

Notes

Keeping Stalkers at Bay in Texas

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I. INTRODUCTION	54
II. STALKING IN THE UNITED STATES: A GRIM PICTURE.....	55
A. A Brief Overview of Stalking Legislation in the United States.....	59
B. Nature and Relation of Stalking to Domestic Violence	60
i. The Impact of Stalking on Victims.....	60
ii. Correlation of Stalking to Physical Violence, Protective Order Violations, and Femicide	62
iii. Stalkers Are an Especially Dangerous Breed of Criminals.....	65
iv. Conclusion: Stalking Requires the Use of Protective Orders.....	67
C. Protective Orders as a Legal Response	68
i. Enforcement and Violations: Great Challenges to Effectiveness	70
ii. Beneficial Influences: Reduction of Violence and Victim Empowerment.....	71
III. STALKING PROTECTIVE ORDERS IN THE UNITED STATES	74
A. Oregon Case Study.....	76
IV. STALKING AND PROTECTIVE ORDERS IN TEXAS	79
A. Currently Available Protective Orders in Texas	79
B. Stalking: A Texas-Sized Problem	81
C. Texas Stalking Statistics.....	81

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D. Conclusion: The Lack of Stalking Protective Orders is an Oversight in Texas’s Protective Order Legislation.....	83
V. RECOMMENDATIONS	84
A. Strategies on Implementing Stalking Protective Order Legislation	84
i. Generate Consensus Among Existing Domestic Organizations.....	85
ii. Create a Stalking Advocacy Organization.....	86
iii. Anticipate and Address Concerns of the Texas Legislature	87
B. Improving the Protective Order Process	89
i. Standardize and Shorten Protective Order Forms.....	89
ii. Increase Access and Cultural Sensitivity.....	91
iii. Raise Awareness in the Courts Regarding Possible Re-victimization.....	92
iv. Speed Up Distribution of Protective Orders by Enhancing Communication Between Relevant Agencies and Personnel	93
C. Improving Protective Order Enforcement and Effectiveness.....	94
i. Enhance Stalking Training and Response Protocols in Police Departments and the Community	94
ii. Engage Respondents in Protective Order Proceedings.....	97
iii. Advance the Economic Rights of Applicants.....	99
iv. Modernize Safety Planning	99
VI. CONCLUSION.....	100

[The stalking makes me] mad, hurt, hate—I feel hate, I feel rage, I feel disgust. I feel like screaming. I just get aggravated. I don’t feel like a real person, I feel like a robot. I feel like I have to speak, and I have to look, and I have to dress, and I have to walk the way he wants me to. Not the way I want to.¹

I. INTRODUCTION

Although stalking has sometimes been portrayed on the cinema

¹ Tara, former stalking victim, quoted in TK LOGAN ET AL., PARTNER STALKING: HOW WOMEN RESPOND, COPE, AND SURVIVE 135 (Springer Publishing 2006) [hereinafter TK LOGAN, PARTNER STALKING].

screen as romantic and appealing, in reality it is a “crime of terror.”² As Neal Miller describes, “it is one part threat and one part waiting for the threat to be carried out.”³ The development of stalking laws in the United States and Texas has been remarkably short, yet encouragingly fast. Texas, however, remains one of a trio of states that does not address stalking in its protective order legislation. While the devastating impact of stalking on victims and society as a whole is well known, Texas has fallen behind the national trend of states assisting stalking victims within their borders. Despite having progressed more slowly than other states, Texas still has the opportunity to draft a focused and comprehensive statute creating stalking protective orders.

This paper argues that the Texas Legislature should enact a bill authorizing stalking protective orders. Part I provides an overview of stalking in the United States, the relation of stalking to domestic violence, and the use of protective orders as a legal response to both crimes. Part II surveys current stalking protective orders in the United States and features an in-depth case study of Oregon, which demonstrates how one state passed and subsequently interpreted its stalking protective order law. Part III focuses on stalking and protective orders as they exist in Texas, and reveals the urgency and feasibility of legislating stalking protective orders. Finally, Part IV is comprised of eleven recommendations divided into three categories: (1) strategies to make stalking protective orders in Texas a reality; (2) enhancements to the protective order process; and (3) improvements to the enforcement and effectiveness of protective orders. These recommendations are the heart of this paper, and are deliberately forward-looking in that they assume stalking protective order legislation will be enacted in the near future.

II. STALKING IN THE UNITED STATES: A GRIM PICTURE

According to the U.S. Department of Justice, an estimated 3.4 million people are stalked annually in the United States.⁴ At least one in

² NEAL MILLER, U.S. DEP'T JUST., INST. FOR LAW AND JUST., STALKING LAWS AND IMPLEMENTATION PRACTICES: A NATIONAL REVIEW FOR POLICYMAKERS AND PRACTITIONERS I (2001).

³ *Id.*

⁴ KATRINA BAUM ET. AL, U.S. DEP'T OF JUST., BUREAU OF JUST., STALKING VICTIMIZATION IN THE UNITED STATES I (2009) (Special Report). This is a staggering jump (143%) from 1.4 million recorded only eleven years ago. PATRICIA TJADEN & NANCY THOENNES, NAT'L INST. OF JUST., CTRS. FOR DISEASE CONTROL AND PREVENTION, STALKING IN AMERICA: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY, RESEARCH IN BRIEF 1, 2 (April 1998) [hereinafter TJADEN & THOENNES, NVAW SURVEY FINDINGS]. Approximately 503,000 women and 185,000 men are stalked by an intimate partner annually. PATRICIA TJADEN & NANCY THOENNES, U.S. DEP'T JUST., NAT'L INST. JUST., EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE iii (2000).

twelve American women and one in forty-five American men will be stalked at some point in their lives.⁵ These “domestic terrorists” use violence and threats of violence to subjugate and torment their victims in their quest for power and control.⁶ Almost half of the victims (45.5%) were stalked at least once a week.⁷ Although stalking can affect both women and men, most (78%) of stalking victims are women, and 74% of these women are between the ages of eighteen and thirty-nine.⁸ This high percentage shows that stalking of young women is especially severe.

The sexual victimization of college students is also quite prevalent.⁹ The combination of many young adults working, living, and interacting in a relatively cloistered and confined physical space such as a college campus with potentially immature views of relationships can produce unhealthy relationships and modes of communication. Extrapolating from previous studies on college students, Patricia Tjaden estimates that between 21% and 26% of women attending postsecondary institutions are stalked each year, a figure which is twenty-five times greater than that found in the national study she conducted in 1998.¹⁰ Stalking on campus is not limited to student-student interactions, but also includes student-instructor relationships.¹¹

With the proliferation of cheap technology that allows instantaneous tracking and monitoring of victims, the frequency of cyberstalking has risen dramatically. In response, Linda Farstein, Chief

⁵ TJADEN & THOENNES, NVAW SURVEY FINDINGS, *supra* note 4, at 3.

⁶ JUSTICE SOLUTIONS, 2005 NATIONAL STALKING AWARENESS MONTH RESOURCE GUIDE 2 (2004).

⁷ BAUM, STALKING VICTIMIZATION, *supra* note 4, at 12.

⁸ TJADEN & THOENNES, NVAW SURVEY FINDINGS, *supra* note 4, at 2.

⁹ Patricia Tjaden, *Stalking in America: Laws, Research, and Recommendations*, in VICTIMS OF CRIME 75, 81 (2007) [hereinafter Tjaden, *Stalking in America*].

Stalking among college women is a thoroughly researched field. For further research, see BONNIE S. FISHER, FRANCIS T. CULLEN & MICHAEL G. TURNER, BUREAU OF JUST. STATISTICS, NAT'L INST. OF JUST., THE SEXUAL VICTIMIZATION OF COLLEGE WOMEN (2000) (conducting a study of 4,446 female students and reporting 13.1% had been stalked in school and surprisingly, only 3.9% sought a restraining order); Bonnie S. Fisher, Francis T. Cullen & Michael G. Turner, *Being Pursued: Stalking Victimization in a National Study of College Women*, 1 CRIMINOLOGY & PUB. POL'Y 257, 289-90 (2002) (summarizing various studies on stalking among undergraduate women students and stating “among college women, stalking appears to be a common form of victimization”); Victoria Ravensburg & Catherine Miller, *Stalking Among Young Adults: A Review of the Preliminary Research*, 8 AGGRESSION & VIOLENT BEHAVIOR, 455-469 (2003) (describing how social immaturity, structure of college campuses, and unchecked independence are some reasons why the stalking rate is markedly higher among young adults); Andrew Brownstein, *In the Campus Shadow, Women Are Stalkers As Well As the Stalked*, CHRON. HIGHER EDUC. Dec. 8, 2000, at A40 (discussing a study showing that men constitute 42% of stalking victims at the University of Pennsylvania and Rutgers University, and that female stalkers were three times as likely to be found at the two college campuses than in the population at large).

¹⁰ Tjaden, *Stalking in America*, *supra* note 9, at 81.

¹¹ See Karen Osterholm et al., *College Professors as Potential Victims of Stalking: Awareness and Prevention: National Implications*, 1 FOCUS on C., U., & Sch., no. 1, 1, 2 (2007), available at <http://www.mincava.umn.edu/categories/1001?type=8> (last accessed January 14, 2010) (follow link to article) (discussing how cases involving students who stalk educators are less likely to be reported to college administration, law enforcement entities, or the media than when the roles are reversed, and how a faculty member may mistakenly perceive an obsessive fixation on the part of the student as merely a harmless crush).

of the Sex Crimes Prosecution Unit in the Manhattan District Attorney's Office, has proclaimed that "cyberstalking has replaced traditional methods of stalking and harassment."¹² One-quarter of all stalking victims reported suffering some form of cyberstalking, often via e-mail or instant messaging.¹³ A stalker no longer needs to be in close proximity to his victim to monitor or follow her. He can use a global positioning system (GPS) to track her in her car as she travels to virtually any location, or install a small hidden camera (often called a "spycam") in his victim's home and peek in on the most private moments of her life.¹⁴

Technological stalking can be done from a distance—something that was not anticipated by early stalking laws that were drafted to prohibit *physically* following and pursuing another person.¹⁵ Stalkers'

¹² Quoted in U.S. DEP'T OF JUST., STALKING AND DOMESTIC VIOLENCE: REPORT TO CONGRESS 5 (2001) [hereinafter 2001 STALKING AND DOMESTIC VIOLENCE REPORT]. Cyberstalking is truly "the hidden horror of the Internet" that nobody talks about. Tom Zeller Jr., *A Sinister Web Entraps Victims of Cyberstalking*, N.Y. TIMES, April 17, 2006, available at <http://www.nytimes.com/2006/04/17/technology/17stalk.html> (last accessed December 31, 2009) (quoting Parry Aftab, executive director of WiredSafety.org, a network of 9,000 volunteers who patrol the Web and assist victims of cyberstalking, child pornography and other online ills). For as little as \$5.99 per month, a person can turn a cell phone into a surveillance device, which will track where the victim travels. GLEN KERCHER & MATTHEW JOHNSON, CRIME VICTIMS' INST., SAM HOUSTON ST. U. STALKING IN TEXAS, 5 (2006). This has led to some terrifying tactics, such as the cyberstalker's hooking a phone to the battery of a victim's car and programming it to pick up silently whenever he called, so that he could monitor the precise location of her vehicle via the Internet. See e.g., Marie Tessier, *Hi-Tech Stalking Devices Extend Abusers' Reach*, WOMEN'S ENEWS, Oct. 2, 2006, available at <http://www.womensenews.org/article.cfm/dyn/aid/2905> (last accessed December 31, 2009). Like stalking among young adults, cyberstalking has spawned a growing body of scholarly studies. For further research and information, see 2001 STALKING AND DOMESTIC VIOLENCE REPORT (discussing the nature and extent of cyberstalking in America, and the major differences between offline and online stalking); Cindy Southworth et al., Violence Against Women Online Resources, *A High-Tech Twist on Abuse: Technology, Intimate Partner Stalking, and Advocacy* (2005), available at <http://www.mincava.umn.edu> (last accessed December 31, 2009) (click on "Stalking," and then "Research") (surveying the various technologies with which cyberstalkers utilize, such as cell phones, location and surveillance systems, instant messaging, spyware, and blogs); Naomi H. Goodno, *Cyberstalking, A New Crime: Evaluating the Effectiveness of Current State and Federal Laws*, 72 MO. L. REV. 125 (2007) (discussing the differences between cyberstalking and offline stalking, criminal elements that should be included in state statutes, and potential issues in criminalizing cyberstalking); Cindy Southworth & Sarah Tucker, *Technology, Stalking and Domestic Violence Victims*, 76 MISS. L.J. 667 (2007) (providing a brief overview of all the different technologies cyberstalkers can use in their goal to maintain control over their victims).

¹³ BAUM, STALKING VICTIMIZATION, *supra* note 4, at 5.

¹⁴ NAT'L CTR. FOR VICTIMS OF CRIME, THE MODEL STALKING CODE REVISITED: RESPONDING TO THE NEW REALITIES OF STALKING 15 (2007) [hereinafter MODEL STALKING CODE REVISITED]. The stalker can also put a spyware program on the victim's computer for as little as \$30.00 and intercept all of her e-mails and Internet searches. *Id.* Global positioning system (GPS) technology comprised about a tenth of the electronic monitoring of stalking victims. BAUM, STALKING VICTIMIZATION, *supra* note 4, at 5.

¹⁵ The sheer terror of being cyberstalked can be seen "in the first successful prosecution under California's cyberstalking law, [where] prosecutors in the Los Angeles District Attorney's Office obtained a guilty plea from a 50-year-old former security guard, who used the Internet to solicit the rape of a woman who rejected his romantic advances. The defendant terrorized his 28-year-old victim by impersonating her in various Internet chat rooms and online bulletin boards, where he posted, along with her telephone number and address, messages that she fantasized of being raped. On at least six occasions, sometimes in the middle of the night, men knocked on the woman's door saying they wanted to rape her. The former security guard pleaded guilty in April 1999 to one count of stalking and three counts of solicitation of sexual assault. 2001 STALKING AND DOMESTIC

use of e-mail and other technology to contact victims has prompted many jurisdictions to pass so-called “cyberstalking” laws. While it is heartening to see state legislatures responding to this new form of stalking, as the National Center for Victims of Crime explains, “passing separate laws for stalking and cyberstalking often creates unintended consequences such that prosecutors have trouble choosing the statute under which to prosecute a case.”¹⁶ The obvious solution is to phrase the text of the stalking statute in a way that covers all conceivable forms of stalking, whether with the use of currently known technologies or yet undeveloped ones. A broadly-written statute is something the Texas Legislature should consider since the current stalking statute does not explicitly cover cyberstalking.¹⁷

Further data paint a grim picture of stalking and its relationship to femicide. Overall, 87% of stalkers are men; furthermore, 94% of women and 60% of men are stalked by men.¹⁸ Seventy-seven percent of female stalking victims and 64% of male victims are stalked by someone they know.¹⁹ Fifty-nine percent of female stalking victims and 30% of male victims are stalked by a current or former intimate partner.²⁰ The Intimate Partner Stalking and Femicide Study, which studied female murder victims who had been killed by intimate partners, found that 76% of femicide victims and 85% of attempted femicide victims had been stalked by their intimate partners in the year prior to their murders.²¹ These sobering statistics reveal that as much as stalkers may claim they act out of love for their victims, “it is not the power of love that drives them, but the love of power.”²² One would think that given the danger stalkers pose both to their victims and society, legislators would have long since fully addressed stalking in all of its forms. However, although there have always been stalkers in society, the history of stalking laws is surprisingly short.

VIOLENCE REPORT, *supra* note 12, at 4.

¹⁶ MODEL STALKING CODE REVISITED, *supra* note 14, at 15.

¹⁷ See TEX. PEN. CODE ANN. § 42.072 (Vernon 2008); see also Part IVB (discussing ways to modernize protective orders in Texas).

¹⁸ Tjaden & Thoennes, NVAW SURVEY FINDINGS, *supra* note 4, at 5. However, the most recent statistics have shown two-thirds (66.9%) of female victims report being stalked by men, one-fourth (23.5%) by females, and one-tenth (9.6%) by an individual whose sex they are unsure of. BAUM, STALKING VICTIMIZATION, *supra* note 4, at 4.

¹⁹ NAVW SURVEY FINDINGS, *supra* note 4, at 2. Overall in 2006, approximately three-fourths of all stalking victims interviewed reported knowing their perpetrator in some capacity. BAUM, STALKING VICTIMIZATION, *supra* note 4, at 4.

²⁰ NAVW SURVEY FINDINGS, *supra* note 4, at 2. In 2006, 30.3% of all stalking victims were stalked by such people. BAUM, STALKING VICTIMIZATION, *supra* note 4, at 4. Nancy K. D. Lemon, DOMESTIC VIOLENCE & STALKING: A COMMENT ON THE MODEL ANTI-STALKING CODE PROPOSED BY THE NATIONAL INSTITUTE OF JUSTICE, BATTERED WOMEN’S JUST. PROJECT 1 (1994) (“[I]t is estimated that seventy to 80% of stalking cases occur in a domestic context, while only 10% to 20% involve strangers”).

²¹ Judith M. McFarlane et al., *Stalking and Intimate Partner Femicide*, 3 HOMICIDE STUDIES 300, 308 (1999).

²² JUSTICE SOLUTIONS, *supra* note 6, at 2.

A. A Brief Overview of Stalking Legislation in the United States

Stalking has only recently been recognized as a significant and widespread problem.²³ Stalking laws emerged, in part, because of the failure of civil injunctions to protect adequately victims from threatening behavior and bodily harm.²⁴ Before 1990, not only might a court have held that a person who was the target of stalking behavior failed to meet the “irreparable injury” requirement for an injunction,²⁵ but the process of obtaining this civil remedy was often arduous, time-consuming, and—should the victim need an attorney—expensive.²⁶

In 1990, California enacted the first state stalking law after the young and popular actress, Rebecca Schaeffer, was murdered at her Los Angeles apartment by an obsessed fan who had stalked her for two years.²⁷ In 1992, twenty-nine states passed similar legislation, and by 1993, all states and the District of Columbia had addressed stalking in their penal codes.²⁸ Three years later, Congress codified interstate

²³ Before 1990, “stalking consist[ed] of behavior which was often committed but which was not named as a crime.” Carol E. Jordan et al., *Stalking: Cultural, Clinical and Legal Considerations*, 38 BRANDEIS L.J. 513, 550 (2000). Even the 1990 edition of Black’s Law Dictionary did not have an entry for “stalking” among its definitions. See Black’s Law Dictionary (6th ed. 1990).

