

BEADLE COUNTY

Procedures and Polices for Prosecution of Stalking Cases

I. Policy Statement

A. Overview

Like domestic violence, stalking is a crime of power and control. Stalking is conservatively defined as “a course of conduct directed at a specific person that involves repeated (two or more occasions) visual or physical proximity, nonconsensual communication, or verbal, written or implied threats, or a combination thereof, that would cause a reasonable person fear.” Stalking behaviors also may include persistent patterns of leaving or sending the victim unwanted items or presents that may range from seemingly romantic to bizarre, making unwanted phone calls, following or laying in wait for the victim, following or spying on the victim, showing up at places without a legitimate reason, damaging or threatening to damage the victim’s property, defaming the victim’s character, or harassing the victim via the Internet by posting personal information or spreading rumors about the victim. While individually these acts may not be criminal, collectively and repeatedly these behaviors may cause a victim to fear for his or her safety or the safety of a family member.

According to Tjaden and Thoennes (1998) 8.1% of women and 2.2% of men report having been stalked during their lifetime. Females are at higher risk of stalking victimization than males. 89% of female murder victims who had been physically abused had also been stalked in the year before the murder. Women are more likely than men to be stalked by an intimate partner, whereas men are more likely to report being stalked by a stranger or acquaintance.

Many experts believe that every stalker is different; however they have identified four broad categories of stalkers and stalking behavior:

1. Intimate Partner. The most common type of stalking behavior, which represents 70-80 percent of stalkers. This type of stalkers is characterized by a previous personal or romantic relationship between the stalker and the victim. Once the relationship ends, this group of stalkers, fearing they will lose identity and self worth, often become desperate to re establish dominance and control.
2. Acquaintance. Stalking does not have to involve an intimate relationship. The relationship can be as minor as a casual interaction, such as a momentary conversation, a quick lunch together in a crowded restaurant, or a smile across a room. These can all be interpreted as a romantic encounter by a potential stalker. A large number of people every year become stalking victims because they felt sorry for someone and showed him or her compassion.

3. **Public Figure.** This stalker generally knows the victim through the media. Their main quest is to make their existence known to the victims.
4. **Private Stranger.** Because the stalker is unknown to them, the stalking takes on a much more frightening feeling. Because the stalker is unknown to the victim, the victim has no idea who to be on the lookout for, who to be careful of or around, and who to speak to and who to avoid. Although the danger level connected with stranger stalking may not in actuality be higher, the stress level most certainly is.

B. South Dakota Laws on Stalking.

Stalking is defined by SDCL 22-19A-1. It is a class one misdemeanor to stalk another person. Stalking while a protection order is in place or a subsequent conviction for stalking is a class 6 felony. Stalking a child under the age of 12 is a class 6 felony. Stalking does not require a mandatory arrest pursuant to SDCL 23A-3-2.1.

C. The Use of Technology in Stalking

Stalking can be carried out in person or via electronic mechanisms (phone, fax, GPS, cameras, computer spyware or the Internet). Cyber stalking, the use of technology to talk victims, shares some characteristics with real life stalking. It involves the pursuit, harassment, or contact of others in an unsolicited fashion initially via the Internet and email. Cyber stalking can intensify in chat rooms where stalkers systematically flood their target's inbox with obscene, hateful or threatening messages and images. A cyber stalker may further assume the identity of his or her victim by posting information (fictitious or not) and soliciting responses from the cyber community. Cyber stalkers may use information acquired online to further intimidate, harass, and threaten their victim via courier mail, phone calls, and physically appearing at a residence or work place.

Although cyber stalking does not involve physical contact with a victim, it is still a serious crime. Potential stalkers may find it easier to stalk via a remote device such as the Internet rather than to confront an actual person. However, conduct that falls short of the legal definition of stalking may in fact be a precursor to stalking and must be taken seriously.

D. Goals in stalking prosecutions.

Prosecutors should focus on the following goals when prosecuting stalking cases:

- i. Recognize stalking as a serious, life threatening crime.

- ii. Recognize that early intervention in stalking cases is the key to saving lives
- iii. Stop the stalking behavior.
- iv. Keep the victim, affected children, family members and general public safe.
- v. Hold the stalker accountable.
- vi. Provide resources for the victim.
- vii. Deter the stalker and others from perpetrating acts of stalking.

II. Outreach

A. Leadership

As with domestic violence, prosecuting attorneys should use their official position in the community to provide leadership in developing a community wide response to stalking.

B. Community Response

Prosecuting attorneys should actively foster and participate in multi-disciplinary efforts to maintain an effective and accountable justice system response to stalking and to encourage community wide efforts to end the problem. It is difficult to stop stalking without the cooperation of all agencies within the criminal justice system. Prosecutors, law enforcement, judges, probation officers, victim services and the mental health community must all recognize each's vital role in combating stalking.

III. Education.

A. Continuing education of state's attorney staff on stalking issues.

As resources permit, prosecutors should also avail themselves of opportunity for continuing education on stalking issues including understanding the dynamics of domestic abuse and the lethality of stalking behavior.

B. Working with local law enforcement.

1. Prosecutors should inform local law enforcement officers of prosecution policies and procedures on stalking. Prosecutors should update officers on applicable changes in the laws on stalking. Law enforcement should develop thorough and complete investigations of all incidents.
2. Evidence Gathering. Law enforcement officers should respond promptly to the scene to assess, intervene and collection initial information. Officers should be trained to identify stalking behavior including cyber stalking. Using technology to stalk, presents many challenges. Find an expert in the field to assist

you with these cases before they come through your door. To further empower a victim, officers should instruct a victim on how to collect evidence necessary to build a case against the stalker. Victims should be instructed to keep a journal or log of all contacts or sightings of the offender.

