



By Jennifer R. Ellis

## Civil Stalking Statutes: Alternative Justice for Stalking Victims

Public concern about the murder of actress Rebecca Schaeffer by an obsessed fan who had stalked her for two years prompted California to enact the first criminal stalking law in 1990. While every state has now enacted some form of criminal stalking law, only a few states have civil stalking statutes which expressly allow stalking victims to sue stalkers for monetary damages.

Civil stalking statutes provide a crucial legal option for stalking victims. In the case of one stalking victim, Joan Stinson, filing a civil lawsuit against the stalker who terrorized her for more than a year and a half proved to be the most effective weapon in deterring his conduct, and in ultimately helping her obtain justice.

### A Victim's Story: Joan Stinson's Civil Action

Joan Stinson met Richard Slaughter at a Christmas party in 1991. He was employed at her family's business. After four dinner dates, Slaughter began a campaign of harassment that included vandalizing Stinson's car, peering into her windows, lurking in the woods near her apartment, and following her to softball games. On two occasions, he posed as a potential buyer to persuade a real estate agent to leave him alone in Stinson's home.

Stinson was so fearful of Slaughter that she obtained a temporary restraining order against him. However, Slaughter continued to harass her until the police eventually arrested him. Within ten days of his release from jail, Slaughter resumed calling Stinson.

Shortly thereafter, a Maine detective discovered that Slaughter had been indicted in 1980 for the stalking and fatal stabbing of a woman in Virginia, but that Virginia officials had withdrawn the indictment. Maine authorities refused to arrest Slaughter because his stalking of Stinson did not support an indictment under Maine's criminal law.

Frustrated by the criminal justice system's limits, Stinson and her attorney, William Knowles, filed a civil suit against Slaughter in 1993. It was one of the nation's first civil cases against a stalker, and the first case of its kind in Maine. A jury awarded Stinson \$150,000 in compensatory damages for emotional distress and the cost of protecting herself against Slaughter, and \$500,000 in punitive damages, which Slaughter could not discharge through bankruptcy.<sup>1</sup>

Stinson told the jury that while she and her attorney "praised the police for helping throughout the ordeal," a civil action was the only way to protect her from Slaughter's acts of intimidation, which "[fell] through the cracks of the criminal justice system."<sup>2</sup>

For stalking victims like Joan Stinson, civil suits provide a means of recourse in addition to the criminal justice system. Civil cases may also be easier to prove than criminal cases. Prosecutors face a higher burden of proof in criminal cases, and often struggle to convince the judge or jury of the potential dangerousness of a stalker's behavior. Other available remedies, such as restraining orders, may not effectively abate stalking conduct, leaving victims with no alternative but to wait for a stalker to act in a more severe and dangerous manner. Stinson's temporary restraining order proved ineffective as Slaughter violated it more than forty-one times. Civil statutes provide stalking victims with a cause of action for monetary losses incurred as a result of a stalker's conduct. These losses may include the cost of implementing security measures to combat a stalker's threats, losing a job as a result of a stalker's conduct, or attending counseling sessions to handle the emotional strain of a stalker's harassment.

Seven states—California, Oregon, Texas, Michigan, Wyoming, Nebraska, and Kentucky—have enacted civil stalking statutes which expressly provide for a

civil action based on stalking. Under these statutes, a stalking victim may recover civil damages from a stalker regardless of whether the stalker has been charged or convicted under the criminal law. Recoverable damages include expenses incurred by the victim as a result of a stalker's conduct, as well as punitive damages. Oregon, Wyoming, Michigan, Kentucky, Nebraska (and probably California, which does not limit potentially recoverable damages), further provide that stalking victims may recover attorney fees and court costs.

### Civil Stalking Statutes that Define the Prohibited Conduct: Texas, California, and Oregon

Civil stalking statutes in Texas, California, and Oregon set forth the specific elements required for recovery of civil damages by a stalking victim. Each statute requires the victim to show that a stalker engaged in a "course of conduct," that caused the victim "reasonable fear" or "apprehension" regarding his or her safety or the safety of an immediate family member. The "conduct" to be proven varies by statute.

Under the Texas statute,<sup>3</sup> a stalking victim must show that a stalker engaged in "harassing behavior" by either: (1) violating a restraining order prohibiting such behavior, or (2) threatening, through "acts or words, to inflict bodily injury or to commit an offense on" the victim, a member of the victim's family, or the victim's property.