²⁴ Kathleen G. McAnaney et al., Note, *From Imprudence to Crime: Anti-Stalking Law*, 68 NOTRE DAME L. REV. 819, 875 (1993); Jennifer L. Bradfield, Note, *Anti-Stalking Laws: Do They Adequately Protect Stalking Victims?*, 21 HARV. WOMEN’S L.J. 229, 240-247 (1998).

²⁵ E.g., *Alberti v. Cruise*, 383 F.2d 268, 271 (4th Cir. 1967).

²⁶ McAnaney, *supra* note 24, at 877.

²⁷ Bradfield, *supra* note 24, at 244. There were a number of events prior to 1990 that helped pave the road to this legislation. In 1982 there was the stalking and attempted murder of actress Theresa Saldana. Email from Jodi Rafkin, Program Attorney for the Stalking Resource Center at the National Center for Victims of Crime, to author (Nov. 10, 2009, 17:14 CST) (on file with author). Schaeffer’s stalker learned about hiring a private investigator to obtain the victim’s home address from the subsequent media coverage. *Id.* He later hired his own investigator to find Schaeffer’s home address through the California motor vehicle database. *Hearing on Securing Electronic Personal Data: Striking a Balance Between Privacy and Commercial and Governmental Use, Before the United State Senate Committee on the Judiciary* 100th Cong. (2005). In 1988 in Sunnyvale, California, Richard Farley shot and killed 7 people and wounded 4 others, including the woman he had been stalking. Email from Jodi Rafkin, Program Attorney for the Stalking Resource Center at the National Center for Victims of Crime, to author (Nov. 10, 2009, 17:14 CST) (on file with author). The following year, in Orange Country, there were 5 more stalking murders. *Id.* All these events taken together prompted passage of California’s stalking law. Intense pressure from the film industry and wider community also compelled California State Senator Edward Royce and Judge John Watson to draft the stalking law. Tjaden, *Stalking in America*, *supra* note 9, at 75.

²⁸ Tjaden, *Stalking in America*, *supra* note 9, at 76; see also Jordan, *supra* note 23, at 554-63 (comparing stalking statutes across the country). “In 1993, Congress directed the National Institute of Justice (NIJ) at the U.S. Department of Justice to develop a model anti-stalking code to encourage states to adopt anti-stalking measures and to provide them with direction in drafting such laws.” MODEL STALKING CODE REVISITED, *supra* note 14, at 11. NIJ entered into a cooperative agreement with the National Criminal Justice Association (NCJA) to research existing stalking laws and develop model legislative language.” *Id.* “NCJA sought additional expertise and input from the National Conference of State Legislatures, the American Bar Association, the National Governors’ Association, the Police Executive Research Forum, the National Center for Victims of Crime, and other national organizations.” *Id.* Since the 1993 model anti-stalking code was developed, much more information regarding the behavior of stalkers and the effectiveness of state stalking laws was

stalking as a federal offense, and later amended the statute to include stalking via electronic communications.²⁹ An amendment adopted in 2006 expanded the federal stalking statute to include conduct that causes the victim substantial emotional distress.³⁰ The new law also added language that would cover surveillance of a victim by a GPS device.³¹

B. Nature and Relation of Stalking to Domestic Violence

Three of the strongest justifications to be made for the passage of stalking protective order legislation in Texas are: (1) the devastating impact stalking has on its victims; (2) the clear correlation between stalking, physical violence, and femicide; and (3) the special danger stalkers pose as criminals. Stalking can be paralyzing for the victim and cause physical, financial, social, psychological, and emotional misery. In describing the nature of stalking, Professor Paul Mullen writes that “stalking is distinguished [from other criminal offenses] by its repetition and persistence. The stalking victim is usually exposed to multiple forms of harassment, often involving threatening and traumatic incidents, the consequence of which may be chronic fear and apprehension.”³² Put another way, stalking is a crime that is defined largely by its effect on the victim and the fear it induces.

i. *The Impact of Stalking on Victims*

Since the goal of stalking is to induce fear and exercise control over someone else’s life, victims inevitably suffer many mental health problems.³³ Four-fifths of women in one study reported suffering direct negative physical and mental health consequences as a result of being

made known, including the stalker’s rising use of tracking and monitoring technology, quantifiable national data that documented the prevalence and severity of stalking. This created a need for revisiting and updating the original code, which was completed last year. *See generally id.*

²⁹ 18 U.S.C. § 2261A (2007), *see also, supra* note 12 on cyberstalking.

³⁰ 18 U.S.C. § 2261A(2)(B) (2007).

³¹ 18 U.S.C. § 2261A(2)(A) (2007).

³² PAUL E. MULLEN, MICHELE PATHÉ & ROSEMARY PURCELL, *STALKERS AND THEIR VICTIMS* 58 (2000). The fact that stalking, by definition, is a form of repeat victimization, which requires behavior constituting a series of incidents rather than a single criminal act, makes it especially dangerous, as one Pennsylvania court noted: “The repetitiveness of stalking acts is indicative of the defendant’s unrelenting obsession with the victim and often reveals an escalation of violence.” *Cmmw. v. Leach*, 729 A.2d 608, 613 (Pa. Super. Ct. 1999).

³³ In one study, almost all victims (99%) reported diminished quality of their lives as a result of the stalking. Eighty percent reported a high level of fear, 94% were constantly wary, and 64% reported changes in activity patterns. MARY P. BREWSTER, U.S. DEP’T OF JUST., NAT’L INST. OF JUST., *EXPLORATION OF THE EXPERIENCES AND NEEDS OF FORMER INTIMATE STALKING VICTIMS* 10 (1999); *see also* 2001 *STALKING AND DOMESTIC VIOLENCE REPORT*, *supra* note 12 (outlining emotional and psychological symptoms exhibited by stalking victims).

stalked.³⁴ The symptoms they reported include: (1) acute physical injury including open wounds, fractures, head injuries, sprains and strains, and burns; (2) chronic physical injuries or exacerbations of other health problems; (3) stress-related health problems; (4) difficulty with sleep; (5) decreased perception of safety at home or neighborhood; (6) anxiety disorders; and (7) feelings of losing self, negative perceptions of self, and self-blame.³⁵

Stalking also imposes significant financial and social distress on its victims. In one study, Professor Mary Brewster found that 80% of stalking victims incurred financial expenses, ranging from nominal costs to those exceeding \$100,000, as a direct result of being stalked.³⁶ Twenty-seven percent of the women incurred moving expenses as a result of trying to evade their stalkers, and 29% reported losing salary or tuition as a result of the stalking.³⁷ Interference with job performance, harassment at work, and disruption of occupational duties also aggravate victims' monetary woes and keep them from achieving financial independence.³⁸ In their efforts not to be followed, victims' normal routines and social lives are disrupted. Many avoid going out on their own, and give up personal activities.³⁹ Some may even move to another state or attempt to change their identity, which can involve uprooting children, leaving behind close relatives and friends, and abandoning careers.⁴⁰

Stalking creates a "psychological prison" that systematically "deprives its victims of basic liberty of movement and security in their homes."⁴¹ One victim described her ordeal in the following words:

I wake up every morning, wondering if this is the day I will die at the hands of my stalker. I spend the day looking over my shoulder for him. I jump every time the phone rings. I can't sleep at night from worrying, and when I do sleep, I have nightmares of him. I can't escape him, not even for a minute. I never have a moment's peace, awake or asleep.⁴²

Psychological responses to stalking may include not just anxiety, fear, and paranoia, but also feelings of guilt, self-blame, shame, isolation, low self-esteem, anger, rage, and depression.⁴³ Almost always, there is a

³⁴ TK LOGAN, PARTNER STALKING, *supra* note 1, at 107-47.

³⁵ *Id.*

³⁶ BREWSTER, *supra* note 33, at 10. Victims bore a median cost of \$1000. *Id.*

³⁷ *Id.* at 7. In 2006, over half of the victims lost less than \$1,000 of pay, and 8% of victims lost \$5,000 in pay or more. BAUM, STALKING VICTIMIZATION, *supra* note 4, at 7.

³⁸ LOGAN, *supra* note 1, at 149-81.

³⁹ OFFICE OF COMMUNITY ORIENTED POLICING SERVS., U.S. DEP'T OF JUST., CREATING AN EFFECTIVE STALKING PROTOCOL 11 (2002).

⁴⁰ *Id.*

⁴¹ 2001 STALKING AND DOMESTIC VIOLENCE REPORT, *supra* note 12, at vii.

⁴² CREATING AN EFFECTIVE STALKING PROTOCOL, *supra* note 39, at 11.

⁴³ *Id.* The destructive impact of stalking can be exacerbated in certain cultural contexts, for instance,

“pervasive sense of loss of personal safety, a constant feeling of stress, and hypervigilance.”⁴⁴ In more serious episodes, stalking victims may show symptoms of Post-Traumatic Stress Disorder (PTSD): (1) repeatedly re-experiencing frightening stalking incidents, (2) avoiding reminders of the problem (for example, through social withdrawal or avoidance of any situations that might trigger memories of stalking incidents), and (3) having exaggerated “startled responses.”⁴⁵ Victims often complain about feeling exhausted, being unable to concentrate, and for some, suffering short-term memory problems, which negatively affect work productivity or academic performance.⁴⁶ Each new stalking incident can exacerbate victims’ reactions, which may be further compounded by concerns regarding the harmful effects stalking may have on their children and other “secondary victims.”⁴⁷ These concerns bolster the argument that additional forms of protection for victims, including stalking protective orders, are essential.

ii. *Correlation of Stalking to Physical Violence, Protective Order Violations, and Femicide*

Stalking and domestic violence intersect and are enmeshed on many levels.⁴⁸ According to Professor TK Logan, who has conducted

in Asian families. In 2002, the National Asian Women’s Health Organization conducted a study of violence among 336 young Asian American women. NAT’L ASIAN WOMEN’S HEALTH ORG., SILENT EPIDEMIC: A SURVEY OF VIOLENCE AMONG YOUNG ASIAN AMERICAN WOMEN 1 (2002) (Special Report). The study found that a large number of these women were victims of sexual violence, emotional abuse, and stalking, but barely utilized support services. *Id.* at 2. One reason for this phenomenon was the cultural barriers and stigmas within Asian American families that often suppressed the violence as a private “family matter,” which in turn perpetuated the violence. *Id.* Young Asian American women victims were also often blamed for “bringing shame to the family,” erecting yet another barrier for them in seeking support. *Id.* Indeed, there is a common Chinese saying, *jiachou buke waiyang*, which translates to “Don’t wash dirty linens in public.” In other words, any affair that might bring shame upon the family cannot be made known to the outside world; it is to be strictly kept within the confines of the home.

⁴⁴ CREATING AN EFFECTIVE STALKING PROTOCOL, *supra* note 39, at 11.

⁴⁵ McAnaney, *supra* note 24, at 851 & n. 146.

⁴⁶ CREATING AN EFFECTIVE STALKING PROTOCOL, *supra* note 39, at 11. Overall, in measuring the emotional impact of and response to their stalking, women reported that they “very much” felt: (1) frustrated (82%); (2) overwhelmed (77%); (3) angry (73%); (4) lonely (71%); (5) resentful (69%); (6) anxious or worried (68%); (7) tense or on the edge (68%); (8) confused (65%); (9) less trustful of others (63%); (10) like I don’t get what I deserve (63%); (11) withdrawn from others (61%); (12) tearful and/or sad (60%); and (13) vulnerable (57%). TK LOGAN, PARTNER STALKING, *supra* note 1, at 134.

⁴⁷ *Id.* at 12. Stalking also results in children’s psychological distress and negatively impacts the relationships between family and friends. TK LOGAN, PARTNER STALKING, *supra* note 1, at 155.

⁴⁸ See TK Logan et al., *Stalker Profiles With and Without Protective Orders: Reoffending or Criminal Justice Processing?*, 17 VIOLENCE AND VICTIMS 541 (2002) (a study based on 346 males who had been charged with stalking, of which two-thirds had a protective order against them at some point over the study period, suggesting stalking was associated with intimate partner violence); cf. Jennifer Cole et al., *Intimate Sexual Victimization Among Women with Protective Orders: Types and Associations of Physical and Mental Health Problems*, 20 VIOLENCE AND VICTIMS 695, 697 (2005) (“Some research findings have shown that men who physically and sexually assault their partners are more violent when compared to men who physically assault but do not sexually assault their

numerous scholarly studies on domestic violence, stalking is the number one predictor of whether a perpetrator will commit subsequent acts of domestic violence.⁴⁹ Stalking can manifest itself in the form of directed aggression, damaged or stolen property, harm towards a third party or pet, and most seriously, physical assault.⁵⁰ In roughly one-fifth of reported incidents, stalkers wielded weapons: knives, firearms, and even cars.⁵¹ A vast majority (81%) of female stalking victims who were stalked by a current or former husband or cohabiting partner were also physically assaulted by that partner, and almost a third were sexually assaulted.⁵² In an in-depth study of sixty-two stalking victims, Professor Logan and other researchers found that 92% of the women feared their stalking partners would physically harm them or someone close to them, and that 71% believed the stalking worsened in frequency and severity over time.⁵³

Where there is stalking, domestic violence is also likely to be found.⁵⁴ The majority of stalking victims complain of serious physical assault, threats to kill or harm, or attempts or threats to take children.⁵⁵

partners. . .”).

⁴⁹ Telephone Interview with TK Logan, Professor in Department of Behavioral Science, University of Kentucky (Nov. 24, 2008). In the introduction to her book, *PARTNER STALKING*, Professor Logan comes to these eight conclusions about the severity of stalking: (1) stalking is not a rare event; (2) current or ex-intimate partners make up a large, if not the largest, category of stalking perpetrators among women reporting stalking victimization; (3) partner stalking often occurs during relationships as well as separation or divorce from abusive relationships; (4) partner stalking is dangerous because it is associated with violence, including potential deadly violence; (5) stalking is associated with extensive victim distress (86% of women indicated they had experienced long-term changes to their personalities because of being stalked, and 75% had symptom levels indicating a presence of at least one psychiatric disorder); (6) women use a variety of strategies to cope with stalking; (7) partner stalking is often not perceived as serious (dismissal was the most common disposition of stalking criminal cases); and (8) little is known about men who stalk their partners. TK LOGAN, *PARTNER STALKING*, *supra* note 1, at 3-12.

⁵⁰ Kris Mohandie et al., *The RECON Typology of Stalking: Reliability and Validity Based upon a Large Sample of North American Stalkers*, 51 J. FORENSIC SCI. 147, 150 (2006). In this study of over one thousand stalkers, the results of previous studies are confirmed: stalkers predominantly target female victims (81%), the duration of the average stalking episode is sixteen months, and threats are commonly used (60%, with an average number of five threats per stalking case). *Id.* at 149-50. Most disturbingly, the study found that violence occurred in 46% of cases, with 73% of all cases reporting criminal justice involvement greater than a police report. *Id.* at 150.

⁵¹ *Id.* at 150.

⁵² TJADEN & THOENNES, *NVAW SURVEY FINDINGS*, *supra* note 4, at 2.

⁵³ TK LOGAN, *PARTNER STALKING*, *supra* note 1, at 22. More specifically, 57% of the women were afraid their stalker was going to kill them, 44% were afraid of physical harm, 5% were concerned that the stalker would harm their children or take them away, 5% feared the stalker would harm others close to them, and 7% thought the stalker might harm himself. *Id.* at 22. Chapter two of the book provides comprehensive statistics on the relationship of stalking to domestic violence.

⁵⁴ CREATING AN EFFECTIVE STALKING PROTOCOL, *supra* note 39, at 9; *see also* Kevin S. Douglas & Donald G. Dutton, *Assessing the Link Between Stalking and Domestic Violence*, 6 *AGGRESSION & VIOLENT BEHAVIOR* 519, 533 (2001) (citing a study in which 30% of 120 convicted batterers attending a treatment program admitted to stalking their partners).

⁵⁵ BREWSTER, *supra* note 33, at 7. In one study, 73% of the women reported threats of violence made by their stalkers against them, and 37% mentioned threats of violence towards family, friends, coworkers, or other affiliates. Forty-six percent of the victims reported that their stalkers had committed violence against them during the stalking. Those who received explicit threats were also more likely than those who received implicit threats or no threats, to have experienced violence at the hands of their stalkers (65.7% versus 23.9%, respectively).

Physical injuries from these assaults range from small scrapes and bruises to gunshot wounds.⁵⁶ Studies suggest that the relationship of former partners in between 30% and 65% of stalking cases was violent.⁵⁷ Overall, it is estimated that stalkers commit acts of violence against their victims in 25% to 35% of all stalking cases.⁵⁸ In light of this data, most domestic violence could be seen as a sub-category of stalking.

Not only does stalking play a critical role in the domestic abuse that causes victims to seek protective orders, it is also a primary source of protective order violations. Professor TK Logan reported in her study of 698 women that 30% continued to be stalked by their partner *after* the protective order was issued.⁵⁹ Even more disturbing is that after the issuance of a protective order, the chances of this subset of women experiencing psychological abuse almost doubled, and the chances of suffering physical abuse quadrupled.⁶⁰ They were also 4.7 times more likely to be injured, 4.8 times more likely to experience severe physical violence, and an astonishing 9.3 times more likely to experience sexual assault than were women who were not stalked after the issuance of a protective order.⁶¹ Furthermore, women in the first category reported more verbal abuse, physical violence, degradation, jealousy and control, symbolic violence or threat tactics, and sexual coercion than women in the second.⁶² It is not surprising, then, that post-protective order stalking causes women to report continued fear and to perceive the order as ineffective.⁶³

Since relationship violence significantly correlates with femicide, and stalking is tightly linked to relationship violence, there is good reason to treat every domestic violence case as a potential stalking case, and in many instances, as a potentially lethal one.⁶⁴ In a high proportion

⁵⁶ *Id.* at 10. In Brewster's study, 46% of the women experienced violence at the hands of their stalkers, with 81% of these women suffered physical injuries. The most prevalent injuries were bruises (27.3% of the total sample), small scrapes and cuts (18.2%), and black eyes (12.3%). Additionally, 22% of the women suffered property damage of some kind. *Id.*

⁵⁷ *Id.*

⁵⁸ JR Meloy, THE PSYCHOLOGY OF STALKING: CLINICAL AND FORENSIC PERSPECTIVES 5 (1998).

