## **Purpose**

Having to “strike a balance” demonstrates that stalking is “not just a criminal justice problem,” it is one that must be addressed through a multi-disciplinary approach. It must be a coordinated response from law enforcement, prosecutors, parole and probation officers, advocates and mental health professionals. Striking a balance, effectively confronting the behavior and responsibly providing for victim safety involves a true coordinated community response. Striking a balance means assessing the threat level, considering intervention and investigation strategies, gathering evidence, and intervening on a victim’s behalf.

While the purpose of this protocol is intended specifically to aid the law enforcement officer, it should be clear that investigating and managing a stalking case takes a larger community approach to succeed. We urge law enforcement officers to actively involve other members of the system and the community who might be considered to be a part of a coordinated community response approach, and to encourage those segments of the community to adopt their own complementary protocols.

## **I. Introduction**

We offer this protocol to the law enforcement community as a means of more readily recognizing stalking, more effectively managing the investigation, providing for victim safety, and collaborating with others in the criminal justice system and service providers, to ensure that justice is served and victims are once again made to feel secure. Over one million women and 350,000 men are stalked every year in the United States. In fact, 78% of stalking victims are women, and 59% of them are stalked by their partners. In addition, 1 woman in 12 will be a stalking victim during her lifetime.<sup>1</sup>

Stalking is a behavior in which criminal justice professionals and service providers must work together to prevent stalking from escalating and to protect the victim from serious injury or death. There is no limit to what stalkers will do next or how far they will go. In some instances, stalkers limit harassment to annoying phone calls and letters, but other cases can escalate to assault or homicide.<sup>2</sup>

The crime of stalking affords the investigator and other responders an opportunity to be proactive by permitting the investigator and other responders to manage the case, educate and support the victim, assess the stalker, and work as a team.<sup>3</sup>

Stalking can be a difficult crime for the criminal justice system to track. Complete and thorough documentation by the victim and the investigator is essential to the prosecution of the stalking case.

## **II. Stalking and the Law**

### **A. Stalking**

#### **§750.411h. Stalking, Sec. 411h.**

(1) As used in this section:

- (a) "Course of conduct" means a pattern of conduct composed of a series of 2 or more separate non-continuous acts evidencing a continuity of purpose.
- (b) "Emotional distress" means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.
- (c) "Harassment" means conduct directed toward a victim that includes, but is not limited to, repeated or continuing un-consented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.
- (d) "Stalking" means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(e) "Un-consented contact" means any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Un-consented contact includes, but is not limited to, any of the following:

(i) Following or appearing within the sight of that individual.

(ii) Approaching or confronting that individual in a public place or on private property.

(iii) Appearing at that individual's workplace or residence.

(iv) Entering onto or remaining on property owned, leased, or occupied by that individual.

(v) Contacting that individual by telephone.

(vi) Sending mail or electronic communications to that individual.

(vii) Placing an object on, or delivering an object to, property owned, leased, or occupied by that individual.

(f) "Victim" means an individual who is the target of a willful course of conduct involving repeated or continuing harassment.

(2) An individual who engages in stalking is guilty of a crime as follows:

(a) Except as provided in subdivision (b), a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(3) The court may place an individual convicted of violating this section on probation for a term of not more than 5 years. If a term of probation is ordered, the court may, in addition to any other lawful condition of probation, order the defendant to do any of the following:

(a) Refrain from stalking any individual during the term of probation.

(b) Refrain from having any contact with the victim of the offense.

(c) Be evaluated to determine the need for psychiatric, psychological, or social counseling and if, determined appropriate by the court, to receive psychiatric, psychological, or social counseling at his or her own expense.

(4) In a prosecution for a violation of this section, evidence that the defendant continued to engage in a course of conduct involving repeated un-consented contact with the victim after having been requested by the victim to discontinue the same or a different form of un-consented contact, and to refrain from any further un-consented contact with the victim, gives rise to a rebuttable presumption that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(5) A criminal penalty provided for under this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct or for any contempt of court arising from the same conduct. (Chgd. by 1997 PA 65, eff. 3/31/98.)

## **B. Aggravated Stalking**

### **§750.411i. Aggravated stalking, Sec. 411i.**

- (1) All the definitions used for Stalking apply to Aggravated Stalking as well.
- (2) An individual who engages in stalking is guilty of aggravated stalking if the violation involves any of the following circumstances:
  - (a) At least 1 of the actions constituting the offense is in violation of a restraining order and the individual has received actual notice of that restraining order or at least 1 of the actions is in violation of an injunction or preliminary injunction.
  - (b) At least 1 of the actions constituting the offense is in violation of a condition of probation, a condition of parole, a condition of pretrial release, or a condition of release on bond pending appeal.
  - (c) The course of conduct includes the making of 1 or more credible threats against the victim, a member of the victim's family, or another individual living in the same household as the victim.
  - (d) The individual has been previously convicted of a violation of this section or section 411h.
- (3) Aggravated stalking is a felony punishable as follows:
  - (a) Except as provided in subdivision (b), by imprisonment for not more than 5 years or a fine of not more than \$10,000.00, or both.
  - (b) If the victim was less than 18 years of age at any time during the individual's course of conduct and the individual is 5 or more years older than the victim, by imprisonment for not more than 10 years or a fine of not more than \$15,000.00, or both.
- (4) The court may place an individual convicted of violating this section on probation for any term of years, but not less than 5 years. If a term of probation is ordered, the court may, in addition to any other lawful condition of probation, order the defendant to do any of the following:
  - (a) Refrain from stalking any individual during the term of probation.
  - (b) Refrain from any contact with the victim of the offense.
  - (c) Be evaluated to determine the need for psychiatric, psychological, or social counseling and, if determined appropriate by the court, to receive psychiatric, psychological, or social counseling at his or her own expense.