However, even with proof of threatening acts or words, a stalking victim may only recover damages after satisfying the following factors: first, the victim must have reported the stalker's harassing behavior to the police as a stalking offense prior to commencing the civil action. Second, the victim

must have “clearly demanded” that the stalker stop his or her conduct, and the stalker must have persisted, notwithstanding the victim’s demand. Finally, the stalker must have had the “apparent ability” to carry out the challenged threats.

Under California’s civil stalking statute,<sup>4</sup> a stalking victim may recover civil damages upon proof that a stalker either: (1) violated a restraining order or (2) made a “credible threat” against the victim or a member of the victim’s family. The California statute further provides that a victim must show the stalker’s intention was to “follow, alarm, or harass” the victim or the victim’s family.

Like the Texas statute, California requires that a victim must have “clearly and definitively demanded” the stalker to “cease and abate” his or her conduct, and that the stalker must have persisted in his or her behavior. Both statutes also exempt “constitutionally-protected” conduct from potential civil liability.

Under the Oregon civil stalking statute,<sup>5</sup> a stalking victim may bring an action to recover either civil damages or to obtain a stalking protective order. For both actions, a victim must prove that a stalker “intention-

ally, knowingly, or recklessly” engaged in “repeated and unwanted contact” with the victim or a member of the victim’s immediate family or household. Although the Oregon statute does not expressly define the “contact” that must be proven, the stalking victim must show that such contact was “alarming or coercing.” Further, actions under the Oregon statute must be brought within two years of the conduct that gave rise to the claim.

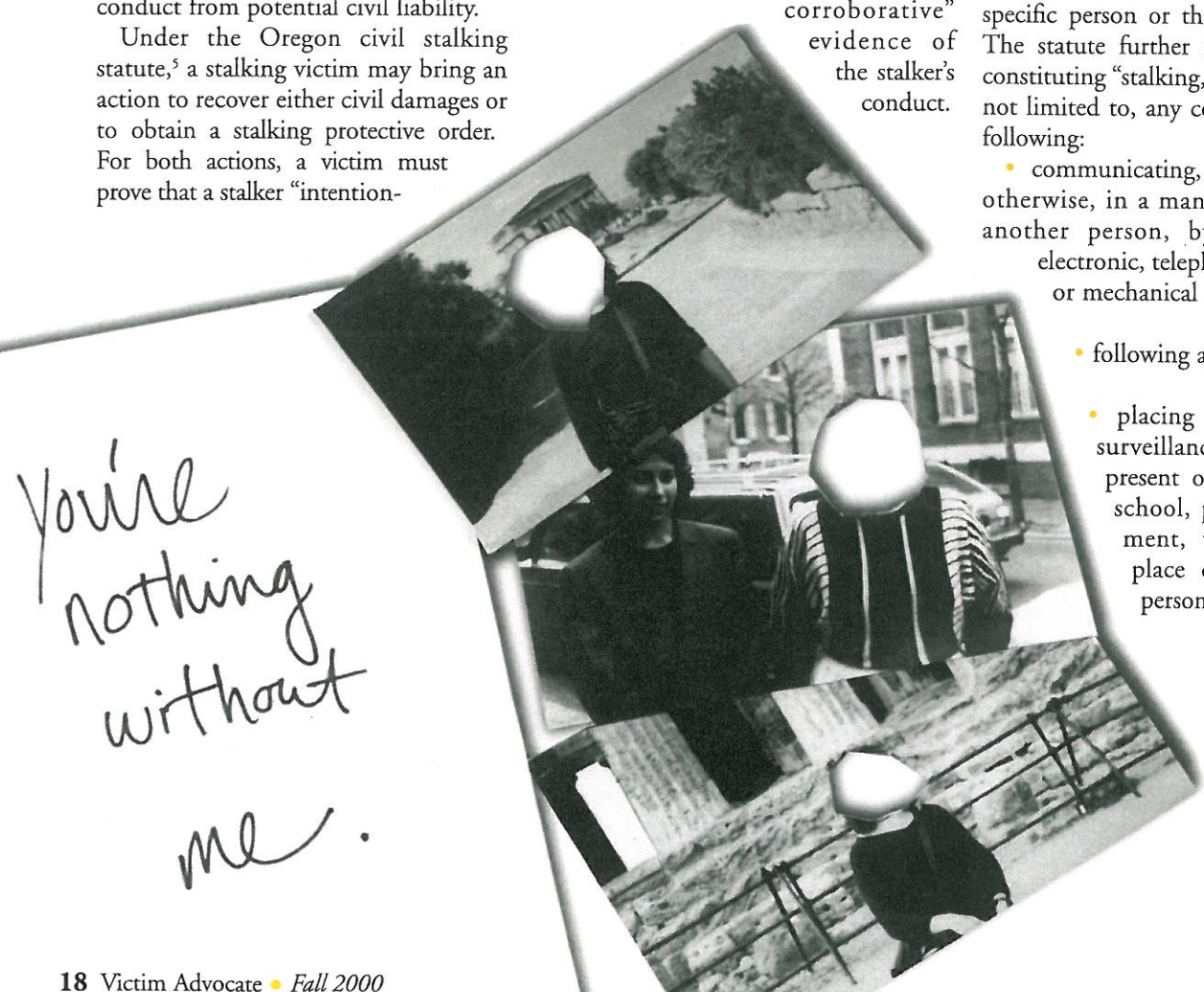
In proving the stalking “conduct” under each state’s statute, victims must support their allegations with credible evidence. While the Texas statute requires the victim to submit additional evidence other than that of “the [victim’s] own perceptions and beliefs,” the Oregon statute expressly requires a victim to prove that a reasonable person in his or her situation would have been “alarmed or coerced by the [stalker’s] contact.” The California statute requires victims to present “independent, corroborative” evidence of the stalker’s conduct.