3. Law enforcement should also work with a victim to establish a safety plan, as these cases often escalate to confrontations and violence. Because law enforcement can not provide 24/7 protection, victims should be taught security measures that allow them to take back control.
4. Law enforcement officers and investigators must be reminded that many of the stalkers have mental disorders and often disregard the consequences of their behaviors.

IV. Communicating with the victim.

A. Early Contact.

Prosecutors should have early contact with the victim. Prosecutors should establish good rapport with the stalking victim. A prosecutor should try to gain the victim's trust by taking the victim's needs seriously. Communication between the victim and the prosecutor should routinely include the following:

- a brief discussion of the criminal justice system
- the purpose of questioning
- the role of judges, prosecutors, advocates and others
- assessment of the victim's needs and expectations
- the possible outcome of the case
- on going updates on the status of the case

B. Protection Orders. Prosecutors should encourage stalking victims to obtain a stalking or domestic abuse protection order if the facts and circumstances warrant one. Having a protection order in place to help establish a pattern of conduct and also to prove the element of fear.

C. Safety plans. Prosecutors should also assist the victim with developing a safety plan, for all stages, including before criminal charges are brought, at the arraignment, pending a trial and after trial is concluded. The American Bar Association has a safety plan on its website. See www.abanet.org/tips/dvsafety.html

D. No drop policies. Although prosecutors should have a no drop policy for domestic violence case, stalking cases may go forward without the victim's cooperation. If a victim becomes reluctant, prosecutors should find out why. Some reasons why a victim maybe reluctant to go forward with a case, may include ashamed and embarrassed, victim is still living with the stalker, the stalker is threatening the victim, the victim may be financially dependent on the stalker. All the same reasons, why a victim stays in a domestic abuse relationship may play a role in the victim becoming reluctant in a stalking case.

- E. **Education.** Victims should be educated about the crime of stalking and explained the dynamics of stalkers. Victims often do not realize they are being stalked.
- F. **Behavior Modification.** Victims should be encouraged to modify their schedules/ routines and lifestyles for their own protection.
- G. **Support Systems.** It is important for victims to establish a support system. Victims should tell others what is occurring so that others can take note of the stalkers behaviors. Advocates should be recommended to all stalking victims, along with support groups and self-defense classes.

V. Charging Decisions

- A. **Benefits of charging stalking.** Charging a perpetrator with stalking rather than a violation of protection, allows the court and the jury to get a true picture of what the defendant is and is not doing. A stalking charge, can also allow a prosecutor to get into evidence 404(b) prior bad acts as it tends to show a pattern or course of conduct as is allowed under the rule.
- B. **Creative Charging.** Keep an open mind when it comes to stalking cases. Consider all of the possible crimes that have been committed, such as violation of protection orders, threatening or harassing phone calls, intentional damage to property, simple assault.
- C. **Parasitic Prosecution.** If you are not successful with the prosecution of the stalking cases or are not getting the appropriate sentence from the judge, consider asking for the maximum sentences on other offenses the stalker may be committing, such as driving without a license or misdemeanor possession of drugs.

VI. Case Management

- A. **Plea Negotiations.** Prosecutors should approach plea negotiations with the intent of serving the goals of the prosecution.
- B. **Experts.** Prosecutors should consider the use of an expert-usually a mental health professional. An expert can assist in assessing the defendant's mental state and create a profile of the offender. An expert can also be useful in cross examination of defense experts and the defendant. An expert can provide credibility and legitimacy to a case.
- C. **Assignment.** To the extent possible, stalking cases should be assigned to prosecutors with specific training and experience in this area. Because a stalking case can take a longer period of time before a trial, it is best not to switch prosecutors during this process.
- D. **Dismissals.** Prosecutors should not dismiss charges in stalking cases without using the utmost discretion. Victim safety should always be the number one priority in prosecution of stalking cases. It is not

impossible to obtain a conviction for stalking without a victim's participation.

E. Trials

1. **Trial Preparation.** At a minimum trial preparation should include, making sure that you as the prosecutor are familiar and knowledgeable about the technology involved in stalking, and interviewing all witnesses., filing pretrial motions, particularly 404(b) motions.
2. **Jury Selection.** As with all juries, get to know their level of knowledge of the technology that may be involved.
3. **Evidence Admissibility.** Prosecutors should be familiar with the admissibility issues with any of the evidence they are planning to present, for example, best evidence, authentication, hearsay, relevance and chain of custody issues.
4. **Defenses.** Know your defenses. The most common defense used in stalking cases is denial, coincidental meetings with no intent to inflict fear, blaming the victim, claiming the victim exaggerated the behavior and claiming that the victim was following the defendant.

VII. Final disposition.

- A. **Victim Recommendation.** Prosecutors should encourage stalking victims to complete a victim impact statement and give victims notice of a plea agreement and the right to make an impact statement to the sentencing court if they so desire.
- B. **Sentencing recommendations.** When deciding what sentence to recommend, prosecutors should consider numerous factors including but not limited to:
 1. Defendant's criminal history
 2. Impact of the crime on the victim and family
 3. History of stalking with this victim or other victims
 4. Defendant's potential for rehabilitation
- C. **Sentencing.** Prosecutors should promptly pursue sanctions where a defendant has violated the terms and condition of his or her sentence, such as continual contacts or attempts at contacts.
- D. **Beyond Convictions.** Stalking cases require prosecutors to consider post conviction implications. Many stalkers are not detained long enough for the stalking tendencies to subside. Many times prison or jail only aggravates their stalking tendencies. Victim notification rights are very important. Please see SDCL 24-15-3. Stalkers may also attempt to stalk their victims while in jail or prison. Thus, additional charges should be considered and a post conviction safety plan should be implemented.