(5) In a prosecution for a violation of this section, evidence that the defendant continued to engage in a course of conduct involving repeated un-consented contact with the victim after having been requested by the victim to discontinue the same or a different form of un-consented contact, and to refrain from any further un-consented contact with the victim, gives rise to a rebuttable presumption that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(6) A criminal penalty provided for under this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct or for contempt of court arising from the same conduct. (Chgd. by 1997 PA 65, eff. 3/31/98.)

### **III. Profile of a Stalker**

#### **A. Definitions**

Nationally, stalking generally refers to harassing or threatening behavior that 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. These acts may be accompanied by a credible threat of serious bodily harm, and they may be precursors to an assault or murder.<sup>4</sup>

#### **B. Characteristics of the Stalker**

It should be realized that on one end of the spectrum some stalkers will never do anything more than repeat hang-up phone calls to see if their object of attention is home or not. While at the other end others will kill.<sup>5</sup> Sometimes stalkers are prior intimate partners; yet often they only desire a relationship with a non-intimate, who can be an acquaintance, classmate, or coworker.

Generally stalkers share the following characteristics:

- 1. They are obsessed, tending to constantly think and or fantasize about their victims. These fantasies may be love oriented or angry and vengeful.**
- 2. They tend to have been rejected, with a history of failed relationships.**
- 3. They tend to be intelligent, making up for what they lack in social skills with their ability to carefully plan stalking behaviors.**
- 4. They can be male or female, with females having the ability to be just as notorious as males.**
- 5. They are often motivated by feelings that the victim is "the only one" they can ever love, or desire for revenge against someone who is perceived as having "wronged" them.<sup>6</sup>**

*Note: The difference between stalking and other crimes is that stalking is what the stalker does to make their victim afraid that he/she will commit other crimes.<sup>7</sup>*

## C. Types of Stalkers

### 1. Acquaintance Stalking

The stalker and victim may know each other casually, either through formal or informal contact. For example, they may be co-workers, neighbors, or they may have dated once or twice but were not sexual partners.

### 2. Stranger Stalking

The stalker and victim do not know each other at all. Cases involving celebrities and other prominent figures fall in this category.

### 3. Intimate Stalkers

The stalker and victim may be married or divorced, current or former cohabitants, serious or casual sexual partners, or former sexual partners. A history of domestic violence may exist.<sup>8</sup>

The intimate stalker is typically known as the person who “just can’t let go”. They are most often men who refuse to believe that a relationship has really ended. Often others, including the victim, feel sorry for them, although they shouldn’t. Studies show that the vast majority of these stalkers are not sympathetic, lonely people who are still helplessly in love, but were in fact emotionally abusive and controlling during the relationship.<sup>9</sup> Many have criminal histories unrelated to stalking. Well over half of stalkers (59%) fall into this “former intimate partner” category.<sup>10</sup> In these types of cases, the victim may unwittingly encourage the stalker by trying to “let him down easy” or agreeing to talk to him “just one more time”. **What victims need to understand is that there is no reasoning with stalkers.**<sup>11</sup>

When the victim says, “I don’t want a relationship now,” the stalker hears, “she’ll want me again tomorrow.” When the victim says, “I just need some space,” the stalker hears, “If I just let her go out with her friends, she’ll come back.” When the victim says, “It’s just not working out,” the stalker hears, “we can make it work out.”<sup>12</sup> In other words, the only thing to say to the stalker is “no”. No explanations, no time limits, no negotiation. A victim should say “no” once and only once and then never say it again.<sup>13</sup>

If stalkers can’t have a victim’s love, they will take their victim’s hatred or fear. The worst thing in the world for the stalker is to be ignored. Just as little children, if they are not getting the attention they want, they will act out and misbehave because **even negative attention is better than none at all.**<sup>14</sup>

### 4. Delusional Stalkers

These stalkers frequently have little, if any, contact with their victims. They may have a major mental illness such as schizophrenia, manic depression or erotomania. What they all have in common is some false belief that keeps them tied to their victims. In erotomania, the stalker’s delusional belief is that the victim loves them. This type of stalker actually believes that he is having a relationship with his victim, even though they might never have met.<sup>15</sup> Examples include the woman who stalked David Letterman, the stalker who killed actress Rebecca Schaeffer, and the man who stalked Madonna.<sup>16</sup> Another type of delusional stalker might believe that he is destined to be with someone, and that if he only pursues her hard enough and long enough, she will come to love him as he loves her.<sup>17</sup> These stalkers know they are not having a relationship with their victims, but firmly believe that they will some day. John Hinckley Jr.’s, obsession with Jodie Foster is a prime example.<sup>18</sup>



**The typical profile of this type of stalker is that of:**

- (a) An unmarried and socially immature loner**
- (b) Who is unable to establish or sustain a close relationship with others**
- (c) Who rarely dates, and**
- (d) Who has had few if any sexual relationships.<sup>19</sup>**

The delusional stalker is both threatened by and yearning for closeness and therefore apt to pick victims who are unattainable in some way. Perhaps the victim is married, or has been the stalker's therapist, clergyman, doctor, or teacher. Those in the helping professions are particularly vulnerable to delusional stalkers because for someone who already has difficulty separating reality from fantasy, the kindness shown by the soon-to-be victim, the only person who has ever treated the stalker with warmth is blown out of proportion into delusional intimacy. What these stalkers cannot attain in reality is achieved through fantasy, and it is for this reason that the delusion seems to be so difficult to relinquish.<sup>20</sup>