## Civil Stalking Statutes Based on Criminal Statutes: Wyoming, Michigan, Kentucky, and Nebraska

In contrast to the civil stalking statutes just discussed, the Wyoming,<sup>6</sup> Michigan,<sup>7</sup> Kentucky,<sup>8</sup> and Nebraska<sup>9</sup> statutes provide for a civil action based upon proof that a stalker’s conduct violated the elements set forth under each state’s criminal anti-stalking statute, regardless of whether the stalker was charged or convicted under that statute. Thus, a victim must show that a stalker’s behavior transgressed the criminal code in order to recover civil damages.

The Wyoming criminal stalking statute<sup>10</sup> prohibits a person from engaging in a “course of conduct reasonably likely to harass” another. The statute defines “harass” as including, but not limited to, verbal or written threats, vandalism, or non-consensual physical contact directed at a specific person or that person’s family. The statute further identifies conduct constituting “stalking,” as including, but not limited to, any combination of the following:

- communicating, anonymously or otherwise, in a manner that harasses another person, by either verbal, electronic, telephonic, telegraphic, or mechanical means;
- following a person;
- placing a person under surveillance by remaining present outside his or her school, place of employment, vehicle, or other place occupied by the person; or



- otherwise engaging in a course of conduct that harasses another person.

Thus, under the Wyoming civil stalking statute, a stalking victim may recover civil damages from a stalker upon proof of any combination of the above-stated conduct.

Under the Michigan criminal stalking statute,<sup>11</sup> a person is guilty of stalking if he or she engages in a “willful course of conduct [defined as a series of two or more separate noncontinuous acts evidencing a continuity of purpose] . . . involving repeated or continuous harassment of another individual” that would cause a reasonable person fear and that actually caused the victim fear.

The statute further identifies the following behavior as conduct evidencing stalking:

- following or appearing within the sight of another person;
- approaching or confronting another person in a public place or on private property;
- appearing at another person’s workplace or residence;
- entering onto or remaining on property occupied by another person;
- contacting another person by telephone, mail or by electronic communication; or
- placing an object on, or delivering an object to a place occupied by another person.

Thus, a stalking victim may recover civil damages based upon evidence that a stalker engaged in any of the above-stated conduct.

### Alternative Civil Statutes

Although not expressly “stalking” statutes, several states have enacted comparable civil statutes under which a stalking victim could potentially bring a civil action against a stalker. These states

include Washington,<sup>12</sup> Tennessee,<sup>13</sup> and South Dakota,<sup>14</sup> which have enacted civil statutes prohibiting “malicious harassment.” Each provides for a civil action based upon proof of the elements set forth under each state’s criminal “malicious harassment” statute.