⁵⁹ See TK Logan & Robert Walker, *Civil Protective Order Outcomes Violations and Perceptions of Effectiveness*, 24 JOURNAL OF INTERPERSONAL VIOLENCE 675, 682 (2009) (also available at J. Interpersonal Violence OnlineFirst, doi:10.1177/0886260508317186, 10) (summarizing the various studies that give rise to this wide spectrum of figures). In a separate study, Professors Logan and Cole found that the stalking lasted, on average, eight months after the order was issued. TK Logan & Jennifer Cole, *The Impact of Partner Stalking on Mental Health and Protective Order Outcomes Over Time*, 22 VIOLENCE & VICTIMS 546, 558 (2007).

⁶⁰ Logan & Walker, *supra* note 59, at 680.

⁶¹ *Id.*

⁶² Logan & Cole, *supra* note 59, at 553.

⁶³ See Logan & Walker, *supra* note 59, at 683. Heightening the victims' lower perception of personal safety and effectiveness of protective orders, Professors Logan and Cole reported that if there was no stalking after the protective order, 85.4% of the women felt fairly to extremely safe from their partners, and 86% stated the protective order itself was fairly to extremely effective. However, if there was stalking, these numbers plunge to 55.2% and 59%, respectively. Logan & Cole, *supra* note 59, at 554.

⁶⁴ CALLIE MARIE RENNISON & SARAH WELCHANS, BUREAU OF JUST. STATISTICS, U.S. DEP'T OF JUST., INTIMATE PARTNER VIOLENCE 1 (2000) (Special Report).

of cases involving the murder (76%) or attempted murder of women (85%), the perpetrator was shown to have stalked the victim beforehand.⁶⁵ Another study found that femicide victims who were physically abused prior to the murder were also far more likely to have been stalked than women who were not physically abused.⁶⁶ Although femicide in stalking cases is admittedly rare—only 0.5% of known stalking cases culminate in the death of the female victim—that rate is still fifty times that of the U.S. population at large (<0.01%).⁶⁷ Femicide is also the leading cause of death in the U.S. among young African-American women aged fifteen to forty-five years, and the seventh leading cause of premature death among women overall.⁶⁸

iii. Stalkers Are an Especially Dangerous Breed of Criminals

Many stalkers have a host of life problems that are occasionally compounded by histories of violence and serious mental illness.⁶⁹ Stalkers tend to be young males with some prior criminal record and history of substance abuse.⁷⁰ If their attempts to contact or win over their victims' hearts prove unsuccessful, it is possible that they will target the victims aggressively with violent acts such as breaking into their

⁶⁵ McFarlane, *Intimate Partner*, *supra* note 21, at 300. In North Carolina, one research study found that 23.4% of the women who had been murdered by a current or former partner had been stalked prior to the fatal crime. Kathryn Moracco et al., *Femicide in North Carolina, 1991-1993: A Statewide Study of Patterns and Precursors*, *HOMICIDE STUDIES* 422, 435 (1998). The large differences between both studies can be explained by the use of proxy informants who knew the victim and perpetrator, in McFarlane's study, and the exclusive use of police knowledge in Moracco's study.

⁶⁶ Jordan, *supra* note 23, at 536.

⁶⁷ Mohandie, *supra* note 50, at 152.

⁶⁸ Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, 93 *AM. J. PUB. HEALTH* 1089, 1089 (2003). Intimate partner homicide accounts for approximately 40% to 50% of U.S. femicides. *Id.*

⁶⁹ Mohandie, *supra* note 50, at 152; *see also* Carol E. Jordan et al., *Stalking: An Examination of the Criminal Justice Response*, 18 *J. INTERPERSONAL VIOLENCE* 148, 148 (2003) (reinforcing previous studies stating there are high rates of criminal offending among stalkers and a high rate of protective orders associated with stalking cases).

⁷⁰ *See* BREWSTER, *supra* note 33, at 6. This study, consisting of 187 women who were recent stalking victims in various counties in southeastern Pennsylvania, also profiled the stalkers who terrorized the women. *Id.* at 3. It found stalkers were, on average, slightly younger than the victims in the sample, with a median age of 30 years old. Seventy-seven percent had completed at least high school, and 45% had completed at least some college. Sixty-nine percent of the stalkers were employed; 62% in blue-collar positions and 37% holding white-collar positions. About sixty-two percent of the stalkers had some type of prior criminal record; 31% for violent offenses. The abuse of either drugs or alcohol by 72% of stalkers may have aggravated their violence. Indeed, 66% of the women identified drug and/or alcohol use as a trigger of violence during their prior relationship with the stalker. *Id.* at 6. Many studies have been conducted on typologies of stalkers and characteristics of stalking. *See e.g.*, Mohandie, *supra* note 50, at 152-54; BREWSTER, *supra* note 33, at 6.

homes with the intent to commit harm.⁷¹ Indeed, rejections may humiliate the stalker and intensify their anger. As Professor Mullen and other researchers note, “In our experience, the majority of these stalkers possess an overwhelming sense of entitlement to their partner and family. Rejection is experienced by these individuals as personally humiliating and a powerful justification for their continued pursuit of the perpetrator of their narcissistic wound.”⁷²

In other words, as Douglas and Dutton note, the stalker’s inability to handle shame, humiliation, and loss, means they may respond to rejection with rage, fantasies of power, and possibly retaliation, which can lead to even more aggressive stalking and further rejection.⁷³ This self-aggravating cycle is one reason why “[s]talkers are by nature the most relentless of criminals.”⁷⁴ The ruthlessness of stalkers can be seen in how they focus their entire lives on one individual, without fearing the prospect of going to jail; the threat of handcuffs and prison time is simply not a deterrent for them.⁷⁵ As one journalist remarks, “If a stalker . . . is determined to kill, there is little short of death, permanent jail time or round-the-clock bodyguards that will keep him from his mission. Not court orders, not threats – not even moving away.”⁷⁶

⁷¹ Alana M. Nicastro, Amber V. Cousins & Brian H. Spitzberg, *The Tactical Face of Stalking*, 28 J. CRIM. JUST. 69, 71 (2000).

⁷² Mullen, *supra* note 32, at 233 (“The abandonment rage leads to pursuit and the attempt to devalue the other person in real life, which reinforces the ‘narcissistic linking fantasy to the idealized object.’ Narcissistic wounding occurs for the stalker every time his approaches or contacts are rebuked”).

⁷³ Douglas & Dutton, *supra* note 54, at 536.

⁷⁴ Michael Drexler, *Psychologist Says Stalkers Have Need to Exert Control*, THE PLAIN DEALER, Oct. 31, 1993, at 4B; Douglas & Dutton, *supra* note 54, at 542 (“After continuing rejections by the object of their pursuit, the tension could culminate in an attempt to be physically assaultive. After this, a stalker may enter the contrition phase and display qualitatively different stalking behavior, such as unwanted gifts, non-menacing phone calls, and the like. The cycle may perpetuate itself . . .”).

⁷⁵ One commentator further noted: “[M]ost anti-stalking laws have one major shortcoming -- they do not adequately recognize that many stalkers, perhaps most, are emotionally disturbed or mentally ill. The proper penal goal of anti-stalking laws, therefore, should be incapacitation of the stalker. Deterrence is not an appropriate goal because stalkers, will not cease their harmful behavior because of criminal penalties. . . . [P]ersons intent on stalking will break protection orders, and other laws, to contact their victim. Protection of the victim will be best served by basing sentencing provisions on the primary goal of incapacitation.” Heather M. Stearns, Comment, *Stalking Stuffers: A Revolutionary Law to Keep Predators Behind Bars*, 35 SANTA CLARA L. REV. 1027, 1061 and n. 240 (1995). However, one should be careful not to explain away stalking behavior as merely the result of mental illness, since it diminishes the fact that stalkers choose to engage in their criminal conduct. Email from Jodi Rafkin, *supra* note 27. Contrast Stearns’ conclusion with Mohandie’s data, “Forty-six percent of all the subjects in the sample had a clear or probable DSM-IVTR diagnosis at the time of the stalking, while no disorder was apparent from the available data for 30% of the subjects. Psychotic symptoms were present at the time of the offense for 14% of the subjects, but were not present for 64%.” Mohandie, *supra* note 50, at 149.

⁷⁶ Kevin Fagan, *New Focus on Deadly Stalkers*, S.F. CHRON., Jan. 11, 1993, at A1.

iv. Conclusion: Stalking Requires the Use of Protective Orders

Given that stalking is a “correlate of lethal and near lethal violence against women and . . . is significantly associated with murder and attempted murder,” Texas legislators must enact laws that keep stalkers away from their victims.⁷⁷ If “one major way to decrease intimate partner homicide is to intervene with battered women who are at risk,”⁷⁸ then part of this intervention must address stalking, since it is intimately linked to domestic violence that is further tied to the majority of intimate partner femicides.⁷⁹ It has been proven that the single biggest predictor of protective order violations via stalking occurs before the order is issued.⁸⁰ This is yet another reason why there should be a stalking protective order law.⁸¹

Unless there are protective orders available against stalking, a majority of orders already in place may lose their effectiveness because offenders are not told they cannot stalk their victims. While a mere quarter of female stalking victims and about a tenth of male stalking victims do obtain protective orders against their stalkers, even this very low number may be inflated due to the fear created physical and sexual violence that can accompany stalking.⁸² Why should a stalking victim have to wait until she is physically injured to obtain a protective order?⁸³ A survivor should have the remedy of a stalking protective order to ensure the stalking does not worsen into physical violence, and possibly femicide.

⁷⁷ McFarlane, *Intimate Partner*, *supra* note 21, at 300. Femicide victims who were physically abused prior to being murdered were also far more likely to also be stalked. *Id.* at 309. Furthermore, 91% of attempted femicide victims who reported abuse within the year prior to the incident also reported stalking. *Id.* Of course, the stalking protective order law must be gender neutral, since men are also stalking victims.

⁷⁸ Campbell, *supra* note 8, at 1089.

⁷⁹ *See id.* (reporting 67% to 80% of intimate partner homicides “involve physical abuse of the female by the male before the murder, no matter which partner is killed”).

⁸⁰ Logan & Cole, *supra* note 59, at 558.

⁸¹ *See* TK Logan et al., *Factors Associated With Separation and Ongoing Violence Among Women With Civil Protective Orders*, 23 J. FAM. VIOLENCE 377, 383 (2008) [hereinafter TK Logan, *Factors*].

⁸² TJADEN & THOENNES, NVAW SURVEY FINDINGS, *supra* note 4, at 2.

⁸³ “Stalking victims who are not eligible for protection orders are frequently told that nothing can be done until they are physically harmed or a suspect has committed a criminal act. By that time, a serious assault or homicide may have occurred.” Lowell T. Woods, Jr., Note, *Anti-Stalker Legislation: A Legislative Attempt to Surmount the Inadequacies of Protective Orders*, 27 IND. L. REV. 449, 458 (1993); *see generally* RAOUL FELDER & BARBARA VICTOR, *GETTING AWAY WITH MURDER: WEAPONS FOR THE WAR AGAINST DOMESTIC VIOLENCE* (1997) (discussing how criminal justice fails to protect battered women, and how battered woman are victimized by police).

C. Protective Orders as a Legal Response

As domestic violence began to be recognized as a crime, there was a concurrent recognition that protective orders were a potential civil remedy for victims to seek relief.⁸⁴ As early as 1976, battered women's advocates identified domestic violence as a "pattern of coercive control that one person exercises over another," and worked to both liberate victims from their batterers' grip and restore the victims' autonomy.⁸⁵ Called the "grandmother of domestic violence law,"⁸⁶ protective orders first came into existence in 1970 when the District of Columbia passed its Intrafamily Offenses Act.⁸⁷ Pennsylvania became the first state to authorize orders when it passed its Protection from Abuse Act in 1976.⁸⁸ Within four short years, forty-five states implemented similar legislation.⁸⁹ Today, all jurisdictions in the United States provide civil protection orders for victims of intimate or family violence.⁹⁰ They are a prospective remedy designed to prevent future violence rather than punish past conduct, though today almost every state makes the violation of a protective order a crime.⁹¹ Most importantly, they remain "the single most commonly used legal remedy for domestic violence today."⁹²

⁸⁴ The recognition of domestic violence as a crime did not come easy. For instance, in Illinois, prior to the enactment of its protective order statute, most judges, police, and prosecutors did not think that the justice system should intervene in domestic matters, so they took a hands-off approach towards battered women, unless she had "severe injuries." Nina W. Tarr, *Civil Orders for Protection: Freedom or Entrapment?*, 11 WASH. U. J.L. & POL'Y 157, 164 (2003).

⁸⁵ Tamara L. Kuennen, "No-Drop" Civil Protection Orders: Exploring the Bounds of Judicial Intervention in the Lives of Domestic Violence Victims, 16 UCLA WOMEN'S L.J. 39, 47 (2007) (quoting Susan Schechter, a pioneer of the Battered Women's Movement, her book GUIDELINES FOR MENTAL HEALTH PRACTITIONERS IN DOMESTIC VIOLENCE CASES 4 (1987)).

⁸⁶ Barbara Hart, *The Legal Road to Freedom, in BATTERING AND FAMILY THERAPY: A FEMINIST PERSPECTIVE* 1, 13 (Marsali Hansen and Michele Harway, eds., 1993)

⁸⁷ Kuennen, *supra* note 85, at 48 (2007). D.C.'s Act was formally adopted by Congress on July 29, 1970. D.C. CODE ANN. § 16-1001, et seq. (2008).

⁸⁸ Jeannie Suk, *Criminal Law Comes Home*, 116 YALE L.J. 2, 13 (2006).

⁸⁹ See CLARE DALTON & ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND THE LAW 498 (2001).

⁹⁰ A.B.A. COMM. DOMESTIC VIOLENCE, DOMESTIC VIOLENCE CIVIL PROTECTION ORDERS (CPOS) BY STATE (July 2008) (giving an overview of domestic violence orders in all fifty states). To ensure there was nationwide enforcement of civil and criminal protective orders, even when victims crossed state lines to escape abuse, VAWA created the Full Faith and Credit Act, which required every temporary or final injunction, protective order, or restraining order properly issued by a state court be given full faith and credit by courts in every other state. 18 U.S.C. §§ 2265, 2266 (2007). A fair number of states have passed their own full faith and credit law, requiring that a new state's remedies and sanctions apply, even if they differ from those of the issuing state; See, e.g., ALA. CODE § 30-5-4 (2009); FLA. STAT. § 741.315 (2009); IOWA CODE § 236.19 (2009); MD. FAM. LAW CODE ANN. § 4-508.1 (2009); N.H. REV. STAT. ANN. § 173-B:13 (2009); TENN. CODE ANN. § 36-3-622 (2009); W. VA. CODE § 48-28-3 (2009). Even though Texas currently does not authorize stalking protective orders, it must uphold such orders issued by neighboring states such as Oklahoma, Louisiana, and New Mexico that do authorize them. TEX. FAM. CODE § 88.003 (Vernon 2008).

⁹¹ Suk, *supra* note 88, at 16 (citing NEAL MILLER, DOMESTIC VIOLENCE: A REVIEW OF STATE LEGISLATION DEFINING POLICE AND PROSECUTION DUTIES AND POWERS, INST. LAW & JUST. 24 & n.67 (June 2004)).

⁹² Sally F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?*, 29 CARDOZO L. REV. 1487, 1489 (2008).

At its core, protective orders afford victims both control and independence by recognizing a privacy interest on behalf of the victim.⁹³ By ordering the offender from the home and prohibiting contact with the victim, protective orders erect a zone of privacy in which the offender cannot legally intrude.⁹⁴ Victims seek them not only to stop the physical assault and break free from the psychological chains shackled upon them, but also to have the law act as a “loudspeaker” proclaiming that society condemns the abuse.⁹⁵ Victims may also want to use a protective order to create a public record documenting the abuse, making prosecution for later acts of abuse more likely, and ensuring the batterer will not simply “get away with it.”⁹⁶ Another advantage of a protective order is that as a civil proceeding, it has a lower burden of proof than in criminal litigation.⁹⁷ Even if the available evidence cannot sustain a criminal conviction, the victim may still be able to acquire relief through a protective order. This is especially important when the victim and the assailant are the only witnesses to the crime and there is little, if any, extrinsic evidence.⁹⁸

Despite the advantages of protective orders, victims of domestic violence, sexual assault, and stalking seldom seek them, in part because they are concerned about having to face the perpetrator in court, and worried that the court will not believe them.⁹⁹ They also fear losing their privacy and that the abuse will continue even after the protection order is obtained.¹⁰⁰ Some realize that attempts to escape their abuser may result in murder.¹⁰¹ This inexcusable fact means that protective orders can and will be ineffective without sound enforcement and skilled,

⁹³ As Barbara Hart so eloquently wrote, “A new remedy was needed . . . One that would not displace the abused woman from her home but could compel relocation of the abuser. One that could constrain the abusing husband from interfering with and disrupting the life of the abused woman and children . . . One that would give the mother authority to act as primary caretaker of her children . . . One that would sharply limit the power of the battering husband or partner to coerce reconciliation. One that would advance the autonomy and independence of the battered woman from the abuser. Civil protection orders were this new remedy.” Barbara J. Hart, *State Codes on Domestic Violence: Analysis, Commentary and Recommendations*, 43 JUV. & FAM. CT. J. 3, 23 (1992).

⁹⁴ Jordan, *supra* note 23, at 543; Jeannie Suk also writes, “From the beginning of the battered women’s movement, women’s advocates understood that victims faced a particular practical obstacle to avoiding continued violence: sharing a home with their abusers. . . . [A]dvocates concluded that short-term housing in shelters was inadequate. The civil protection order would exclude the abuser instead of displacing the victim from the home. It would there by limit disruption to her life, provide stability and safety in her own space, enhance her autonomy from her abuser, and reduce the costs of ending a marriage.” Suk, *supra* note 88, at 14.