Delusional stalkers have almost always come from a background that was either emotionally barren or severely abusive. They grow up having a very poor sense of their own identities. This coupled with a predisposition toward psychosis leads them to strive for satisfaction through another, yearning to merge with someone who is almost always perceived to be of a higher status.<sup>21</sup>

### **5. Vengeful Stalkers**

Vengeful stalkers are not lovelorn. They become angry with their victims over some slight, real or imagined issues. Politicians are often targets of this stalker who has become angry over some piece of legislation or program the official sponsors. Disgruntled ex-employees are also a part of this group. They target their former bosses, co-workers, and/or their entire company.<sup>22</sup> Some of these angry stalkers are psychopaths, i.e., people without a conscience or remorse. Some are delusional (most often paranoid), and believe that they in fact are the victims. They stalk to get even.<sup>23</sup>

## **IV. Early Recognition and Threat Assessment**

### **A. Methods of Identification**

#### **1. Early and Swift Recognition**

Early and swift recognition of potential stalking cases is critical to aid in protecting the victim's safety. While not all cases can be referred or readily identified through standard means or channels, investigators need to develop ways to identify cases. In their report on Threat Assessment, Fein, Vossekuil and Holden observe:

*“Increasingly, Americans have been confronted with such incidents of targeted violence, both actual and/or threatened. Behaviors characterized as ‘stalking’, workplace violence, and attacks on public figures and officials are frequently reported to the media. Often the perpetrators of these attacks are subsequently found to have given advance notice of their violent inclinations.”*

***Early recognition can be achieved by:***

- (1) Regular review of patrol activities;

- (2) Daily review of patrol contact records;
- (3) Outreach to victims through web sites, educational videos, public forums, printed and other materials about stalking. The purpose is to educate potential victims to report suspicious behaviors or potential stalker activities;
- (4) In service training of all department personnel in identifying stalking behaviors.

## **2. Continuing Training and Collaboration**

Investigators and crime analysis personnel should be educated to recognize potential stalking cases. For example, a prowler call may be more than a peeping tom or an attempted burglary. Personnel should be trained to inquire if there is a person residing in the area of the reported case who has a protective order in place. In this example, while the victim may be unaware of the activity, the assigned personnel can investigate whether the possibility exists that the prowler is stalking the victim.

In agencies where there is a section designated to investigate these offenses, i.e., anti-stalking unit, domestic violence unit, etc., members should meet frequently internally and with collaborating agencies and units to enhance early recognition and assessment of stalking cases.

## **B. Threat Assessment Model**

### **1. Determining Violence Potential**

- (a) Is the suspect thinking about violence?
- (b) Is the suspect engaging in planning behavior?
- (c) Is the suspect taking logical steps toward the execution of a plan, such as acquiring a weapon or ammunition?

### **2. Threat Assessment in Stalking Cases**

#### **Questions to Ask**

- (a) What motivated the subject to make the statement or take the action that caused him/her to come to attention?
- (b) What, if anything, has the subject communicated to someone else (victim, law enforcement, family, friends, colleagues, associates) or written in a diary or journal concerning his or her intentions?
- (c) Has the subject shown an interest in any of the following?
  - (1) Assassins or assassination
  - (2) Weapons (including the recent acquisition of a weapon)
  - (3) Militant or radical ideas/groups
  - (4) Murder, murderers, mass murders, workplace violence and stalking incidents.
- (d) Is there evidence that the subject has engaged in menacing, harassing, and/or stalking type behaviors? Has the subject engaged in attack related behaviors? These behaviors combine an inappropriate interest in the following:

- (1) Developing an attack idea or plan
- (2) Approaching, visiting, and/ or following the victim
- (3) Approaching, visiting, and/ or following the victim with a weapon.

(e) Does the subject have a history of mental illness involving command hallucinations, delusional ideas, feelings of persecution or rejection, etc., with indications that the subject has acted on those beliefs?

(f) How organized is the subject? Does the subject have the ability to plan and execute a violent action against the victim?

(g) Is there evidence that the subject is experiencing desperation and/or despair? Has the subject experienced a recent personal loss and/or loss of status? Is the subject now, or has the subject ever been, suicidal?

(h) Is the subject's "story" consistent with his or her actions?

(i) Are those who know the subject concerned that he or she might take action based upon inappropriate ideas?

(j) What factors in the subject's life and/or environment might increase or decrease the likelihood that the subject will attempt to attack a victim or victims?

### **3. Clarification of Stalker's Motives and Interests**

In addition an investigator should address troubling or unresolved issues about a particular case, which could include missing information or new information that might clarify the subject's motives and interests. It is vital that the investigator learn as much as possible about the potential stalker and their method of operation. The investigator must assess the potential threat posed by a suspect. Information that needs to be documented includes:

- (a) Any prior threats made
- (b) Any actual pursuit of the victim
- (c) Any history of violence against the victim or others
- (d) Any information regarding the suspects' tendency toward emotional outbursts of rage
- (e) Prior history of mental illness
- (f) Substance abuse problems
- (g) Possession or knowledge of or fascination with weapons
- (h) Any history of Personal Protective Order/PA 53 violations or conditions of bond or probation order
- (i) Subject's prior criminal history and/or prior contacts with law enforcement

### **4. Consultation with Other Professionals**

Investigators should consult with other professionals before drawing conclusions about whether a subject poses a threat to someone. Another investigator with intelligence experience is often the

most effective consultant. However, people with special expertise that might pertain to the facts of a given case can often offer a useful perspective.