Malicious harassment statutes allow victims to recover civil damages comparable to existing civil stalking statutes, including both special and general damages, reasonable attorney’s fees and costs, and punitive damages (although the Washington statute limits punitive damages to \$10,000). However, as these statutes are narrower in scope, they necessarily exclude some stalking victims from potential recovery.

In order to recover civil damages under Tennessee’s “harassment” statute, a stalking victim would have to show, in accordance with the elements set forth under the criminal statute, that a stalker either:

1. threatened, by telephone or in writing, to take action known to be unlawful against the victim, and thereby knowingly annoyed or alarmed the victim; or
2. placed one or more telephone calls anonymously, or at an hour known to be inconvenient to the victim, or in an offensively repetitious manner, or without a legitimate purpose of communication, and thereby annoys or alarms the victim.<sup>15</sup>

Since the statute requires proof that a stalker actually verbalized a threat, a stalker who merely followed or appeared within the sight of a victim may not be liable under this statute. Vandalizing a victim’s property, another common behavior among stalkers, would similarly not constitute “harassment” under the Tennessee statute.

South Dakota’s and Washington’s “malicious harassment” statutes also fall short of existing civil stalking statutes because these statutes only provide for a civil action when the victim was harassed because of his or her race, religion, ancestry, or national origin. Under both statutes, such a stalking victim would also

have to prove, in accordance with the states’ criminal statute, that the stalker “maliciously, and with the specific intent to intimidate or harass”:

1. caused physical injury to the victim; or
2. defaced, damaged, or destroyed any real or personal property of the victim; or
3. threatened, by words or acts, to do the acts prohibited by the statute.<sup>16</sup>

Finally, the victim would have to show that the stalker had the “apparent ability” to carry out the claimed threats. Thus, while both the South Dakota and Washington statutes could allow for a cause of action based on a broad range of stalking “conduct,” these statutes would only provide potential recovery in cases where a stalker’s motivation was highly specific.

In the remaining states, a stalking victim might bring a civil suit against a stalker under any one of a number of common law theories of recovery. However, enacting civil stalking statutes in these states would create a definitive alternative to the criminal justice system for stalking victims. The seven states that have done so thus far have provided victims with a means of regaining their livelihood and obtaining justice. As Joan Stinson’s attorney stated regarding Stinson’s civil victory, “a message has been sent that stalking is serious business, and if you stalk you’ll have to pay.”<sup>17</sup> **W**

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1. See Kristin J. Bouchard, Comment, *Can Civil Damage Suits Stop Stalkers?*, 6 B.U. Pub. Int. L.J. 551, 555 (1997).  
 2. *Id.* (quoting Royal Ford, *Fending off a Stalker Woman Wins \$650,000 in Suing Tormentor*, Boston Globe, March 28, 1995, at 1, 9).  
 3. Tex. Civ. Prac. & Rem. Code Ann. §§ 85.001-006 (West 2000).  
 4. Cal. Civ. Code § 1708.7 (West 2000).  
 5. Or. Rev. Stat. § 30.866 (1999).  
 6. Wyo. Stat. § 1-1-126 (2000).  
 7. Mich. Comp. Laws Ann. § 600.2954 (West 1999).  
 8. 2000 Ky. Acts 400.  
 9. Neb. Rev. Stat. § 28-113 (2000).  
 10. Wyo. Stat. § 6-2-506 (2000).  
 11. Mich. Stat. Ann. §§ 750.411(h)-(j) (Callaghan 1999).  
 12. Wash. Rev. Code Ann. § 9A.36.083 (West 2000).  
 13. Tenn. Code Ann. § 4-21-701 (1999).  
 14. S.D. Codified Laws Ann. § 22-19B-3 (2000).  
 15. Tenn. Code Ann. § 39-17-308 (1999).  
 16. S.D. Codified Laws Ann. § 22-19B-1 (2000) and Wash. Rev. Code Ann. § 9A.36.080 (West 2000).  
 17. *\$650,000 Award to Victim of Stalker*, Bangor Daily News, March 18, 1995, available in LEXIS, Nexis library, Bangor Daily News File.