⁹⁵ See Karla Fischer & Mary Rose, *When “Enough is Enough”: Battered Women’s Decision Making Around Court Orders of Protection*, 41 CRIME & DELINQ. 414, 423 (1995).

⁹⁶ *Id.*

⁹⁷ Elizabeth Topliffe, *Why Civil Protection Orders Are Effective Remedies for Domestic Violence But Mutual Protective Orders Are Not*, 67 IND. L.J. 1039, 1048 (1992).

⁹⁸ Woods, *supra* note 83, at 457.

⁹⁹ A.B.A. COMM’N ON DOMESTIC VIOLENCE, A.B.A. STANDARDS OF PRACTICE FOR LAWYERS REPRESENTING VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, AND STALKING IN CIVIL PROTECTION ORDER CASES vi (2007).

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at vi-vii.

holistic advocacy.

i. Enforcement and Violations: Great Challenges to Effectiveness

Without enforcement, protective orders are like dollar bills that are not legal tender; they are merely pieces of paper.¹⁰² As the “Achilles heel of the civil protection order process,” enforcement is imperative because otherwise a protective order “at best offers scant protection and at worst increases the victim’s danger by creating a false sense of security.”¹⁰³ Protective orders are effective when the stalker is rational and can control his behavior to avoid legal consequences, but they are ineffective when the stalker has little regard for the consequences of stalking behavior and is obsessed with harming or harassing the victim.¹⁰⁴ Some stalkers are simply not afraid of the consequences of a protective order violation. As Diana, a former stalking victim, laments: “[the protective order] pisses them off. It’s like taking a fly swatter and hitting an elephant with it. It just makes them mad.”¹⁰⁵ One study revealed that overall, “58% of women were classified as having experienced a [protective order] violation.”¹⁰⁶ This figure falls in the middle of a range of 23% to 70% ascertained in other reports.¹⁰⁷ Unfortunately, most women expect such violations.¹⁰⁸ Another study demonstrated that victims who obtained protective orders experienced 2.5 times as many total suspect tactics and significantly higher number of stalking tactics than victims who had not obtained protective orders.¹⁰⁹

Even assuming that offenders stay at the required minimum distance prescribed in their orders, they can still terrorize a victim

¹⁰² A Texas detective concurred with this statement by saying that the piece of paper is not what saves a victim’s life, it is the batterer’s ultimate obeying the law that does. However, he added that protective orders have reduced crime in Austin, and have given police officers a tool for warrantless arrests, even if it is only a family disturbance. Telephone Interview with Detective [name withheld], Austin Police Dept. (Nov. 21, 2008).

¹⁰³ PETER FINN AND SARAH COLSON, U.S. DEP’T OF JUST., CIVIL PROTECTION ORDERS: LEGISLATION, CURRENT COURT PRACTICE, AND ENFORCEMENT (1990).

¹⁰⁴ Harvey Wallace & Kathleen Kelty, *Stalking and Restraining Orders: A Legal and Psychological Perspective*, 18 J. OF CRIME & JUST. 2, 99, 107 (1995).

¹⁰⁵ Quoted in TK LOGAN, PARTNER STALKING, *supra* note 1, at 259.

¹⁰⁶ TK Logan, *Factors*, *supra* note 81, at 382.

¹⁰⁷ See Logan & Walker, *supra* note 59, at 3 (summarizing the various studies that give rise to this wide spectrum of figures).

¹⁰⁸ Fischer and Rose found that 86% of the victims they interviewed thought the batterer would violate the order, but 98% reported feeling more in control of their lives, and 89% felt more in control of their relationships after obtaining the order. Fischer & Rose, *supra* note 95, at 417. Adele Harrell and Barbara Smith also came to similar conclusions. They found that less than half of the women they interviewed believed the batterer would obey the order, yet 79% said it was helpful in sending her partner a message that his actions were wrong. Adele Harrell & Barbara E. Smith, *Effects of Restraining Orders on Domestic Violence Victims*, in DO ARRESTS AND RESTRAINING ORDERS WORK? 214, 218 (Eve S. Buzawa & Carl G. Buzawa eds., 1996).

¹⁰⁹ Nicastro et al, *supra* note 71, at 76.

through stalking tactics. Recidivism, defined as contact between the stalker and victim after criminal justice intervention, occurs in 60% of cases, as reported by a study involving one thousand stalkers, the largest nonrandom sample of stalkers ever studied.¹¹⁰ That study also reported the time frame between intervention and recidivism averages two months, with a range of one day to six years.¹¹¹ Another analysis of women who had domestic violence protective orders indicated that a violent partner had stalked approximately half of them during their relationship.¹¹² These stalking victims experienced more PTSD and anxiety symptoms, as well as protective order violations, than women who were not stalked by their partners.¹¹³

ii. Beneficial Influences: Reduction of Violence and Victim Empowerment

In spite of the unsettling frequency of protective order violations, protective orders still produce substantial beneficial effects. They give victims a real hope of reducing the chances of being harmed, and they also shift the dynamics of the relationship away from the batterer in favor of the victim. First, they lower the possibility of victims being harmed. For example, victims in Texas who applied for protective orders reported significantly lower violence, and decreased levels of threats of abuse at three months, six months, and one or two years after initial contact with the justice system.¹¹⁴ Similarly, 149 women who participated in another study on the effectiveness of protective orders also reported considerably lower levels of intimate partner violence up to eighteen months after applying for an order.¹¹⁵ These findings were confirmed in another report, which concluded,

¹¹⁰ Mohandie, *supra* note 50, at 150.

¹¹¹ *Id.*

¹¹² TK Logan, Lisa Shannon & Jennifer Cole, *Stalking Victimization in the Context of Intimate Partner Violence*, 22 VIOLENCE AND VICTIMS 669, 671 (2007) (finding 53% of the women had been stalked by a violent partner, and 47% reported experiencing stalking behavior from this partner in the past year). Other researchers add “stalking is more likely to occur in the context of a terminated relationship than is rape or physical assault.” TJADEN & THOENNES, EXTENT, NATURE, AND CONSEQUENCES, *supra* note 4, at 38.

¹¹³ *Id.* at 677, 678.

¹¹⁴ Julia H. Gist et al., *Protection Orders and Assault Charges: Do Justice Interventions Reduce Violence Against Women*, 15 AM. J. FAM. L. 59, 67, 70 (2001); Victoria Holt et al., *Civil Protection Orders and Risk of Subsequent Police-Reported Violence*, 288 J. AM. MED. ASS’N 589, 593 (2002) (reporting a significant 80% decrease in police-reported violence against women who had permanent protective orders).

¹¹⁵ Judith McFarlane et al., *Protection Orders and Intimate Partner Violence: An 18-Month Study of 150 Black, Hispanic, and White Women*, 94 AM. J. PUB. HEALTH 613, 616 (2004) [hereinafter McFarlane, *Protection Orders*].

Women who applied for a protection order, irrespective of whether the order was received, were 70% less likely to experience reassault. Stated another way . . . women who did not apply for a protection order were 3.3 times more likely to be reassaulted when compared with women who sought help.¹¹⁶

The message from all these experts is that despite the regularity with which orders are violated, they are nonetheless still an effective legal remedy against domestic violence.¹¹⁷

The second way a protective order is beneficial to a victim of intimate partner violence is how it empowers her by placing her at the center of the decision-making process. It gives her a “taste of freedom,” and her restorative process begins in earnest as she leaves the oppressive relationship.¹¹⁸ Through a protective order, women are able to convey to the batterer that his behavior is illegal and unacceptable, and shift the blame from themselves to the abuser.¹¹⁹ Many abusers retreat after being served a protective order, since a violation may result in criminal sanctions, including jailtime or “even time in an abuse-prevention course.”¹²⁰ As two researchers concluded, “The specter of facing a judge after violating his order may act as a deterrent for some stalkers.”¹²¹ To victims, a protective order is their day in court and an affirmation by an authority figure who says, “I agree that something terrible has happened to you and you deserve protection.”¹²² By placing the strength of the law on the victim’s side, protective orders provide her with a “bargaining chip” which she may use to extract concessions from the abuser, resulting in an improvement of her personal safety.¹²³

¹¹⁶ Judith McFarlane et al., *Intimate Partner Sexual Assault Against Women: Frequency, Health Consequences, and Treatment Outcomes*, 105 *OBSTETRICS & GYNECOLOGY* 1, 99, 102 (2005).

¹¹⁷ Goldfarb, *supra* note 92, at 1503-04; see also JEFFREY FAGAN, *THE CRIMINALIZATION OF DOMESTIC VIOLENCE: PROMISES AND LIMITS* 24 (1996) (describing civil protect orders as “the primary source of legal sanction and protection for battered women”)

¹¹⁸ Ruth Sheehan, *Orders Can Help Victims*, *NEWS & OBSERVER* (Raleigh, N.C.), June 26, 2006, at 1, http://www.ncdsv.org/publications_protectorders.html (last accessed January 14, 2010) (follow link to article).

¹¹⁹ Goldfarb, *supra* note 92, at 1535.

¹²⁰ Sheehan, *supra* note 118, at 1; cf. Stearns, *supra* note 75.

¹²¹ Wallace & Kelty, *supra* note 104, at 108.

¹²² As one victim stated, “After so long of just taking it and taking it[,] I needed to be able to show myself as much as show him that I was tired of being a victim. . . . [T]hat feeling, of fighting back and speaking out, will never leave me.” Quoted in Fischer & Rose, *supra* note 95, at 424.

¹²³ LEE H. BOWKER, *ENDING THE VIOLENCE* 98 (1986); JAMES PTACEK, *BATTERED WOMEN IN THE COURTROOM* 164–66, 171 (1999); see also David A. Ford & Mary Jean Regoli, *The Criminal Prosecution of Wife Assaulters: Process, Problems, and Effects*, in *LEGAL RESPONSES TO WIFE ASSAULT* 127, 142, 156–57 (N. Zoe Hilton ed. 1993) (finding that women who have the choice of whether to drop criminal charges against the abuser, but do not do so, are least likely to be revictimized, in part because their control over the prosecution gives them bargaining leverage over the abuser); FAGAN, *CRIMINALIZATION OF DOMESTIC VIOLENCE*, *supra* note 117, at 17–18 (describing the “Sword of Damocles” effect created by giving the victim the power to hold the threat of legal sanctions over the abuser’s head). Even though only an estimated one-fifth of the approximately two million victims of domestic violence in the United States each year seek protective orders, these victims generally report increased emotional well-being, sense of security, and control over their lives. Carolyn N. Ko, *Civil Restraining Orders for Domestic Violence: The*

Protective orders are also empowering because they help change the dynamics of the batterer-victim relationship. No longer is the victim merely a pawn in the batterer's hands. She can take control of the relationship and also convey to the batterer that she will seek help from the legal system when she needs it, and that the system will respond. Even the simple act of filing for an order can be one of the most helpful and empowering strategies available; it affirms that the victim has a choice in how she lives.¹²⁴ This choice also brings her into contact with the legal system, which can lead her to other community resources like social services agencies and battered women's support groups.¹²⁵ Protective orders can thus further empower victims by expanding their support network and allowing third parties to intervene on their behalf.

Overall, empirical studies have consistently shown a high level of satisfaction among women who have obtained protective orders. For example, a study conducted by the National Center for State Courts found that six months after obtaining a protective order over 85% of women felt their lives had improved since the order, over 92% felt better, and over 80% felt safer.¹²⁶ Ninety-five percent of the participants stated they would seek a protective order again.¹²⁷ Similarly, in a Wisconsin study, 94% of the women felt their decision to obtain a protective order was a good one, and 86% were satisfied, with half of them reporting they were very satisfied.¹²⁸ In a four-state study of clients in family violence agencies, 72% of the women who obtained protective orders rated them as "somewhat effective" or "very effective" in preventing further abuse and violence.¹²⁹ Lastly, in a Colorado study, 84% of women felt somewhat safe or very safe from physical harm and 72% felt somewhat safe or very safe from harassment one year after receiving their protective order.¹³⁰ The relationship of stalking to domestic violence and the success of protective orders in combating domestic violence combine to form a powerful tool that stalking victims can acquire to keep their

Unresolved Question of "Efficacy," 11 S. CAL. INTERDISC L.J. 361, 369–70 (2002).

¹²⁴ Jane C. Murphy, *Engaging with the State: The Growing Reliance on Lawyers and Judges to Protect Battered Women*, 11 AM. U. J. GENDER SOC. POL'Y & L. 499, 513–16 (2003); see Fischer & Rose, *supra* note 95, at 423–35; see also Goldfarb, *supra* note 92, at 1544 ("The fact that an order is violated does not necessarily mean that it is worthless or that obtaining it was a mistake. The process of obtaining a protection order can be a valuable experience and prepare the woman to take additional actions on her own behalf.")

¹²⁵ Goldfarb, *supra* note 92, at 1509.

¹²⁶ Susan L. Keilitz et al., CIVIL PROTECTION ORDERS: THE BENEFITS AND LIMITATIONS FOR VICTIMS OF DOMESTIC VIOLENCE, NAT'L CTR. STATE CTS. 35 (1997).

¹²⁷ *Id.* at ix.

¹²⁸ Anne L. Horton et al., *Legal Remedies for Spousal Abuse: Victim Characteristics, Expectations, and Satisfaction*, 2 J. FAM. VIOLENCE 265, 274 (1987); see also Murphy, *supra* note 124 at, 511, 517 (reporting the results of a Baltimore study in which 68% of battered women who filed for a protective order remarked that doing so was helpful, quite helpful, or extremely helpful).

¹²⁹ Janice Grau et al., *Restraining Orders for Battered Women: Issues of Access and Efficacy*, in CRIMINAL JUSTICE POLITICS AND WOMEN: THE AFTERMATH OF LEGALLY MANDATED CHANGE 13, 22 (Claudine Schwebel & Clarice Feinman eds., 1985).

¹³⁰ ADELE HARRELL ET AL., THE URBAN INST., COURT PROCESSING AND THE EFFECTS OF RESTRAINING ORDERS FOR DOMESTIC VIOLENCE VICTIMS 32–33, 60 (1993).

stalkers at bay.

III. STALKING PROTECTIVE ORDERS IN THE UNITED STATES

Stalking protective orders should be the first line of defense against the relentless stalker. The U.S. Department of Justice has cited lack of confidence in the ability of the criminal justice system to protect victims from future harassment as an important reason why it is so hard for victims to recover from the effects of stalking.¹³¹ One way to remedy this lack of confidence in the ability of the system to protect stalking victims is the creation of a protective order specifically tailored for stalking. As Carol Jordan and other domestic violence researchers recommend, “[State] statutes should afford stalking victims, like domestic violence victims, access to protective orders. This is particularly important for those victims who would not fall under the state’s existing statutory definition for eligibility for a domestic violence protective order.”¹³²

Forty-eight jurisdictions (forty-seven states and the District of Columbia) have permanent protective order measures against either stalking or harassment.¹³³ While not every state has a specific stalking-

¹³¹ CREATING AN EFFECTIVE STALKING PROTOCOL, *supra* note 39, at 12.

¹³² Jordan, *supra* note 23, at 579.

¹³³ ALA. CODE. § 30-5-1 (2008) (providing for protection orders to prevent domestic abuse); ALASKA STAT. § 18.65.850 (West 2008) (providing protection orders for stalking and sexual assault); ARIZ. REV. STAT. § 12-1809 (2008) (protective orders for stalking and sexual assault); ARK. CODE ANN. § 11-5-115 (West 2008) (workplace violence order); CAL. CIV. PROC. CODE § 527.6 (West 2008) (providing for a temporary restraining order and an injunction prohibiting harassment); COLO. REV. STAT. ANN. § 13-14-102 (West 2008) (providing two processes for obtaining protection orders); DEL. CODE ANN. tit. 10, § 1045 (West 2008) (permitting the court to provide relief under a protective order); D.C. CODE § 16-1003 (2008) (petition for civil protection); FLA. STAT. ANN. § 784.046 (West 2008) (creating a cause of action for an injunction for protection in cases of repeat violence); GA. CODE ANN. § 16-5-94 (West 2008) (restraining orders, protective orders, and approval of consent orders to prevent recurrence of stalking); HAW. REV. STAT. ANN. § 604-10.5 (West 2008) (granting the district courts power to enjoin or prohibit or temporarily restrain harassment); IDAHO CODE ANN. § 18-7905 (West 2008) (by implication); 750 ILL. COMP. STAT. ANN. 60/214 (West 2008) (order of protection); IND. CODE ANN. § 34-26-5-2 (West 2008) (providing process for a victim of violence or stalking to apply for an order for protection); IOWA CODE ANN. §§ 664A.3, 708.11 (West 2008) (no-contact order); KAN. STAT. ANN. § 60-31a06 (West 2008) (permitting the court to issue a protection from stalking order); KY. REV. STAT. ANN. § 508.155 (West 2008) (restraining order authorized after stalking conviction); LA. REV. STAT. ANN. § 46:2136 (2008) (protective order issued after petitioner demonstrates abuse and shows relationship to the stalker); ME. REV. STAT. ANN. tit. 5, § 4655 (2008) (protective order issued after finding of harassment); MD. CODE ANN., CTS. & JUD. PROC. § 3-1501 (West 2008) (order approved after stalking conviction); MICH. COMP. LAWS § 600.2950A (2008) (personal protective order issued after petitioner demonstrates facts that constitute stalking); MINN. STAT. ANN. § 609.748 (2008) (retraining order authorized if petitioner shows specific facts and circumstances); MISS. CODE ANN. § 93-21-7 (West 2008); MO. ANN. STAT. § 455.020 (West 2008) (civil protective order granted after the petitioner presents a verified petition alleging stalking by respondent); MONT. CODE ANN. § 40-15-116 (2008) (petitioner need only show reasonable apprehension of bodily injury); NEB. REV. STAT. § 28-311.09 (2008) (civil harassment protective order authorized after petitioner provides the events and dates of acts constituting harassment); NEV. REV. STAT. ANN. § 200.591 (West 2008) (order issued if petitioner shows specific facts and circumstances); N.H. REV. STAT. ANN. § 173-B:5 (2008) (civil protective order approved if defendant represents a credible threat to the safety of the plaintiff); N.J. STAT. ANN. §

protective-order statute, forty-two of the forty-eight jurisdictions have language that specifically points to or mentions stalking.¹³⁴ As would be expected, there is great variation between these states' statutes in terms of the actions that are covered, qualification requirements for and duration of orders, standard of proof, and penalties for knowing violations.¹³⁵ But they at least address stalking in one form or another in their permanent protective order laws. Texas is only one of a trio of states, the other two being Massachusetts and Connecticut, that does not provide a permanent protective order against stalking or harassment.¹³⁶