## 5. Documentation

Documenting and keeping a record of the information gathered and evaluated in a stalking investigation is vital. A well-documented record permits others to review the case and offer assistance, and shows that the investigation was performed with care and attention. Also, a carefully documented case file provides baseline information about a subject's thinking and actions at a certain point in time, which can be invaluable if the subject is investigated again or if future investigators need to determine whether the subject has changed thought or behavior patterns.<sup>24</sup>

# V. Investigating the Stalking Case

## A. Preliminary Investigation

1. The first item of business for the police officer in a possible stalking investigation is to determine whether:

- (a) A criminal stalking event has actually occurred, or
- (b) The incident might be a precursor to a stalking case, or
- (c) The incident is a continuation of prior occurrences that amount to a stalking situation.

2. Secondly, the officer must identify the stalker. In the vast majority of cases, the stalker will be known to the victim as an ex-spouse, ex-intimate, co-worker, former friend, or acquaintance. In a few cases, the stalker may be a stranger to the victim.

3. It is always helpful in any preliminary investigation to fall back on police fundamentals and steer questions and the line of inquiry in an effort to answer the six primary interrogatories, e.g.:

- (a) **What** happened? Establish the crime.
- (b) **Who** did it? **Who** saw it? Identify the suspect. Identify the witnesses
- (c) **When** did it occur? Pinpoint the time.
- (d) **Where** did it happen? Locate the crime scene.
- (e) **Why** did it occur? Determine the motive.
- (f) **How** did it occur? Examine the method.
- (g) **How** did it make you feel?

4. Any time a complainant reports any type of "harassing" behavior, the responding officer should be thinking about the possibility of stalking. The officer should focus further questioning to determine if this is an isolated incident or repetitious, on-going conduct.

**5. It is not uncommon for a victim to tolerate harassing behavior for some time before reporting it to the police.** Therefore, whenever a report is made concerning this kind of harassment, the officer should consider the possibility of a stalking offense.<sup>25</sup>

6. There are two parts to any stalking preliminary investigation: the assessment phase and the corroboration phase.<sup>26</sup> In the assessment phase the officer should learn as much as possible

about the stalker and his/her method of operation. In the corroboration phase the officer should gather physical and witness-related evidence.

## **B. Assessing the Complaint**

In the assessment phase of the preliminary investigation, the officer (and the follow-up investigator) should attempt to learn as much as possible about the stalker suspect.

*The following information is relevant and should be considered and recorded:*<sup>27</sup>

- (1) Personal data (name, address, DOB, prior criminal record, etc.)
- (2) Prior threats or violence with the complainant or any prior victims
- (3) Any prior stalking behaviors
- (4) Criminal history and check on any outstanding warrants
- (5) Mental illness or mental instability history
- (6) Drug or alcohol abuse
- (7) Access to or possession of firearms
- (8) Any homicidal or suicidal tendencies
- (9) Presence of any social inhibitors, i.e., any factors that might inhibit the suspect from engaging in violent behavior, such as family, social position, job, etc.
- (10) Proximity to any significant dates, such as anniversaries, birthdays, relationship break-ups, court hearings, etc.

### **Best Practice**

**This should be common police practice, but it bears repeating: In any criminal inquiry, always obtain LEIN/NCIC checks on any suspects.**

*Once a stalking offense occurrence has been confirmed (or at least strongly suspected), the officer should query the complainant/victim regarding the following specifics:*<sup>28</sup>

- (1) What other suspicious or related incidents or activities have occurred?
- (2) Were police reports made on these prior incidents?
- (3) If police reports were filed, what is the name of the agency and the complaint number(s)?
- (4) What is the approximate length of time the suspect has been directing his or her activities toward the victim?
- (5) Who else has the suspect acted out against-victim's family, their friends, their co-workers, or even any other victims, if known?
- (6) Is there a personal protective order, condition of bond, PA53 and/or probation order in place against the suspect?
- (7) Has the suspect ever violated any personal protective order, condition of bond, PA53 and/or probation order in the past? If so, how, and was the violation reported to the police or the courts?
- (8) Did the suspect ever act violently toward the victim? If so, did the victim report it to the police or take any official action?

(9) Has the suspect ever threatened the victim? If so, what exactly was said?

(10) Is the victim afraid of the suspect? Do the victim's family, friends, and colleagues share that degree of fear?

(11) How has the victim reacted to these harassment activities? Has she moved, changed phone numbers, taken self-defense courses, obtained a personal protective order, applied for a handgun permit, carried pepper spray, etc? Again, this is important, and the officer should obtain specifics since the victim's state of mind is an important component in proving a stalking case in court.

### **Best Practice**

**If the victim is genuinely in fear of the suspect, this is an important element in sustaining probable cause for an arrest and a later conviction for stalking. Make sure you include in your report(s) any victim's statement of fear of bodily harm to herself or to another person. Take the time to write it out and add any supporting observations made by yourself or any other witnesses.**

(12) Has the victim done safety planning with SAFE Place, or anyone else? (*Note: Safety planning is discussed later in this protocol.*)

(13) Document the complaint thoroughly and do a quality, comprehensive preliminary investigation.

***The following data is important to try to ascertain how much the suspect actually knows about the victim and the degree of their relationship, if any by asking the following questions.<sup>29</sup>***

(1) What relationship is the victim to the stalker? How well known is the victim to the suspect? Does the suspect have any knowledge regarding the victim's home address, job or workplace, personal lifestyle, or daily routine?

(2) Is the victim vulnerable to attack? Does the victim have sufficient resources to arrange for adequate physical security? What possible change in the victim's lifestyle could make an attack by the suspect less likely or more difficult?