2C:12-10.1 (West 2008) (authorized restraining order after stalking conviction); N.M. STAT. ANN. § 40-13-3 (West 2008) (civil protective order authorized if petitioner is in immediate danger following an incident of abuse by the respondent); N.Y. FAM. CT. ACT § 821 (McKinney 2008) (protective order issued after stalking conviction); N.C. GEN. STAT. ANN. § 50C-1 (West 2008) (order granted if respondent is convicted of stalking); N.D. CENT. CODE § 12.1-31.2-01 (West 2008) (disorderly conduct order); OHIO REV. CODE ANN. §§ 2903.211, .214(C)(1) (2009) (defining and prohibiting stalking, authorizing protective order for stalking violations); OKLA. STAT. tit. 22, § 60.2(A) (2009) (allowing victim of stalking to seek protective order); OR. REV. STAT. § 30.866 (2007) (authorizing protective order based on stalking); 23 PA. CONS. STAT. § 6108(a)(9) (2009) (authorizing protective order based on stalking or harassment); R.I. GEN. LAWS §§ 15-15-1(2)(iv), 15-5-3 (2009) (defining domestic abuse to include stalking, authorizing victim of domestic abuse to seek protective order); S.C. CODE ANN. § 16-3-1750 (2008) (authorizing restraining order based on stalking or harassment); S.D. CODIFIED LAWS § 22-19A-1, -19A-8 (2009) (defining and prohibiting stalking, authorizing protective order for stalking violations); TENN. CODE ANN. § 36-3-602 (2009) (authorizing protective order based on stalking); UTAH CODE ANN. § 77-3A-101 (2009) (authorizing civil stalking injunction); VT. STAT. ANN. tit. 12, § 5133 (2009) (authorizing protective order against stalking); VA. CODE ANN. §§ 18.2-60.3, 19.2-152.10 (2009) (criminalizing stalking, authorizing protective order based on stalking violation); WASH. REV. CODE §§ 10.14.020, .040 (2009) (defining "unlawful harassment," authorizing protective order based on "unlawful harassment"); W. VA. CODE § 61-2-9a(i) (2009) (restraining order authorized after stalking or harassment conviction); WIS. STAT. § 813.125 (2009) (defining harassment to include stalking and authorizing restraining order against harassment); WYO. STAT. ANN. § 7-3-507 (2009) (authorizing victim of stalking to seek protective order). Two charts that provided a good start for the compilation of this list are: (1) COMM'N ON DOMESTIC VIOLENCE, AMERICAN BAR ASS'N, STALKING/HARASSMENT CIVIL PROTECTION ORDERS (CPOS) BY STATE (June 2007), http://www.ncvc.org/src/main.aspx?dbID=DB_StalkingProtectionOrdersbyState198 (last accessed January 14, 2010) (follow link to chart); (2) CATHERINE A. CARROLL, WASH. COALITION OF SEXUAL ASSAULT PROGRAMS, STALKING PROTECTION ORDERS BY STATE (February 2007), http://www.ncvc.org/src/main.aspx?dbID=DB_StalkingProtectionOrdersbyState198 (last accessed January 14, 2010) (follow link to chart).

¹³⁴ Alabama, Alaska, Arkansas, Colorado, Delaware, D.C., Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming mention stalking, *supra* note 133. The states that include harassment, but do not mention stalking are: Arizona, California, Hawaii, Maine, Minnesota, and North Dakota, *supra* note 133.

¹³⁵ *E.g.*, Florida explicitly covers cyberstalking (FLA. STAT. ANN. § 784.048(1)(D) (West 2008)), whereas New Hampshire does not (N.H. REV. STAT. ANN. § 633-a (2008)). Delaware allows any person to qualify for an order (DEL. CODE ANN. TIT. 10, § 1041(3) (2008)), whereas South Dakota states only a victim of stalking is qualified (S.D. CODIFIED LAWS § 22-19A-8 (2008)). Ohio has a five-year limit (OHIO REV. CODE § 2903.214(E)(2)(a) (Baldwin 2008)), whereas Tennessee only has one year (TENN. CODE ANN. § 36-3-605(b) (West 2008)). Maryland requires clear and convincing proof (MD. CODE ANN. CTS. & JUD. PROC. § 3-1505(c)(1)(ii) (West 2008)), whereas South Carolina requires good cause (S.C. CODE ANN. § 16-3-1760(A) (2008)). Finally, in Nevada, a violation is a felony (NEV. REV. STAT. ANN. § 200.591(5)(b) (West 2008)), whereas in North Carolina it is just contempt (N.C. GEN. STAT. ANN. § 50C-10 (West 2008)).

¹³⁶ Thankfully, Texas does provide civil protection orders for victims of non-intimate partner sexual assault, under TEX. CODE CRIM. PROC. ANN. ART. 7A.01 (Vernon 2008).

Texas should join the overwhelming majority of states that have stalking protective orders by either amending its protective order legislation or adding a new section specifically enacting stalking protective orders.

A. Oregon Case Study

An in-depth study of how one state has passed and interprets its stalking protective order law can be a useful reference for the Texas Legislature, should it decide to enact its own. Oregon, with its strong stalking laws, detailed legislative history, and rich case law, is well suited for this comparison. Oregon's stalking protective order statute was enacted in 1993.¹³⁷ At that time, the nation was caught up in the rush to provide legislative remedies for stalking victims.¹³⁸ Under this limelight, the Oregon Legislature received numerous specific reports and stories of stalking victims in Oregon,¹³⁹ which prompted it to pass the stalking protective order statute.¹⁴⁰ Professor Caroline Forell at The University of Oregon School of Law noted, "Substantial evidence shows that the legislature enacted the stalking statutes because it recognized the harm female stalking victims were suffering . . . [T]he primary purpose

¹³⁷ OR. REV. STAT. ANN. § 30.866 (West 2008). Subsection 1 of that statute reads: A person may bring a civil action in a circuit court for a court's stalking protective order or for damages, or both, against a person if:

(a) The person intentionally, knowingly or recklessly engages in repeated and unwanted contact with the other person or a member of that person's immediate family or household thereby alarming or coercing the other person;

(b) It is objectively reasonable for a person in the victim's situation to have been alarmed or coerced by the contact; and

(c) The repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victim's immediate family or household.

¹³⁸ Caroline Forell, *Making the Argument that Stalking is Gendered*, 8 J.L. & SOC. CHALLENGES, 52, 87-88 (2006). See also James R. Hargreaves, *Many Questions, Few Answers: Oregon's New Anti-Stalking Law Will Be a Challenge to Implement*, 54-DEC OR. ST. B. BULL. 15, n. a (1993) ("Even though SB 833 is an imperfect bill, the final version represented a reluctant compromise among the interest groups involved, including the American Civil Liberties Union, Oregon District Attorneys Association, Oregon Criminal Defense Lawyers' Association and various women's groups. The challenge was to craft legislation that balanced First Amendment free-speech rights with the need to protect victims of stalking crimes").

¹³⁹ Bob Bonaparte was a lawyer who did a pro bono stalking case in Multnomah County that gained publicity through its bizarre facts and helped bring the severity of stalking to the urgent attention of the Oregon Legislature. He represented a female college student at Portland State University who was stalked by a male student, who left her bloody jeans and notes. The student obtained a civil injunction for invasion of her privacy, which was the predecessor remedy to a stalking protective order. The odd aspects of the case caught the attention of national media, like *USA Today* and *Inside Edition*, though the female student refused to be interviewed to protect her own privacy. Telephone Interview with Bob Bonaparte, Partner, Shenker & Bonaparte, LLP (Dec. 9, 2008).

¹⁴⁰ Representative Kevin Mannix, a leading proponent of the stalking legislation, explained the motive behind the SPO statute to Senator Shoemaker: "[T]he essence of the whole stalking legislative package is to understand and relate to the concerns of the victim and the fears of the victim rather than so much the intention of the stalker. . . [O]f all the stories I had presented to me, and it's reached a total of over forty . . . from Oregon alone, every single one of them involved a situation where the person did, by the time they wanted to start complaining about the situation, did begin to feel real fear . . . for usually her safety . . ." *Id.* at 85-86 (citing Tape Recording: S. Judiciary Comm., S.B. 833, 67th Cong., (May 5, 1993), Tape 142, Side A).

of the Oregon Legislature was to protect women who are the bulk of stalking victims.”¹⁴¹ The Legislature later added electronic communications to the types of conduct applicable to Section 30.866 in 2001. Those who do obtain orders receive intense enforcement from police officers, since the officers view a violation of a stalking protective order as a higher offense than the violation of a restraining order.¹⁴² As in Texas, meeting the grounds for stalking in Oregon is quite hard.¹⁴³ Hopefully, with more awareness and education, more Oregonians will utilize stalking protective orders. Despite limited use today, it is still commendable that Oregon enacted stalking protective orders fifteen years ago.

In evaluating the constitutionality of the stalking protective order statute, the Oregon Supreme Court in 2002 held the statute is neither facially vague nor violative of a respondent’s due process right to travel.¹⁴⁴ Prior to 2002, constitutional challenges to the stalking protective order had a mixed record in the appellate courts.¹⁴⁵ Nevertheless, the Oregon Supreme Court, upon its analysis of the legislative purpose behind Section 30.866, concluded that the means aimed at achieving the purpose behind the protective order statute were sufficiently narrowly drawn so as to satisfy the Due Process Clause.¹⁴⁶

Two Oregon cases demonstrate the flexibility that Oregon judges have exercised in issuing stalking protective orders. First, in *Pinkham v. Brubaker*,¹⁴⁷ the respondent became intimate with the petitioner after being unable to find housing and staying at petitioner’s home.¹⁴⁸ Though their relationship was rocky, and the respondent never explicitly threatened the petitioner or her daughters, the petitioner later became

¹⁴¹ Forell, *supra* note 138, at 83.

¹⁴² Telephone Interview with Gabby Santos, Program Coordinator for Undeserved Communities, Oregon Coalition Against Domestic and Sexual Violence (Nov. 21, 2008). Ms. Santos said the police view the abuse of a person with whom the abuser does not live as more serious than the abuse of someone with whom the abuser does live.

¹⁴³ *Id.*

¹⁴⁴ Delgado v. Souders, 46 P.3d 729, 749 (Or. 2002).

¹⁴⁵ Cases where the statute was upheld include: *State v. Maxwell*, 998 P.2d 680 (Or. App. 2000) (vagueness challenge to terms of protection order rejected [phrase “visual or physical presence” has plain and ordinary meaning]); *Shook v. Ackert*, 952 P.2d 1044 (Or. App. 1998) (overbreadth claim rejected, [stalking protective order statute is not facially overbroad in its specification of what the order contents may be, since the court will determine on case-by-case basis what communication is constitutionally permitted]). Cases where the statute was held void for vagueness include: *State v. Norris-Romine*, 894 P.2d 1221 (Or. App. 1995) (phrase “without legitimate purpose” is not self-explanatory and lacks sufficient warning of what is barred); *State v. Orton*, 904 P.2d 179 (Or. App. 1995) (phrase “without legitimate purpose” for judging post-issuance behavior is vague); *Starr v. Eccles*, 900 P.2d 1068 (Or. App. 1995) (citing *Norris-Romine* for ruling that “legitimate purpose” phrase is vague).

¹⁴⁶ See *Delgado v. Souders*, 46 P.3d at 751. It found the legislative purpose to “prevent[] the commission of certain crimes against particular persons and their immediate families or household members. To prevent the commission of such crimes. . . the legislature created a mechanism in ORS 30.866 whereby a potential criminal defendant could be prevented from ‘contact[ing]’ a potential crime victim.” *Id.* at 750.

¹⁴⁷ 37 P.3d 186 (Or. App. 2001).

¹⁴⁸ *Id.* at 188.

fearful because of the respondent's stalking behavior.¹⁴⁹ The Oregon Court of Appeals affirmed the trial court's issuance of a stalking protective order based on expressive incidents that occurred before the respondent moved from the petitioner's home: the respondent's attack on the ten-year-old daughter's friend; his comment that the younger daughter's artwork looked like the "boobs" of her, her sister, and her mother; and his shredding of the petitioner's dresses to express his anger after an argument with her.¹⁵⁰ The court stated that at least the latter two incidents "qualified . . . [as] unwanted contact [involving expression] under the statute."¹⁵¹ The court then concluded that two nonexpressive contacts the respondent made—his twice taking the younger daughter on an extended car trip without the petitioner's permission or knowledge—"satisf[ie]d the statutory requirement of repeated, unwanted contacts," and thus declined to analyze the incidents under the "more stringent standard required under *Randal* [for nonexpressive conduct.]"¹⁵²

The second case, *Boyd v. Essin*,¹⁵³ involved a respondent who had been served with a protective order for domestic abuse.¹⁵⁴ After separation from the petitioner, he began spying on her from a distance outside of the restraining order's prohibited range of 1,000 feet.¹⁵⁵ The court believed such actions fell within the scope of the stalking protective order statute:

Even though watching petitioner's home with binoculars may not fall within the specific acts listed in ORS 163.730(3), it is similar in both kind and effect to the acts that the legislature has said are encompassed within the term "contact." It shows an unwanted relationship or association between petitioner and respondent, and it is precisely the kind of contact that the statute was intended to prevent.¹⁵⁶

Despite the seeming liberality with which Oregon courts interpret Section 30.866, they still emphasize the need for an explicit threat to be made before an issuance of a stalking protective order.¹⁵⁷ They will also consider the context and totality of the circumstances in assessing the nature of the threat.¹⁵⁸

¹⁴⁹ *Id.* at 188-191.

¹⁵⁰ *Id.* at 188-90, 192.

¹⁵¹ *Id.*

¹⁵² *Id.* at 192 [citation omitted].

¹⁵³ 12 P.3d 1003 (Or. App. 2000)

¹⁵⁴ *Id.* at 1004.

¹⁵⁵ *Id.* at 1005.

¹⁵⁶ *Id.* at 1007. See also *Smith v. Di Marco*, 142 P.3d 539, 541 (Or. App. 2006) ("The final series of contacts do qualify under [Section 30.866]. Respondent repeatedly followed petitioner, peered at him through binoculars at a distance, and followed closely in a car as petitioner biked down the street. That conduct, petitioner testified, caused him to take special precautions to ensure that respondent was not able to kidnap his children").

¹⁵⁷ See e.g., *Hanzo v. deParrie*, 953 P.2d 1130, 1142 (Or. App. 1998) (reversing the grant of a stalking protective order for an anti-abortion protester).

¹⁵⁸ In one case, respondent alleged his e-mail and telephone contacts were nonthreatening contacts.

IV. STALKING AND PROTECTIVE ORDERS IN TEXAS

The conclusions of the Oregon Supreme Court and the passage of Oregon's stalking protective order law are important because they give the Texas Legislature a template for framing the language of an effective stalking protective order statute. It is not necessarily a violation of due process if a state government limits the movement of a person it deems is a danger to others in society; as the U.S. Supreme Court has stated, "The fact that a liberty cannot be inhibited without due process of law does not mean that it can under no circumstances be inhibited."¹⁵⁹ Indeed, Texas already inhibits the liberty of two classes of unincarcerated people—family violence and sexual assault offenders—by application of its corresponding protective orders.¹⁶⁰

A. Currently Available Protective Orders in Texas

In Texas, victims of family violence and sexual assault can obtain permanent civil protective orders,¹⁶¹ while stalking victims can receive only emergency protective orders.¹⁶² Temporary *ex parte* orders are also available if the court finds "clear and present danger of family violence," but they are issued as immediate protection until a court hearing can be set.¹⁶³ It was not until 1997 that a partner in a cohabitating relationship

The court, in its analysis, ultimately rejected his allegation by interpreting his nonthreatening contacts in light of his previous behavior: "[M]any of respondent's contacts with petitioner . . . in combination with his in-person encounters with petitioner at the gym during that time—would alarm a reasonable person. For example, respondent repeatedly alluded to his fantasies—some of them coercive in nature—of resuming a sexual relationship with petitioner. More significantly here, however, respondent's expressive contacts provide context for his nonexpressive contacts. . . . Specifically . . . respondent continued to engage in such conduct despite petitioner's repeated requests that he leave her alone; when petitioner asked him to find another workout facility, he purported to treat her request as a joke. Respondent's conduct was particularly disturbing in light of his admission to petitioner that he had been violent toward a former spouse."

Castro v. Heinzman, 92 P.3d 758, 762 (Or. App. 2004) (citations omitted).

¹⁵⁹ *Zemel v. Rusk*, 381 U.S. 1, 14 (1965).

¹⁶⁰ See TEX. FAM. CODE ANN. § 82.001 (Vernon 2009), TEX. FAM. CODE ANN. § 85.001 (Vernon 2009).

¹⁶¹ TEX. FAM. CODE ANN. § 82.004 (Vernon 2009) governs family violence protective orders, whereas TEX. CODE CRIM. PROC. ANN. arts. 7A.01-7A.06 (Vernon 2005) authorize sexual assault protective orders. Under § 85.001 of the Family Code, a protective order will be ordered if family violence has occurred and family violence is likely to occur in the future. TEX. FAM. CODE ANN. § 85.001 (Vernon 2009). "Family violence" includes: "an act by a member of a family or household against another member of the family or household . . . that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault or sexual assault." TEX. FAM. CODE ANN. § 71.004(1) (Vernon 2009). No time specifications are mentioned in section 71.004, which makes it arguably possible to obtain a protective order, no matter when the violence occurred, as long as it is like to occur again in the future.

¹⁶² TEX. CODE CRIM. PROC. ANN. art. 17.292(a) (Vernon 2005).