(3) Assess the victim's risk awareness and their understanding of the need for caution. How able and willing is the victim to articulate a clear and consistent "I want no contact with you" message to the suspect?

## **C. Corroborating the Complaint**

The next step, just as with any other criminal investigation, is to look for evidence and witnesses.

***For physical evidence, look and ask for the following:<sup>30</sup>***

(1) Any taped telephone messages from the suspect;

(2) Any paper copies of E-mail messages or correspondence (letters, cards, or notes) left by or sent from the suspect;

(3) Any objects given to the victim or left for the victim by the suspect;

(4) Photograph any evidentiary items vandalized, damaged, or written on, such as walls, vehicles, etc., and process for fingerprints;

- (5) Collect any physical evidence such as items left for the victim, correspondence, etc., and have it processed for fingerprints;
- (6) If the computer was used as a tool for communication, collect the computer and all relevant disks;
- (7) If appropriate, initiate arrangements to obtain records for the victim's telephone;
- (8) Ask the victim whether she/he has taken any photographs, any other written documentation of the stalking and/or collected and bagged any evidentiary items. If the victim has done so, recover the evidence and note clearly in your report how the evidence was gathered.
- (9) Attempt to locate any possible witnesses. Ask the victim first for any family members, friends, or co-workers who might be able to offer any additional information or otherwise corroborate any aspect of the incident in question and/or the ongoing stalking situation.
- (10) Canvass the area of the crime scene. The crime scene can be the victim's home, work site, telephone, computer, vehicle, mailbox, or any other location or instrumentality where the suspect has contacted, confronted, or otherwise harassed the victim.

### **Best Practice**

**Don't depend on the victim to list any possible witnesses. Look for additional witnesses on your own by canvassing the neighbors and talking to people who frequent the area.**

Note: The final phase of a stalking preliminary investigation is accounting for the safety of the victim. While there are safety matters the officer can discuss with the victim, if the stalking involves a domestic situation, it is very important that the victim be referred to S.A.F.E. Place, so that staff can assist the victim with safety planning.

### ***The following are steps you should take with any stalking victim:***

- (1) Accounting for the safety of the victim means advising and counseling the victim about what you as a police officer can realistically do and what she/he can do to provide a reasonably secure environment.
- (2) Officers should advise stalking victims that they and their agencies cannot realistically guarantee the victims' safety around-the-clock. Victims must take responsible measures for their own safety.
- (3) Officers should be cognizant of potential civil liability regarding the suggestions and recommendations they offer to the victim. Stalkers are not predictable and therefore the plans that a particular victim tries to implement may not always work.
- (4) Refer to Part VII of this protocol for a full discussion of safety planning.

## **D. Liability Issues**

An important aspect of the preliminary investigation is the responding officer's contact with the stalking victim. The critical first step in any stalking investigation is to acknowledge the legitimacy of the victim's fear and apprehensions and recognize that stalking behavior can lead to violence. The present status of state and federal case law suggests that **the following acts by an officer may create liability:**<sup>31</sup>

- (1) Failing to honor an express or implied promise to provide warnings or protection;

- (2) Making statements that minimize the actual peril faced by a victim or witness who then detrimentally relies on such statements;
- (3) Placing an unprotected victim or witness in close proximity to someone who poses a foreseeable threat to that victim or witness;
- (4) Requesting that a citizen perform an official function which involves a foreseeable risk.

## **E. Follow-up Investigation**

### **1. Basic Practice**

In the course of the follow-up investigation, the officer (or criminal investigator) should contact the victim frequently to better assure her/his continued safety and to ascertain whether any additional incidents have taken place, and whether the victim has any additional information to offer.

### **2. Procedures If Stalking Suspect Is Unknown**

(a) If the suspect is a stranger, the first objective of the follow-up investigation is to determine the suspect's identity. Basic police investigatory work applies and would focus on how the suspect makes contact with the victim:

- (1) Police surveillance of the victim, the victim's vehicle, or the victim's home in an effort to observe the suspect approach or follow the victim;
- (2) Wire tap or pen register on the victim's telephone;
- (3) Liaison with the U.S. Postal Service for mail contacts;
- (4) Contact with the victim's internet service provider for e-mail harassment.

(b) If the suspect is observed in an actual stalking act, officers should not hesitate to make an arrest. Michigan law permits an officer to make a warrant-less, on-scene arrest, based upon probable cause, of a person who has engaged in stalking.

(c) If probable cause is doubtful, officers should at least conduct an in-depth interview, preferably in a police facility, to learn as much personal information about the suspect as possible.

(d) At this time, the officers can confront the suspect with prior reports of his/her activities toward the victim and issue a warning to cease and desist the harassing behavior.

(e) This intervention technique of warning the suspect involves the police telling the stalker to stop. It is more commonly used when the victim knows the identity of the stalker, usually from a prior relationship. Basically, the police go to the stalker and tell him or her to stop. In the case of naive suspects, this technique usually works. This can be successfully used when the actions of the stalker are frightening to the victim, but do not rise to the level of a credible threat of placing the victim in fear for his or her life.<sup>32</sup>



### 3. Procedures If Stalking Suspect Is Known

(a) In those cases where the victim knows the suspect, police contact with a warning can also be effective. Oftentimes, a face-to-face visit at the suspect's workplace or residence may have a deterrent effect on the inappropriate behavior. This type of contact can also occur by way of a scheduled interview at a police station.<sup>33</sup>