¹⁶³ TEX. FAM. CODE ANN. § 83.001(a) (Vernon 2009).

became eligible for a protective order in Texas.¹⁶⁴ In 1999, the Legislature lengthened the maximum duration of a protective order from one year to two years,¹⁶⁵ and two years later expanded the definition of family violence to include victims of dating violence.¹⁶⁶ To assist the processing of intra- and interstate protective orders, Texas law mandates that every protective order issued is entered immediately into a statewide law enforcement database, which is maintained by the Department of Public Safety and is also linked to the Federal Bureau of Investigation's National Crime Information Center.¹⁶⁷

In 2007, the Texas Legislature passed two bills that expanded the coverage of sexual assault protective orders within the state. Previously, access to protective orders in Texas was limited through statutory requirements of a relationship between the victim and the assailant, as it was in many other jurisdictions.¹⁶⁸ In 2007, however, the Texas Legislature made two significant amendments that eliminated this limitation. The first change, enacted through House Bill 1988, authorized a victim of any sexual assault offense to obtain a lifetime protective order against the offender "without regard to the relationship between the applicant and the alleged offender."¹⁶⁹

The second amendment, enacted via Senate Bill 584, authorized a magistrate to issue an emergency protective order for victims of sexual assault.¹⁷⁰ Like the bills that authorized the stalking and family violence emergency protective orders, the fiscal note attached to Senate Bill 584 read, "It is assumed that the bill would not significantly affect the operations of state or local government."¹⁷¹ The House Research Organization's bill analysis on House Bill 1907, the companion bill to Senate Bill 584, noted supporters' position that "[v]ictims should not have to wait until a defendant who has already been arrested for sexual assault or aggravated sexual assault stalks them before an emergency protective order can be issued."¹⁷² This line of reasoning worked for stalking victims in an emergency protective order context and should also hold true in a civil protective one. The severity of stalking in Texas demands that a more aggressive and accessible protective order option be made available for stalking victims.

¹⁶⁴ See *id.* at § 71.005 (Vernon 2009).

¹⁶⁵ See *id.* at § 85.025(a)(1) (Vernon 2009).

¹⁶⁶ *Id.* § 82.002(b).

¹⁶⁷ *Id.* § 86.0011.

¹⁶⁸ Grau, *supra* note 129, at 706-07.

¹⁶⁹ TEX. CODE CRIM. PROC. ANN. art. 7A.01(a) (Vernon 2008).

¹⁷⁰ *Id.* art. 17.292(a).

¹⁷¹ FISCAL NOTE, TEX. S.B. 584, 80th Sess. (2007).

¹⁷² HOUSE RESEARCH ORG., BILL ANALYSIS, TEX. H.B. 1907, 80th Sess. (2007).

B. Stalking: A Texas-Sized Problem

Under Texas law, there are three primary means of a stalking offense: (1) the offender must know, or reasonably believe, the victim will perceive the behavior as threatening; (2) the behavior must cause the victim or a member of the victim's family to fear injury or damage to property; (3) the behavior would cause a reasonable person to have these fears.¹⁷³ Making a terroristic threat is similar to stalking, except it does not have to occur on more than one occasion.¹⁷⁴ Unless fear is intended and present, behavior that might be construed as stalking fails to reach the legal threshold for stalking. Such behavior, however, may fall under Texas's harassment laws, which are limited to actions that an offender may not reasonably believe cause fear for the victim's safety.¹⁷⁵ If the offender's intention is to "harass, annoy, alarm, abuse, torment, or embarrass" the victim, then it falls under the harassment statute.¹⁷⁶ Though Texas should also extend protective orders to harassment cases, it should first address stalking, because stalking is more severe in its requirement for the presence of fear and likelihood of leading to violence.

C. Texas Stalking Statistics

Stalking is a serious social problem in Texas because of its frequency, its association with physical violence, and the emotional toll that it takes on its victims.¹⁷⁷ First, in the only study of its kind conducted in Texas, Professor Glen Kercher and doctoral student Matthew Johnson queried 700 residents about their experiences with

¹⁷³ TEX. PENAL CODE ANN. § 42.072 (Vernon 2008).

¹⁷⁴ *Id.* § 22.07.

¹⁷⁵ *Cf. Segura v. State*, 100 S.W.3d 652, 656 (Tex. App. Dallas 2003), no pet. history ("We conclude stalking and harassment are not *in pari materia* because they are not similar in purpose or object"). In April 2008, the Fort Worth Court of Appeals in *Karenev v. State* found the harassment statute unconstitutionally vague with respect to subsection (a)(7), which states a person commits harassment if he "sends repeated electronic communications in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another." *Karenev v. State*, 258 S.W.3d 210, 216–17 (Tex. App.—Ft. Worth 2008) *judgment reversed by Karenev v. State*, 281 S.W.3d 428 (Tex. Crim. App. 2009, no pet. h.), *discussing* TEX. CODE CRIM. P. ANN. art. 42.07(a)(7) (Vernon 2008). The court observed that subsection "employs, in the disjunctive, a series of vague terms that are themselves susceptible to uncertainties of meaning. . . [Since the statute] 'still does not establish a clear standard for whose sensibilities must be offended, it is unconstitutionally vague in that the standard of conduct it specifies is dependent on each complainant's sensitivity.'" *Id.*

¹⁷⁶ TEX. CODE CRIM. P. ANN. art. 42.07 (Vernon 2008). However, if the harassment is without an active threat, then it will not be grounds for a family violence protective order. *See Thompson v. Thompson-O'Rear*, No. 06-03099129, 2004 WL 1243080, at *4 (Tex. App.—Texarkana 2004), *no pet. history* (refusing to uphold a protective order because there was no active threat of violence).

¹⁷⁷ *See* Part I(B)(1).

stalking.¹⁷⁸ Roughly one-fifth of them responded affirmatively to being stalked in the past twenty-four months, reporting a total of 453 stalking incidents, or approximately 3.5 incidents per victim.¹⁷⁹ The two most frequently reported stalking acts were phone call harassment and stolen property.¹⁸⁰ Surprisingly, men and women were about equally likely to be stalked, and close to three-fifths of the victims were acquainted with their offenders.¹⁸¹

Second, as mentioned above, stalking is closely correlated with physical violence, and in Texas it is no different. Of those who previously knew the offender, 61.6% reported prior violence by the offender.¹⁸² Although this is lower than the 81% of victims reporting prior violence in previous research, it is still alarmingly high.¹⁸³ The most common acts of violence were threats of harm (46.6%), followed by pushing or shoving (27.4%).¹⁸⁴

Lastly, there was a heavy emotional toll and only modest outreach for help resulting from these acts of physical violence. Three-quarters (75.6%) of the victims reported at least one adverse emotional effect, with the most common reaction being anger (58.6%), followed by loss of sleep (29.7%), lack of concentration (26.7%), fear of being alone (25%), and feelings of helplessness (24.2%).¹⁸⁵ It is particularly noteworthy that although men and women reported similar rates of being stalked, more

¹⁷⁸ Kercher & Johnson, *supra* note 12, at 3.

¹⁷⁹ *Id.* 128 reported being stalked, for a yield of 18.26%. Kercher and Johnson had a broad definition of stalking, which included the following behaviors:

Repeatedly sending angry and threatening emails, notes, or letters; repeatedly sending unwanted emails, notes, or letters that were apologetic and/or expressed love for the person; repeatedly sending unwanted angry or threatening phone calls; repeatedly calling the victim and behaving apologetically or expressing love for the person; repeatedly calling the victim and then either hanging up when the phone is answered or saying nothing; watching the victim when he/she is at home; following the victim when he/she is out in public; repeatedly showing up unexpectedly at the victim's home, work, or at a public place; coming to the home or workplace of the victim and creating a disturbance; threatening to kill the victim; threatening to hurt or kill members of the victim's family; tampering with a victim's vehicle; threatening the victim while he or she is driving; breaking into the victim's house, car, or business; stealing things from the victim's house, car, or business; destroying some of the victim's possessions; threatening to report the victim to the police for something he or she did not do; threatening to commit suicide if the victim does not do as the stalker asks; threatening to report the victim to child protective services, immigration, or other authorities if he or she does not do something the stalker wants them to do. *Id.* at 4-5.

¹⁸⁰ *Id.* About a quarter (24.2%) were spied on at home, one-fifth (20.3%) were bothered at work or at home, one-fifth (21.1%) had their house, car, or business broken into, and one-sixth (16.4%) were threatened with being reported to the police for something they did not do. *Id.* at 8.

¹⁸¹ *Id.*

¹⁸² *Id.* The total number of Texas family violence incidents in 2008 was 193,505. TEX. DEP'T PUB. SAFETY, THE TEXAS CRIME REPORT FOR 2008, 47 (2008), available at http://www.txdps.state.tx.us/administration/crime_records/pages/crimestatistics.htm (last accessed January 14, 2010). This represented a 2.1% increase when compared to 2007. *Id.* These incidents involved 208,073 victims (up 3.2% from 2007) and 203,682 offenders (up 3.2% from 2007). *Id.* In Travis County alone, there were 9,451 incidents of family violence (up 3.0% from 2007). *Id.* at 57. Gail Rice, coordinator of the Family Violence Protection Team in Austin, said in 2007 there were 4,523 family violence arrests. Email from Gail Rice, Coordinator, Family Violence Protection Team, to author (Dec. 18, 2008) (on file with author).

¹⁸³ TJADEN & THOENNES, NVAW SURVEY FINDINGS, *supra* note 4, at 2.

¹⁸⁴ Kercher & Johnson, *supra* note 12, at 12.

¹⁸⁵ *Id.* at 10.

than a quarter of the female victims reported experiencing at least six or more emotional symptoms, whereas less than one-twentieth of the males were similarly affected.¹⁸⁶ Kercher and Johnson concluded, “[I]t appears that females are more adversely affected by stalking than are males. This may reflect a heightened sense of vulnerability on the part of females when the stalker is a male.”¹⁸⁷

In terms of reaching out for help, only 43% of victims reported the incidents to the police.¹⁸⁸ Unfortunately, the study did not mention how many participants obtained protective orders.¹⁸⁹ Despite the gravity of the problem of stalking in Texas, legal intervention remedies are few and far between. The Texas Legislature ought to address this problem by enhancing its protective order legislation through the inclusion of stalking protective orders.

D. Conclusion: The Lack of Stalking Protective Orders is an Oversight in Texas’s Protective Order Legislation

Texas needs to address the gap in its stalking and protective order legislation by enacting a bill that merges the two together.¹⁹⁰ Victims should not only have a right to privacy on which the stalker cannot intrude; they should also have the right to avoid contact with a stalker, regardless of whether or not the two had a prior relationship. As one Connecticut court stated,

Providing protection from stalking conduct is at the heart of the state’s social contract with its citizens, who should be able to go about their daily business free of the concern that the [sic] may be the targets of systematic surveillance by predators who wish them ill. The freedom to go about one’s daily business is hollow, indeed, if one’s peace of mind is

¹⁸⁶ *Id.* at 11.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 14. Interestingly, almost a quarter of the respondents stated that their stalker had been arrested prior to the stalking incident for other offenses (though the number is likely higher, since 41% of the victims did not know if the person who stalked them had been previously arrested or not). *Id.* Almost one-third of the victims called the police four or more times, and in only one-fifth of the cases where the victim called the police did an arrest of the stalker take place. *Id.*

¹⁸⁹ In 2007, the Protective Order Division of Travis County Attorney’s Office issued 505 two-year orders out of 636 applications (79.4%). Email from Gail Rice, *supra* note 182. Through January to September of this year, it issued 368 two-year orders out of 452 applications (81.4%). *Id.* These are encouragingly high numbers. However, there were 442 protective order violations in 2007, as reported to the Family Violence Protection Team in Austin. *Id.* Of these 442 violations, 392 were filed as misdemeanor violations (88.7%), and 50 were filed as felony violations (11.3%). *Id.* Although it is unclear how many of these violations were associated with the same protective order, even assuming there were two violations per order, this yields a violation rate of 43.8%.

¹⁹⁰ Alaska passed its stalking protective order statute to close a loophole in its stalking laws. Associated Press, *House OKs Protective Orders*, ANCHORAGE DAILY NEWS, April 17, 2003, at B3.

being destroyed, and safety endangered, by the threatening presence of an unwanted pursuer.¹⁹¹

Texas's stalking protective order statute should cover *any* person who stalks, just as its sexual assault protective order statute applies to any person who sexually assaults another.¹⁹² As Caroline Forell writes, "Jurisdictions which specifically provide stalking protective orders for all victims of stalking assure that all women benefit from substantive equality."¹⁹³

There are currently emergency protective orders and civil protective orders for both sexual assault and family violence in Texas. Recent changes in the law now allow *lifetime* protective orders for sexual assault victims, and it would not be surprising if a similar bill passed for family violence protective orders within the upcoming legislative sessions. Yet, the only protective order available for stalking victims is a magistrate's emergency order. The legislature needs to balance out the disparity between the protective orders of these three crimes by enacting stalking protective orders.

V. RECOMMENDATIONS

The Texas Legislature has three options in authorizing stalking protective orders: (1) simply add the word "stalking" to its existing family violence protective order language; (2) broaden the scope of victims who can apply by stating that any victim of domestic abuse is eligible to apply; or (3) enact its own specific stalking protective order. Regardless of which option it chooses, some strategies on how a stalking protective order bill could be passed are presented below. Further recommendations for improving the protective order application process and the enforcement and effectiveness of protective orders are also discussed, because they would be applicable to newly enacted stalking protective orders.

A. Strategies on Implementing Stalking Protective Order Legislation

The most important recommendation deals with the actual implementation of a stalking protective order bill in Texas. Without a focused strategy and broad support, such a bill proposal to the legislature

¹⁹¹ State v. Culmo, 642 A.2d 90, 102 (Conn. Super. Ct. 1993).

¹⁹² TEX. CODE CRIM P. ANN. art. 7A.01-07 (Vernon 2008).

¹⁹³ Caroline Forell, *The Meaning of Equality: Sexual Harassment, Stalking, and Provocation in Canada, Australia, and the United States*, 28 T. JEFFERSON L. REV. 151, 160 (2005).

is likely to fail. Proponents should present evidence of the severity of stalking, both in the United States and specifically in Texas, as well as the effectiveness of protective orders as a legal remedy for stalking victims, and adopt the following three-step approach to maximize the chances the bill will pass: (1) generate support and unity among existing domestic violence advocates; (2) create a stalking advocacy group that is wholly dedicated to fighting stalking; and (3) anticipate and address concerns that the legislature might have concerning the bill.

i. Generate Consensus Among Existing Domestic Organizations

The most important strategy in advancing stalking protective order legislation is to generate consensus among existing domestic violence organizations so that they can together underscore the importance of such a bill to the Texas Legislature. Building consensus was a key strategy in the successful passage of Oregon's stalking protective order law. As Judge Hargreaves noted, "[T]he final version represented a reluctant compromise among the interest groups involved, including the American Civil Liberties Union, Oregon District Attorneys Association, Oregon Criminal Defense Lawyers Association and various women's groups."¹⁹⁴ These women's groups included advocates from the Oregon Coalition Against Domestic and Sexual Violence, Salem Mid-Valley Women's Crisis Center, Oregon Commission for Women, and Women's Rights Coalition.¹⁹⁵ They helped spur legislative activity by providing valuable testimony on the devastating impact of stalking on Oregon women.¹⁹⁶ As a result of their leadership, the Oregon Legislature acknowledged the similarities between victims of family violence and stalking, and "create[d] a stalking statute similar in purpose and practice to the Family Abuse Prevention Act."¹⁹⁷

Thankfully, there seems to be consensus in Texas. The Texas Association Against Sexual Assault (TAASA) believes stalking protective orders would give prosecutors another tool to pursue their cases and would offer victims more opportunities to see a judge, thereby increasing access to the courts.¹⁹⁸ Additionally, many attorneys at

¹⁹⁴ Hargreaves, *supra* note 138, at n. a.

¹⁹⁵ Cassandra C. Skinner Lopata, *From "The Victim's Situation": A Hypothetical Opinion by a "Reasonable Woman,"* 8 J. L. & SOC. CHALLENGES 111, 125 (2006).

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* at 127 (citing Tape Recording, S. Judiciary Comm., S.B. 833, 67th Cong., (May 4, 1993), Tape 140, Side A [remarks of Fred Avera, Oregon District Attorney's Association, Senator Dick Springer, Chair, Lauren Moughon, Women's Rights Coalition]; Tape Recording, S. Judiciary Comm., S.B. 833, 67th Cong., (May 5, 1993), Tape 142, Side A [remarks of Representative Mannix]).

¹⁹⁸ Telephone Interview with Victoria "Torie" Camp, Director, Texas Association Against Sexual

various influential domestic violence groups, such as Texas Lawyers Care, Travis County Attorney's Office (TCA), TAASA, and Texas Advocacy Project, have all expressed strong support and interest in passing a stalking protective order bill.¹⁹⁹ For instance, TCA Attorney Erin Martinson underscored how "most people don't understand how dangerous stalking is since it often does not consist of specific threats or violence" and believed enacting a stalking protective order statute would be "an easy fix."²⁰⁰ Even police departments, such as in Austin, have no objections to having stalking protective order legislation passed.²⁰¹

Of course, the consensus does not have to be confined to members of the legal community. In addition to attorneys and other groups focused on stalking victims, members of social justice groups, religious congregations, community leaders, and any other concerned citizens should all come together in the effort to curb stalking incidents and promote the safety of stalking victims through the passage of a stalking protective order bill. Stalking, like domestic violence, is a crime that transcends all divisions of society, whether socio-economic, racial, religious, sexual, or cultural, and is something all members of society ought to confront together.²⁰² Mary Lowry, Public Policy Analyst at the Texas Council for Family Violence (TCFV), observes, "There may be a hole in [Texas] stalking legislation because there is no stalking coalition."²⁰³ To fill in this gap, attorneys, judges, and law professors can help review and critique drafts of the proposed stalking protective order bill, and members of this coalition outside the legal community can unite as one voice, so that by the time the next legislative session begins, not only will there be a well-written bill in hand, there will also be a list of advocates ready to testify on behalf of the bill.²⁰⁴

ii. Create a Stalking Advocacy Organization

In addition to generating consensus among existing domestic violence groups, the creation of a separate stalking advocacy organization, in the same vein as the TCFV and TAASA, would give more weight to a stalking protective order proposal and raise awareness

Assault (Nov. 21, 2008).