*\*Note: Officers should be aware that, in some cases, contacting the suspect in this manner might intensify their interest and obsession with the victim. In fact, some suspects may be "pushed" into violent action by police contact. This can occur with a desperate or suicidal ex-spouse or estranged intimate partner who feels spurned and/or abandoned by the victim. They may sense that time is running out and can be provoked into more extreme action. The decision to make contact with the suspect must be made with the victims input. Safety planning with the victim should always take place prior to making any contact with the suspect. Some stalkers, such as Acquaintance Type, may cease their activity when confronted by police intervention. However, intervention in other cases, particularly the Intimate or Delusional types, may trigger more problems.<sup>34</sup>*

(b) Suspect interviews can be helpful and important in assessing the danger posed by the suspect and in obtaining information that may help prove a stalking offense in court. Interviews should only be conducted after the suspect's background has been thoroughly researched. Officers should be aware that stalking suspects can be intelligent, cunning, and manipulative, more so than the common criminal. They are often good liars and they will attempt to deny or otherwise rationalize their behavior.<sup>35</sup>

(c) Information about suspects can be obtained from various sources, such as:<sup>36</sup>

- (1) Personal interviews with the suspect;
- (2) Material created by or in the possession of the suspect, such as journals, letters, books, magazines, or other items;
- (3) Interviews with people who know or have known the suspect, such as friends, family, co-workers, supervisors, landlords, neighbors and previous victims;
- (4) Any public records, such as police, court, probation, corrections, prior PPO's and files.

(d) In some cases, it may be advisable to apply for a search and seizure warrant for a suspect's home, vehicle, or other property. Depending on the circumstances of the case, officers should consider listing the following possible evidentiary items in their warrant affidavit:<sup>37</sup>

- (1) Photographs of the victim, including photos taken covertly;
- (2) Photos, drawings, or diagrams of the victim's home or workplace;
- (3) Writings, diaries, or logs kept by the suspect that describe his/her stalking activities and thoughts, musings, or fantasies about the victim;
- (4) Personal items belonging to the victim;

- (5) Video or audio cassettes that may relate to the stalking, such as surveillance footage;
- (6) Books describing following or surveillance techniques, or materials dealing with stalking in general, violent themes, or police procedures;
- (7) Any equipment that may have been used to “stalk” the victim, including cameras, binoculars, video recorders, listening devices, etc;
- (8) Personal computers that may have been used to correspond with the victim via E-mails, chat rooms or electronic bulletin boards.

## **VI. Personal Protective Orders (PPOs) and Cyber-stalking**

### **A. Use of Personal Protective Orders (PPOs)**

(1) PPOs can be effective limit-setting devices. The court sets the limits and if the stalker violates those limits, law enforcement can make an arrest. However, serving an order on a dysfunctional individual may trigger a violent response. In those situations where the victim knows the stalker well, officers should inquire of the victim what the suspect might do if a court order is served on him/her. If the victim indicates that the suspect will become angry and resort to violence, a court order may not be the best remedial action at that time.<sup>38</sup>

(2) The use of PPOs is a controversial issue in domestic violence situations involving stalking. They may not be effective in protecting the victim and may instead provoke the suspect. But the degree to which the stalker truly poses a threat is often difficult to assess. **Officers should remember that the most important element of a stalking case is the victim’s feeling of being terrorized, frightened, intimidated, threatened, harassed or molested.**

(3) The primary advantage of having a PPO against a suspect/respondent is that it allows the respondent to be immediately arrested when a violation occurs. It is vitally important that when a police agency is attempting to encourage the victim to seek a PPO, as part of an overall intervention plan, that the involved personnel be prepared to respond quickly and aggressively to each violation. Only then is there a sanction for the suspect’s actions and a motivation to change behavior.<sup>39</sup>

### **B. Cyber-stalking<sup>40</sup>**

#### **1. General Information**

(a) Cyber-stalking refers to the use of the Internet, e-mail, or other electronic communication devices to stalk or harass another person. Cyber-stalking is the criminal offense of stalking using a computer as a means of communication. Cyber-stalking is a violation under MCL 752.796, Use of a Computer to Commit a Crime, and MCL 750.145d, Use of Internet or Computer System to Communicate with Another for the Purpose of Committing a Crime.

(b) Cyber-stalking shares the characteristics of conventional criminal stalking and harassment. Stalkers, computer-based or otherwise, are motivated by a desire to exert control over their targeted victims. In many instances, the cyber-stalker and the target victim have had a prior relationship and the cyber-stalking begins when the victim attempts to end the relationship. There are also many instances of cyber-stalking by strangers. The illusion of anonymity of electronic communication gives the cyber-stalker the belief that they have a unique advantage and position of control, in that the suspect is perceived to be almost anyone, anywhere. Cyber-stalkers attempt to conceal their identity through the use of electronic communications, either by using different service providers or by using different chat names. More sophisticated and dedicated cyber-stalkers will utilize anonymous re-mailers.

(c) Most victims will not initially report incidents of cyber-stalking to law enforcement, usually because they do not consider it as a criminal or police matter, or because they are afraid that the police will not take them seriously. It is sometimes difficult to obtain full cooperation from out-of-state agencies when the cyber-stalker's conduct is restricted solely to e-mail messages (talk) and no overt contact or confrontation has taken place (action).

***Officers who experience difficulty with cyber-stalking investigations are advised to contact the Michigan State Police Computer Crime Unit for assistance.***

## **2. What to do if you are being cyber-stalked**

Officers contacted by cyber-stalking victims may advise victims to:

(a) Make it clear to the stalker that the victim does not want any further contact. The victim, at this point, should no longer respond to or initiate any further communication with the stalker.