¹⁹⁹ Compiled from numerous telephone interviews.

²⁰⁰ Email from Erin Martinson, Assistant County Attorney, Travis County Attorney's Office, to author (Dec. 11, 2008) (on file with author).

²⁰¹ Telephone Interview, Detective, *supra* note 102.

²⁰² Sarah M. Buel, Lectures in Domestic Violence and the Law at the University Texas School of Law (Fall 2008).

²⁰³ Telephone Interview with Mary Lowry, Public Policy Analyst, Texas Council on Family Violence (Dec. 12, 2008).

²⁰⁴ Jayne Kita, Director of the Arkansas Domestic Violence Coalition, mentioned one judge who looked at a draft of a protective order law in Arkansas and wrote a critique. Such feedback is invaluable and is something that Texas advocates and judge should emulate. Telephone Interview with Jayne Kita, Director, Arkansas Domestic Violence Coalition (Nov. 18, 2008).

of stalking within Texas. It may even be created as a subcommittee under either organization. Admittedly, strong leadership from existing domestic violence groups may be difficult because they already have full-time legislative agendas. TCFV and TAASA have been able to push successfully for policies because they are focused on just one issue. An organization devoted exclusively to combating stalking would have the power, time, and resources to lobby effectively for stalking issues.

Once a stalking organization has been established, it can lobby a Texas Senator or Representative, perhaps one who has served on the Criminal Justice Committee, to sponsor a stalking protective order bill. Professor TK Logan believes the main role a stalking organization could play is to build crucial connections with the legislature so that there is a realistic chance of drafting a bill and getting it passed.²⁰⁵ Torie Camp added that the most successful way to advocate would probably be to find a stalking victim who suffered as a result of not being able to obtain a stalking protective order.²⁰⁶ While finding victims who are willing to come forth and spark legislative action through their personal stories would certainly be helpful, the passage of a stalking protective order bill in Texas should not have to wait until a sensational, and most likely tragic, story appears. The severity of stalking and the importance of protective orders in Texas have already been thoroughly demonstrated, so there is enough timber to kindle legislative action.

iii. Anticipate and Address Concerns of the Texas Legislature

The third and final prong in the comprehensive strategy to implement a stalking protective order bill is the anticipation and resolution of concerns that might keep the Texas Legislature from proceeding forward. Jodi Rafkin, Program Attorney for the Stalking Resource Center at the National Center for Victims of Crime, has heard from advocates around the country that budgetary concerns can be an obstacle for stalking protective order legislation.²⁰⁷ In general, one reason why the legislature may hesitate to fund a new protective order procedure is that “entities funding the cost of the programs will not directly reap many of the benefits of the programs because the benefits are diffused among different entities.”²⁰⁸ Additionally, police departments that already suffer a shortage of officers may not be able to cover an additional category of protective order victims.

²⁰⁵ Telephone Interview, TK Logan, *supra* note 49.

²⁰⁶ Telephone Interview, Victoria “Torie” Camp, *supra* note 198.

²⁰⁷ Telephone Interview with Jodi Rafkin, Program Attorney, Stalking Resource Center, National Center for Victims of Crime (Nov. 14, 2008).

²⁰⁸ Karen Tracy, *Building a Model Protective Order Process*, 24 AM. J. CRIM. L. 475, 482 (1997).

Torie Camp understands the budgetary concern argument but believes stalking protective order legislation would not carry a fiscal note, because any costs would be borne by local municipalities, not the state.²⁰⁹ Substantial savings would be generated through reduced medical costs from the decrease of domestic violence incidents, and payroll savings would result from the decrease in police time needed to handle those incidents.²¹⁰ Furthermore, addressing stalking early can save exorbitant costs of litigation and other services.²¹¹ While full implementation of stalking protective orders will not come free, the staggering societal costs of domestic violence and stalking in Texas, and the inextricable link between the two, merit action instead of passivity. Budgetary concerns should not be an impediment preventing the legislature from going forward with this stalking protective order law.

Another concern that the legislature might have is a reluctance to amend the protective order statute. Mary Lowry says that whenever it amends the statute, other interest groups might want to tinker with the language, which is already clear as it stands now.²¹² Thus, in her opinion, a stalking protective order bill “would be a hurdle in the Legislature.”²¹³ Dani Lindner, VAWA Grant Coordinator at St. Cloud State University in Minnesota, is in agreement with Lowry and says the biggest argument against the enactment of a stalking protective order statute would be, “What we have now works, so why mess with it? Why spend more time?”²¹⁴

The legislature’s concern about amending the protective order statute can be allayed by realizing that what is currently in place does not work as it pertains to stalking victims. Implementing stalking protective order legislation is in the state’s best interest since it would likely reduce family violence, given the close correlation between stalking and domestic violence.²¹⁵ Moreover, the legislature amended its sexual assault protective order legislation last year, to much applause from domestic violence advocates.²¹⁶ Taking similar steps with stalking legislation should not be any more difficult and would likely be just as welcomed by concerned Texas citizens.

²⁰⁹ *Id.* at 480 (“Funding a protective order policy is typically a matter for local government”); Telephone Interview, Victoria Camp, *supra* note 198.

²¹⁰ Tracy, *supra* note 208, at 482-83.

²¹¹ See, e.g., CASEY GWINN & GAEL STRACK, HOPE FOR HURTING FAMILIES: CREATING FAMILY JUSTICE CENTERS ACROSS AMERICA 81-82 (2006) (noting that in San Diego, it takes an average of \$2.5 million to complete a domestic violence homicide trial.)

²¹² Telephone Interview, Mary Lowry, *supra* note 203.

²¹³ *Id.*

²¹⁴ Telephone Interview with Dani Lindner, VAWA Grant Coordinator, St. Cloud State University (Nov. 21, 2008).

²¹⁵ Telephone Interview with Tracy Grinstead-Everly, Policy Manager, Texas Council on Family Violence (Nov. 21, 2008).

²¹⁶ Article 17.292(a) of the Texas Code of Criminal Procedure was amended by the legislature to allow the issuance of emergency protective orders against perpetrators of sexual assault. Act of May 11, 2007, 80th Leg. R.S., ch. 66, §1, 2007 Tex. Sess. Law Serv. 66 (Vernon)).

B. Improving the Protective Order Process

Along with strategies for enacting a stalking protective order bill, improvements on the overall protective order process in Texas are also needed. Many women who qualify for protective orders do not receive them, and those who do are often overwhelmed by the sheer amount of paperwork and intimidated by the required application process.²¹⁷ In a Harris County study, researchers “found that of 2,932 applicants, . . . only 1,980 (68%) qualified for a protective order, and of those who qualified, only 962 (49%) actually received the order.”²¹⁸ The fact that less than half of qualified applicants actually received a protective order is simply appalling.

Among the reasons most cited for not receiving the order are processing delays at the agency; it takes several weeks and multiple trips to the court to complete all the required paperwork.²¹⁹ The following four recommendations are directed at making the protective order process more efficient and applicant-friendly: (1) standardize and shorten protective order forms across Texas; (2) improve overall access to forms and increase cultural sensitivity; (3) raise awareness in the courts of disrespectful attitudes that can cause re-victimization; and (4) expedite database entry and distribution by increasing communication across relevant agencies and personnel.

i. Standardize and Shorten Protective Order Forms

In many states, application forms for protective orders are nearly impossible for a layperson to comprehend, which obviously presents serious problems for victims seeking help.²²⁰ Thankfully, Texas has taken a step in the right direction with the creation of its Protective Order Kit, which facilitates the application process for *pro se* petitioners.²²¹

²¹⁷ Glen Kercher & Katrina Rufino, PROTECTIVE ORDERS IN TEXAS, CRIME VICTIMS' INST., SAM HOUSTON ST. U. 8 (2008) (citing Ann Malecha et al., *Applying for and Dropping a Protection Order: A Study With 150 Women*, 14 CRIM. JUST. POL'Y REV. 4, 486–504 (2003)).

²¹⁸ *Id.* at 8.

²¹⁹ *Id.* (citing Gist, *supra* note 114, at 59-71).

²²⁰ Tarr, *supra* note 84, at 165.

²²¹ See Letter from Stewart W. Gagnon, Chair, Supreme Court of Texas Protective Order Taskforce, Letter to Andrew Weber, Clerk of the Court (Jan. 5, 2005), available at <http://jwclientservices.jw.com/sites/scac> (last accessed January 5, 2010, click on SCAC Library tab, then click on “More items...” at the bottom of the screen, and then browse to the corresponding report [dated February 22, 2005]). A series of simple question and answers help guide the applicant through the protective order process. For example, the question, “Can I get a protective order?” is followed by the answer: “You can get a protective order if: Someone has hurt you, or threatened to hurt you, and you have a close relationship with that person (you were or are married, dating or living together, have a child together or are close relatives), and you are afraid that person may hurt you again.” TEX. SUP. CT. PROTECTIVE ORDER KIT 1 (2005), available at <http://www.women->

However, there are still different forms for the assortment of protective orders, and overall, they are still quite complex, long, and understandably daunting to the average victim. One solution to this basic issue is to simplify, shorten, and standardize the application forms for all protective orders in Texas.²²² Standardization should be cost-efficient, since it would decrease processing time and minimize filing mistakes.

A few states have already taken steps towards a standardized protective order form. For example, Colorado has consolidated its civil protection order process by combining the procedures for obtaining domestic violence, elder abuse, and stalking protective orders and by using standardized petition and order forms.²²³ By adopting a uniform format, Colorado has simplified the process and attempted to improve the enforcement rates of all protective orders.²²⁴ Similarly, Louisiana has adopted a "Uniform Abuse Prevention Order," which encompasses all civil injunctions and orders "as long as such order is issued for the purpose of preventing violent or threatening acts or harassment against, contact or communication with, or physical proximity to, another person."²²⁵ Finally, in Kentucky, any order that requires entry into its Law Information Network, including those from another jurisdiction, that are entitled to full faith and credit, must be entered on a specified standardized form.²²⁶

These states demonstrate how it is possible to standardize forms. There are current efforts in Texas to follow suit, such as the adoption of Project Passport, a nationwide campaign to create a uniform first page for all protective orders in every state, thereby allowing any police officer in the nation to view information necessary to enforce orders from other jurisdictions.²²⁷ This effort is commendable, but before there

law.org/documents.php (last accessed January 14, 2010) (click on "Pro Se Protective Order Packet (English)" link). The kit was administered in 2005, and needs to be updated. For example, the kit fails to mention how due to the legislative changes of 2007, a sexual assault victim can now obtain a protective order regardless of any prior relationship or not with the perpetrator.

²²² Cf. MODEL DOMESTIC AND FAM. VIOLENCE CODE, § 302 (Nat'l Council of Juv. and Fam. Ct. Judges 1994) ("Uniform form required for petitions and orders; required statements in petitions and orders; duty of clerk to provide petitions and clerical assistance").

²²³ COLO. REV. STAT. § 13-1-136 (West 2008).

²²⁴ The Colorado Legislature stated its purpose in enacting this statute: "The general assembly hereby finds that the statutes provide for the issuance of several types of civil protection orders to protect the public, but that many of these protection orders have many elements in common. The general assembly also finds that consolidating the various forms for issuing and verifying service of civil protection orders and creating, to the extent possible, a standardized set of forms that will be applicable to the issuance and service of civil protection orders will simplify the procedures for issuing these protection orders and enhance the efficient use of the courts' and citizens' time and resources." *Id.*

²²⁵ LA. REV. STAT. § 46:2136.2 (West 2008).

²²⁶ KY. REV. STAT. § 403.737 (Baldwin 2008).

²²⁷ Telephone Interview with Elma Garcia, Director, Texas Lawyers Care (Nov. 21 2008). For basic information on Project Passport, see Ethan Butterfield, *Integrators Woo Criminal Justice Work*, 21 WASH. TECH. 4, Feb. 24, 2006, available at http://www.washingtontechnology.com/print/21_04/28089-1.html?topic=statelocal (last accessed January 14, 2010) ("Without integrated IT justice systems, an officer may be unable to establish a protective order's validity and may have no choice but to leave the scene without enforcing it. . . . If county court systems were linked to state databases of protective orders and other criminal justice information, not only would it be easier to

is national uniformity of protective order forms, there should be intrastate uniformity.

ii. Increase Access and Cultural Sensitivity

Access to protective orders and a culturally sensitive application process are essential in ensuring that victims of domestic violence, sexual assault, and stalking receive necessary and appropriate legal assistance. Texas should consider providing onsite counselors who would guide the victim through the application process and provide emotional support. The availability of these counselors would increase the likelihood that the applicant would continue with the process.²²⁸ Personnel who understand and are responsive to different cultural needs would also encourage applicants to remain in the legal system. For example, Asian-American women often face cultural misunderstandings from service providers and facilities, which ultimately deter them from seeking assistance.²²⁹ A study of Chinese women found that the utilization of legal services, including shelters and social service agencies, was very low due largely in part to cultural and language barriers.²³⁰ Traditional roles, values, and social constraints severely compromise Asian-American women's ability to leave a battered relationship, especially when it involves sexual violence.²³¹ Given such cultural differences, when assessing either threats in a protective order violation or hearing, or the requisite element of fear in a stalking case, judges and police officers in Texas should be aware that words or acts that are not particularly threatening in one cultural frame of reference could very well be terrorizing in another. If they were aware of the basic differences across major cultures, they would be able to gauge a domestic violence victim's situation with greater fairness and accuracy.

establish an order's validity, it could help save lives . . . Project Passport advocates uniformity in appearance and sharing of protective orders to improve safety for domestic violence victims."').

²²⁸ Thankfully, this is already happening in Texas. When the author attended a protective order hearing in Travis County Courthouse in October 2008, he noticed the flurry of Safeplace (a domestic violence shelter in Austin) volunteers that were on hand ready to assist applicants and provide emotional support. However, other jurisdictions may not have as many resources as Austin. Nevertheless, actively seeking to provide onsite counselors whenever possible is a step that all relevant domestic violence personnel should readily implement.

²²⁹ SILENT EPIDEMIC, *supra* note 43, at 4.

²³⁰ Mo-Yee Lee, *Understanding Chinese Battered Women in North America: A Review of the Literature and Practice Implications*, 8 J. MULTICULTURAL SOC. WORK, 215-41 (2000).

²³¹ SILENT EPIDEMIC, *supra* note 43, at 4. See also comments on these values and customs on in *supra* note 43.

iii. Raise Awareness in the Courts Regarding Possible Re-victimization

Court personnel must appreciate the victim's sense of vulnerability in protective order proceedings to minimize the risk of further re-victimizing or terrorizing her.²³² Unfortunately, the way the current Texas stalking statute is phrased, a victim must testify to her fear and emotional distress before she will be able to secure a stalking conviction or protective order.²³³ Regrettably, she is only able to begin to gain control over her life by first testifying to her helplessness in front of her abuser. Any negative or minimizing attitude that is imparted from the court can quickly drive victims away. Darlene, a former stalking victim, tied her lack of trust in the justice system to the belittling manner in which she was addressed by court staff:

I think the people that I dealt with about getting it [protective order], they question you and (sighs). And I felt intimidated because they're like, "Are you sure this is what you want to do?", "Do you understand all this?" I just felt like it was an intimidating process. I think they made me feel like they didn't believe me.²³⁴

Courts are the vanguard of the protective order process. As Janet Carter eloquently asserts,

How effectively the judiciary handles domestic violence cases ultimately determines how effectively the justice system is able to break the cycle of violence. It is a judge who sets the tone in the courtroom, and it is the judge who makes the most critical decisions affecting the lives of the victim, the perpetrator, and children.²³⁵

Judges need to be well-versed in protective order legislation so they can use it effectively in their courts. Similarly, they need to be familiar with the needs of the traumatized protective order applicant in front of their benches and demonstrate full respect for them. Otherwise, victims will not avail themselves of the courts, thus effectively nullifying protective order legislation.²³⁶

²³² Topliffe, *supra* note 97, at 1050–51 (citing studies in Minnesota and Florida that revealed the gender bias of judges that result in profound victimization of women).

²³³ See §§ TEX. PENAL CODE 42.072(a)(2) & (3), TEX. FAM. CODE 71.004 (Vernon 2008)

²³⁴ Quoted in TK LOGAN, PARTNER STALKING, *supra* note 1, at 277.

²³⁵ JANET CARTER ET AL., DOMESTIC VIOLENCE IN CIVIL COURT CASES: A NATIONAL MODEL FOR JUDICIAL EDUCATION xvii (Jacqueline Agtuca et al. eds., 1992).

²³⁶ Topliffe, *supra* note 97, at 1050.

*iv. Speed Up Distribution of Protective Orders by
Enhancing Communication Between
Relevant Agencies and Personnel*

Texas should streamline and expedite the protective order process so that victims should only have to file once and be assured that the right personnel, through the appropriate channels, are handling their information. The application process should not require multiple trips to provide information that has already been submitted. As Renee, a former stalking victim, said in conveying her frustration at the difficulty of trying to obtain a protective order,

Well, if you go to get one you have to stay down there all day, hours and hours. . . . They drag you in and out of court. They ask you a billion questions and they try to act like you are lying when you tell them what's really going on. You have to run to all kinds of different places and they'll just look at you like you're stupid.²³⁷

Reasons why qualified women do not receive protective orders are almost always procedural delays at the agency.²³⁸ Communication between the police and the court is crucial to avoid delays, especially in situations involving emergency protective orders, since they require an arrest before issuance.²³⁹ Procedural delays are also due to the accumulating backlog of applications. Currently, women in Texas can only apply for a protective order during business hours on weekdays.²⁴⁰ As Kercher and Rufino suggest, increasing staff so that some can work on a nightly rotating basis or part-time on Saturday, could help alleviate

²³⁷ TK LOGAN, PARTNER STALKING, *supra* note 1, at 269 (note, this victim was not a Texas resident, but similar experiences have been reported in Texas.).