(b) Save (print) all communications for evidence. Advise the victim not to edit or alter them in any way. Also, the victim should keep a record of contacts with internet system administrators or law enforcement officials.

(c) Consider blocking or filtering messages from the stalker. Many e-mail programs have a filter feature, and software can be easily obtained that will automatically delete e-mails from a particular e-mail address or that contain offensive words. Chat room contact can be blocked as well. It is important that the victim understands that blocking or deleting e-mails/ communications will impede prosecution.

(d) You may need to refer the matter to state or federal authorities.

## **VII. Providing for Victim Safety**

### **A. Guiding Principles**

#### **1. The Victim Must Be Proactive in Planning for Their Own Safety**

It is necessary that law enforcement officers establish a safety net for victims that is regulated by the reality that law enforcement cannot be with the victim around-the-clock

and thus cannot guarantee the safety of the victim.<sup>41</sup> Accordingly, law enforcement must make the victim aware that they must take charge and be proactive in every aspect of the stalking case. The officer should advise the victim of certain steps the victim can take to protect themselves. It is important for the officer to provide pertinent information to the victim, so that the victim can gather evidence to help themselves for the eventual arrest and prosecution of the stalker.

## **2. Safety Planning Is Case Specific**

(a) The officer must be aware each stalking case is different and must be managed individually. The victim must be actively involved in safety planning to determine what might work to better ensure their own safety.

(b) In cases involving domestic violence, officers should refer victims to SAFE Place so that the staff can assist them with safety planning.

## **B. Safety Planning**

### **1. Strategic Considerations**

(a) Officers who are investigating a stalking offense should immediately initiate planning with the victim for the victim's safety. Officers and victims should communicate regularly to keep informed and to enable clarification of the situation by asking questions or raising concerns that could alter the safety plan.

(b) In any safety plan there are certain strategic considerations that should be taken into account:

(1) Victims must be actively involved in their own safety planning. During this process, the officer should educate the victim about stalking and the possible dangers involved with each plan that is discussed and with each tip given.

(2) Safety planning involves an assessment of the victim's environment, including the home, work, school, and day-to-day routines.

(3) In cases where a warrant has been requested victims should be referred to the Victims Unit of the Prosecutor's Office should they have any questions concerning criminal charges, defendant status, and disposition of the case and/or to learn how to be informed when the defendant is released from custody.

(4) Victims must be given the Victim's Rights Form containing information regarding the availability of resources that may assist with safety planning.

(5) Victims must be encouraged to notify police about any new offenses committed, suspicious behaviors, or any events that represent any form of contact with them. When victims report such incidents, they should be treated seriously. Victims should be notified of actions taken by law enforcement and the reasons for those actions. In addition this new information needs to be promptly forwarded to the Prosecutor's Office.

(6) Officers should make victims aware of social supports they may have in the community to include family, friends, and affiliations (i.e.: church, social groups, etc).

(7) If children are involved, it may be necessary to involve them in safety planning also. Victims should be questioned about the role of their children and what services may be necessary to keep the children safe. Children should be instructed to keep address and telephone information confidential, and a determination made as to whether the school should be informed or involved in safety planning.

(8) Victims should be encouraged to carry cell phones to be able to call 911 in the event of an emergency and know their current location. 911 cell phones can be acquired through SAFE Place. Encourage all members of the household to know how and when to dial 911.

(9) Victims should be instructed to never contact the stalker. Contact with the stalker jeopardizes victim safety and weakens a criminal case.

## 2. Measures That Are Generally Safe to Give to Victims

(a) Work with the victim to initiate recommended measures or to put them into effect. Working with the victim in this manner will enable you to know that steps are actually in place and will allow the victim to have the peace of mind to know that the recommended measures have been properly and professionally put in place.

(1) Stop all contact with the stalker. “Too many victims who have once had a relationship with the suspect are concerned about *‘letting him down easily’*.” This leads to difficulty in saying ‘leave me alone’ and really meaning it. It is important that the victim be very direct and firm by telling the stalker that they don’t want to talk to him. Remember by speaking with the stalker at all, it is still talking to them. It may also be perceived as a mixed message by the stalker. If, after leaving 40 messages on her answering machine, the victim returns the call to demand that he stop, the lesson he has learned is the cost of getting a call from her is to call her and leave 40 messages. **Cutting off all contact with the suspect cannot be overemphasized!**<sup>42</sup>

(2) Contact law enforcement to report all incidents.

(3) Keep a log of all activities that are directly and clearly stalking related. Include unusual or not readily explainable activities as they may be related to the stalking. The log should include date, time, and description of the incident, location of the incident, witness information, date and time that the police were called and a report number if one was prepared, responding officer’s name, badge and/or ID number.<sup>43</sup>

(4) Save all evidence such as notes, letters, cards, gifts, telephone messages and e-mail messages. Handle such items with care, so as not to destroy latent evidence.

(5) Do not have a third party, except for the law enforcement officer, attempt to intervene with the stalker.

- (6) Discuss obtaining a personal protection order with the victim. The officer should advise the victim that the issuance of the order could have an escalating effect and that the victim must be extra cautious.
- (7) The victim should be advised to change their home/cellular phone numbers.
- (8) If possible, alter routines, including times for running errands, not using the same route to and from work (or other places), and not parking in the same location.
- (9) Advise family, friends, neighbors and/or co-workers of the problem. Stalkers are manipulative and can get information from these unwitting individuals. If they know what is occurring, they will obviously be more cautious about giving out information about the victim. These individuals can even assist the victim by recording contact information with the stalker.
- (10) Contact the phone company about having a “trap” installed on the phone, so that hang-ups and harassing calls can be traced.
- (11) Avoid places/events the stalker knows the victim frequents.
- (12) If the victim and stalker have children in common, arrange for a third party to make custody exchanges. If a third party is not available, arrange for the exchanges to be made at a police station or location where a law enforcement officer can be present.
- (13) If the victim moves, try to have a roommate or relative put the bills in their name, not that of the victim. Utility, phone, and other service providers should be notified of the problem and be requested to place a code word on the account for the victim.
- (14) Develop safety scenarios, or advance scripting, for different situations in which the stalker might make contact with the victim. For example, “If I am driving to work and see the stalker following me, I will get on the cell phone, call 911, and drive to the nearest police station which is located at \_\_\_\_\_.”
- (15) In domestic violence cases, always refer the victim to SAFE Place.

## Endnotes

- 1) "Stalking in America—National Violence Against Women Survey," as conducted by the Center for Policy
- 2) Research for the National Institute of Justice and the Centers for Disease Control, 1996.
- 3) "Stalking Investigation Strategies," George E. Wattendorf, J.D., FBI Law Enforcement Bulletin, March 2000, p. 11
- 4) "Stalking the Stalker: Law Enforcement Investigation and Intervention," p. 363.
- 5) "How to Stop the Stalker. State Anti-Stalking Laws," Thomas, Criminal Law Bulletin 29 (2), 1992, pp. 125-136.
- 6) "National Institutes of Justice, Domestic Violence, Stalking and Anti-Stalking: An Annual Report to Congress Under the Violence Against Women's Act," Washington, DC: U.S. Department of Justice, NIJ, April 1996, p. 6.
- 7) "Profile of a Stalker," <http://www.fiu.edu/~victimad/stalkprof.htm>
- 8) "Stalked," <http://franciweb.com/stalked/index.html>
- 9) "Domestic Violence, Stalking, and Anti-Stalking Legislation," Attorney General's First Annual Report to Congress under the Violence Against Women Act, National Institute of Justice Report, Washington, DC: U.S. Department of Justice, National Institute of Justice, April 1996, p. 5.
- 10) Orion, D.; "I Know You Really Love Me, A Psychiatrist Account of Stalking and Obsessive Love," New York, 1997, p. 32.
- 11) "Stalking and Domestic Violence," The Third Annual Report to Congress Under the Violence Against Women Act, National Institute of Justice Report, Washington, DC: U.S. Department of Justice, National Institute of Justice, July 1998, p. 10.
- 12) DeBecker, G.; "The Gift of Fear: Survival Signals That Protect Us From Violence," New York 1997, p. 199-210.
- 13) Ibid.
- 14) Ibid., pp. 66 & 67.
- 15) Ibid., pp. 199-210.
- 16) Orion, D.; "I Know You Really Love Me, A Psychiatrist Account of Stalking and Obsessive Love," New York, 1997, p. 32.
- 17) Ibid., pp. 68-70.
- 18) Ibid., pp. 67-68.
- 19) Ibid., pp. 83-85.
- 20) Ibid., p. 75.
- 21) Ibid., pp. 69-71.
- 22) Ibid., pp. 75-78.
- 23) Ibid., p. 79.

- 24) Ibid., pp. 51-60.
- 25) The following sources were used to develop Section IV of the model protocol: "Protective Intelligence Threat Assessment Investigations: A Guide for State and Local Law Enforcement Officials," U.S. Secret Service. Research report by Robert A. Fein and Bryan Vossekuil, July 1998. "San Diego County Domestic Violence Protocol," San Diego County District Attorney's Office, updated draft, June 2, 1998. "Investigative Guide and Protocols," Anti-Stalking Unit, Dover, NH, Police Department.
- 26) "Training Manual on Stalking," The San Diego Stalking Strike Force, 2001, p. 10.
- 27) "Domestic Violence: The Law Enforcement Response," Ellen Pence, Instructor's Manual, revised edition updated by Michael Paymar and Ellen Pence, A Joint Project of the Duluth Domestic Abuse Intervention Project and the Law Enforcement Resource Center, 2000, p. 300.
- 28) "Stalking the Stalker," p. 356.
- 29) Ibid., pp. 354 & 355.
- 30) "Training Manual on Stalking," pp. 15 & 16.
- 31) Ibid., pp. 12 & 13.
- 32) Ibid., pp. 21-23.
- 33) "Stalking the Stalker," pp.365 & 367.
- 34) "Training Manual on Stalking," pp. 18 & 19.
- 35) "Domestic Violence: The Law Enforcement Response," p. 305.
- 36) "Training Manual on Stalking," p. 17.
- 37) "Domestic Violence: The Law Enforcement Response," p. 303.
- 38) "Stalking the Stalker," p. 362.
- 39) Ibid., p. 364.
- 40) Domestic Violence: The Law Enforcement Response," p. 306.
- 41) The materials in this section on Cyber-stalking were taken from the Maryland Police and Correctional Training Commission's Training Unit entitled: *Preliminary Computer Crime Investigation*.
- 42) "Stalking the Stalker," p. 358.
- 43) "Domestic Violence: The Law Enforcement Response," "Appendix 9: How to Investigate Stalking Cases," written by Anne O'Dell, Instructor's Manual (Revised Edition), Ellen Pence (1988), updated by Michael Paymar and Ellen Pence (1999, 2000), a joint project of the Duluth Domestic Abuse Intervention Project and Law Enforcement Resource Center, p. 307.
- 44) "Stalking Incident Log," developed by the Domestic Violence Intervention Project,
- 45) Alexandria, VA.



**NOTES:**