²³⁸ Gist, *supra* note 114, at 69. Judith McFarlane and other researchers describe the inordinately long time victims must wait until they receive an order: "To obtain a protection order, applicants must be willing to arrive at the district attorney's office with proper photo identification and complete paperwork, and they are required to complete an interview with a caseworker, be photographed, and sign an affidavit. This process requires about 2 to 3 hours. Applicants must wait approximately 6 weeks for a court date and then appear in court in front of a judge, at which time the abuser may contest the protection order. In addition, many women need to return to the district attorney's office at a later date with additional required paperwork/witnesses to the abuse. For some women, these trips to the district attorney's office mean work absences and loss of income. . . . [A]t the 3-month interview, many women reported dropping the order within the first 2 weeks after application." McFarlane et al, *Protection Orders*, *supra* note 115, at 615.

²³⁹ These two entities are also responsible for the effectiveness of protective orders, since enforcement often depends upon their unwritten and informal policies. Topliffe, *supra* note 97, at 1046-47.

²⁴⁰ Kercher & Rufino, *supra* note 217, at 9.

the filing backlog and enable more women to receive their orders.²⁴¹

Another step in speeding up the distribution of protective orders comes in the form of electronic applications, which have been successfully implemented in New York. The family court in White Plains has initiated the electronic transmission of protective orders to the police department, utilizing technology developed by the Westchester County Information Technology Department.²⁴² White Plains County Executive Andrew Spano stated, "Electronic orders are quicker and easier to serve. That means that these women can get the protection they need sooner."²⁴³ Supervising Judge of the Family Court Joan Cooney also commented that the new e-orders program is "an example of how agencies can work together to protect victims of domestic violence."²⁴⁴ In a similar fashion, Texas can set up its own e-orders program, which would make application processing much more efficient. The state has already digitized its protective order forms²⁴⁵ but should go one step further by allowing electronic filing.

C. Improving Protective Order Enforcement and Effectiveness

Should stalking protective orders be enacted in Texas, courts and law enforcement must deal with problems of enforcement and effectiveness. As discussed above, these are two critical yardsticks by which to measure the actual power and legitimacy of protective orders. Stalking protective orders would probably face the same challenge that family violence and sexual assault orders have in terms of effective enforcement. Four recommendations are presented in hopes of meeting and overcoming this challenge: (1) enhance stalking training and response protocols in police departments and the community as a whole; (2) engage respondents in protective order proceedings; (3) advance the economic rights of applicants; and (4) modernize safety planning.

²⁴¹ *Id.*

²⁴² *New E-Orders Pilot Program Helps Protect Domestic Violence Victims*, MID-HUDSON NEWS (Newburgh, N.Y.), July 24, 2005, <http://www.ncdsv.org/images/NewE-OrdersPilotProgramHelpsProtectDVVictims.pdf> (last accessed January 5, 2010).

²⁴³ *Id.*

²⁴⁴ *Id.* Judge Cooney remarked, "This is a very exciting way to use technology . . . It helps victims of domestic violence. . . . It is fair to the persons being served. It is a better system for everyone." *Id.*

²⁴⁵ Attorney General of Texas-Greg Abbott, *Protective Orders*, <http://www.oag.state.tx.us/victims/protective.shtm> (last accessed January 5, 2010).

i. Enhance Stalking Training and Response Protocols in Police Departments and the Community

In Texas, as in other states, there is a general lack of specialization and training among law enforcement and prosecution agencies with respect to enforcing stalking statutes. There are currently no stalking units in any police departments in Texas.²⁴⁶ Most departments assign stalking cases to non-stalking specialist units, such as those responsible for family violence or sex crimes.²⁴⁷ Surveys have shown that nationwide, only 13% of police agencies provide specialized stalking training independent of domestic violence training, and about one-fifth of prosecutor offices have no stalking training at all.²⁴⁸ It is not surprising, then, that police officers in Texas do not have sophisticated knowledge or understanding in identifying and handling stalking cases.²⁴⁹ Short of creating individual stalking units within their agencies, which may be costly, police departments can solve this problem by equipping their officers with enhanced training and response protocols that cover stalking.

Texas should consider emulating the system of the Dover Police Department in Dover, New Hampshire. Having adopted a system of “vertical prosecution” in which a single prosecutor handles all stalking cases, Dover detectives and prosecutors work in conjunction with stalking victims to enhance police responses to stalking cases.²⁵⁰ This integration promotes open communication in the investigation of stalking cases.²⁵¹ The stalking prosecutor serves as the point person on stalking cases and can also help train officers to handle stalking cases more effectively.²⁵²

Alternatively, Texas police departments can adopt the Model

²⁴⁶ Tjaden, *Stalking in America*, *supra* note 9, at 83. Texas is hardly in the minority here. Only one police agency out of 169 examined in one national study reported having a specialized stalking unit. *Id.*

²⁴⁷ *E.g.*, the Austin Police Department sends all stalking cases to its Family Violence Unit. Telephone Interview, Detective, *supra* note 102.

²⁴⁸ Tjaden, *Stalking in America*, *supra* note 9, at 83.

²⁴⁹ Telephone Interview with Jodi Rafkin, *supra* note 207. For instance, police officers may be hesitant if most of the cases where they do arrest the stalker do not lead to formal prosecution. Jodi Rafkin points out, “Victims are facing a lot of challenging decisions, and sometime it is frustrating when a victim goes back and forth.” It would be especially frustrating if police officers do not understand the victim’s state of mind. Yet in one study, researchers showed how rarely police officers actually proceed with an arrest of a stalker. They reviewed 1,785 domestic violence complaints generated by the Colorado Spring Police Department from April to September 1998. Of these complaints, 1,731 (97%) had either victim or police narrative, and of these reports, 285 (16.5%) had evidence that the suspect stalked the victim. Only 1 out of the 285 reports resulted in the police officer formally charging the suspect with stalking! Patricia Tjaden & Nancy Theonnes, *The Role of Stalking in Domestic Violence Crime Reports Generated by the Colorado Springs Police Department*, 15 *VIOLENCE & VICTIMS* 4, 427–41 (2000).

²⁵⁰ CREATING AN EFFECTIVE STALKING PROTOCOL, *supra* note 39, at 19.

²⁵¹ *Id.*

²⁵² *Id.*

Stalking Code, published by the National Center for Victims of Crime.²⁵³ This detailed and structured set of guidelines starts off by recommending police departments “assess which community agencies, organizations, or programs are currently responding to the needs of stalking victims, and which additional community stakeholders have a part to play in a more community oriented approach.”²⁵⁴ These stakeholders should be involved in the earliest stages of response planning and should become members of any and all of the bodies charged with developing and executing the new stalking policy, especially since they can promote “understanding of the new policy among the wider community through public education initiatives.”²⁵⁵ The Model Protocol can serve as the basis for the development of Texas’s own comprehensive protocol that would address stalking more effectively. But in the end, Texas should keep in mind that implementation of any stalking protocol can only be effective “if it reaches beyond the confines of the police department to all criminal justice agencies, victim service programs, and beyond.”²⁵⁶

To ensure stalking victims in Texas receive the greatest and broadest protection, the Texas civil and criminal justice system need to work together to enhance the quality of enforcement and the effectiveness of all protective orders. This coordinated effort can speed up responses, increase efficiency, and encourage victims who see the seriousness, care, and focus with which the justice system handles their cases. The inclusion of community involvement can also ensure victims who seek help actually receive proper assistance.

One idea is to use “community partners,” who are resources within the community that have the abilities to provide services for victims, such as representatives from the court system, law enforcement, and victim advocates, who can meet together to discuss collaborative efforts to provide coordinated services for victims.²⁵⁷ Community-based and institutional efforts (i.e., the formal justice system) to address domestic violence can be harmonized because they both share the common goal of reducing, and eventually eradicating, abuse in the lives of victims. Michelle Waul highlights the benefits of community-based advocacy by contrasting it with criminal justice action. She sees community-based services as empowering the victim and providing the resources and information necessary to help them make informed decisions.²⁵⁸ Contrarily, criminal justice initiatives aim at deterring batterers from continuing their abusive behavior by focusing on punishment and

²⁵³ MODEL STALKING CODE REVISITED, *supra* note 14.

²⁵⁴ *Id.* at 99.

²⁵⁵ *Id.*

²⁵⁶ *Id.* at 100.

²⁵⁷ See EMILY SACK, CREATING A DOMESTIC VIOLENCE COURT 10 (Lindsey Anderson et al. eds., 2002). See also Part IV(A)(1), *infra*, on generating consensus among various advocates and organizations to bolster the case for stalking protective order legislation.

²⁵⁸ Michelle R. Waul, *Civil Protection Orders: An Opportunity for Intervention With Domestic Violence Victims*, 6 GEO. PUB. POL’Y REV. 51, 53 (2000).

fines.²⁵⁹

These two crucial tactics should support one another. They are complementary and can be mutually reinforcing. As Jodi Rafkin of the Stalking Resource Center in Washington, D.C. urges,

We encourage prosecutors, police, victim advocates, probation officers, and public health officials a whole variety of people who are affected, to form some sort of coordinated community response group. When you get a group of people working together, they can be powerful in terms of coming together as a coalition that represents a variety of interests.²⁶⁰

This reinforcing, coordinated coalition is what may enable the domestic violence victim to “break free from a batterer’s power and control.”²⁶¹

ii. *Engage Respondents in Protective Order Proceedings*

Texas should engage respondents, who can become agitated during a protective order hearing because they view it as an intrusion into a private matter. Engagement is recommended because it helps reduce order violations, thereby increasing the safety of applicants. Respondents are often as unclear as the petitioners are about courtroom procedures and the protective order process as a whole.²⁶² Combined with the fact that they often harbor anger towards their partner for invoking the legal process, and may be most volatile and unpredictable immediately after an unsuccessful challenge of a protective order, personal engagement can help pacify tense situations and increase compliance with orders.²⁶³

Texas could follow the lead of Massachusetts, whose court system engages the respondent to ensure the safety of the petitioner as she leaves the courtroom and the understanding of the respondent as he receives the order. The Judicial Oversight Demonstration (JOD) Initiative in the Dorchester District of Boston designed and implemented the Dorchester Community Outreach Worker Program, which assists civil restraining

²⁵⁹ *Id.*

²⁶⁰ Telephone Interview with Jodi Rafkin, *supra* note 207.

²⁶¹ Sean D. Thueson, *Civil Domestic Violence Protection Orders in Wyoming: Do They Protect Victims of Domestic Violence?*, 4 WYO. L. REV. 271, 278 (2004). See generally GWINN & STRACK, HOPE FOR HURTING FAMILIES, *supra* note 211 (discussing how San Diego was able to set up a family justice center providing all the services a victim would need in one convenient location).

²⁶² VERA INST. JUST., DEP’T OF JUSTICE, ENGAGING RESPONDENTS IN CIVIL RESTRAINING ORDER CASES: A NEW APPROACH TO VICTIM SAFETY I (2006), available at http://www.ovw.usdoj.gov/dorchester_jodi2.pdf (last accessed January 14, 2010). “[T]his is especially true for recent immigrants with a poor grasp of English, [but] complex legal language can present difficulties for anyone not familiar with the court system.” *Id.*

²⁶³ *Id.*

order respondents by pairing them one-on-one with outreach workers as they enter and leave the courtroom.²⁶⁴ As with the protective order process, the JOD subcommittee recommended hiring a culturally competent outreach worker, preferably bilingual or multilingual, from the local community.²⁶⁵ This program enhances petitioner safety because it ensures “respondents receive clear and accurate information about restraining orders and appropriate social service referrals” in accessible language, which “reduce[s] the likelihood of unintentional violations of court orders.”²⁶⁶

If Texas communities want to set up their own outreach worker program, they should begin by taking stock of their own particular circumstances and needs. As Carmen Del Rosario, a longtime victim advocate and Director of the Domestic Violence Program at the Boston Public Health Commission explains, “Before people start an outreach worker program they should get a number of key players at the table to talk about why they are doing it, how they are going to do it, why it’s important in the community, and what it would look like in their particular community.”²⁶⁷ After assessing their needs, Texas communities can use the guidelines outlined by the JOD as a template for the development of their tailored programs, which can also be circulated for use in rural areas.²⁶⁸

²⁶⁴ *Id.*

²⁶⁵ *Id.* at 6.

²⁶⁶ *Id.* at 1. Explanation of the terms of the restraining order in clear, accessible language can help the respondent cool down. Outreach worker Alexandre also “makes sure that respondents understand that violating a civil restraining order is a serious criminal offense.” *Id.* at 4. Defense Attorney Cathleen Bennett adds, “Some respondents are intimidated by the court system, and they don’t necessarily understand what the judge has said. In these emotional circumstances and even in regular circumstances they may not understand what the judge is trying to convey. So having someone there who can actually walk out with them afterwards and translate and make sure the respondent understands everything is a very good thing.” *Id.* Judge Sydney Hanlon further comments on how addressing the respondent’s immediate needs contributes: “To the degree that respondents feel they have been treated respectfully and compassionately, and offered help to change the behavior that brought them to court, they will be more likely to respect [the terms of the restraining order and the rights of the victim].” *Id.* If some victims vacillate on filing a restraining order due to a concern for how it will affect the respondent, the availability of an outreach worker can help reduce the victim’s hesitation. *Id.*

²⁶⁷ VERA INST. JUST., *supra* note 262 at 6. “Key players might include the clerk’s office, the judge or magistrate who is charged with issuing restraining orders, victim advocacy organizations (especially those that provide court support to victims seeking civil restraining orders), batterer intervention program providers, bailiffs or other court security personnel, the local defense bar, prosecutors, and other relevant players who can help provide guidance, information, and resources.” *Id.* at 6, n.8.

²⁶⁸ The guidelines are a rough protocol only, and “the Boston Public Health Commission, with the assistance of the JOD Advisory Board, is currently developing a formal protocol.” *Id.* at 8. However, the guidelines for outreach worker duties include:

“Making contact with the respondent at the courthouse before and after the civil restraining order hearing. In some instances, the outreach worker (OW) makes follow-up calls to the respondent after the hearing. Because speaking with the OW is voluntary, the OW is required to obtain consent before working with the respondent. Explaining in clear, nontechnical language the civil restraining order process, what to expect from the court hearing, and the meaning of terms in relevant legal forms and documents. The OW is not permitted to strategize with respondents; advise respondents on how to get what they want from the court or judge; compose affidavits or legal forms on the respondent’s behalf; or give legal advice. Referring respondents to shelters, job placement centers, job training programs, substance abuse treatment facilities, and educational programs. Emphasizing to the respondent that the OW is not an advocate, that the OW does not stand beside the respondent

iii. *Advance the Economic Rights of Applicants*

Texas should ensure the adequate promotion of the economic security and restitution for applicants as another measure to improve the overall effectiveness of protective orders. Sadly, many women are unable to leave abusive relationships and often return to their batterers because of financial challenges and economic concerns.²⁶⁹ But thankfully, most courts have statutory authority to grant financial support to domestic violence victims; maintain housing, child care and health insurance for victims and their children; and award other forms of monetary relief in a protective order proceeding.²⁷⁰ Therefore, Texas courts should advance economic compensation for applicants, which should include at least the some or all of the following: (1) housing (orders to vacate, future rent or mortgage payments, suitable alternative housing for the survivor and her children); (2) personal property rights; (3) household expenses; (4) medical costs; (5) reimbursement for property damage; (6) temporary use of vehicle; and (7) future payment of financial obligations or other out-of-pocket expenses related to abuse.²⁷¹ Advancing the economic rights of protective order petitioners throughout the application process will give them a realistic chance of getting back on their feet, as well as improving the likelihood that they will continue with the order.

iv. *Modernize Safety Planning*

Although protective orders are not the end-all solution to stalking or

in court, and that the OW cannot speak on behalf of the respondent in court. Avoiding at all costs collusion with respondents. The OW should remain a neutral provider of information. Avoiding discussion of the details of the respondent's case. The OW should emphasize that communication between the respondent and OW is not confidential and that anything the respondent says can be used against the respondent in court. Immediately informing a supervisor about any threats against victims, children, or others, or whenever the OW has significant concerns about the safety of the victim or others. (Supervisors are bound to follow court protocols after receiving information about a credible threat). Requesting the services of an interpreter when the respondent does not speak English and the outreach worker cannot communicate in the respondent's native language. Meeting at least once a week with a supervisor." *Id.*

²⁶⁹ CHRISTINE THOMAS, BATTERED WOMEN'S JUST. PROJECT ADVANCING THE ECONOMIC RIGHTS OF DOMESTIC VIOLENCE SURVIVORS IN PROTECTION ORDER PROCEEDINGS, 1 (May 2003); *see also* Sarah Buel, *Fifty Obstacles to Leaving a.k.a. Why Abuse Victims Stay*, 28 COLO. BAR J. 19, 20 (1999) (listing reason no. 15 as "Financial Despair": "Financial despair quickly takes hold when the victim realizes that she cannot provide for her children without the batterer's assistance."); Topliffe, *supra* note 97, at 1048 (stating many women do not leave the batterer or want him jailed "because he may be the only source of support for the victim or her family").

²⁷⁰ *See* Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 993 (1993) (listing thirty-eight state statutes that contain "catch-all" provisions and twenty jurisdictions that authorize specific forms of monetary relief).

²⁷¹ *See generally id.*

domestic violence, with proper safety planning, they can be powerful tools that reduce and even halt the violence. Victims should never rely solely on protective orders, but they are still a “useful adjunct to other legal proceedings initiated early in the course of stalking.”²⁷² Safety planning is not technically a “legal proceeding,” but it must always be the first step in any zealous advocacy. Regarding stalking, safety planning should be modernized to combat the latest forms of cyberstalking, since it is a growing threat in Texas and America.²⁷³ It should also include appropriate discussions on lifestyle alterations, such as not going to a certain gym late at night, if the stalking is particularly severe. An up-to-date safety plan combined with an effective protective order affords Texas battered men and women the protection the law purports to give.²⁷⁴

VI. CONCLUSION

Texas should not let stalking victims be re-victimized by its failure to respond effectively to their danger. Stalking is a clarion call for the Texas legislative and judicial system to revise the protective order process with greater emphasis on the role of stalking as an indicator of risk for ongoing violence. Should the Texas Legislature continue to remain silent as stalking incidents increase, it will not be fulfilling its mandate to protect crime victims.²⁷⁵ Protective orders have proven their effectiveness in reducing domestic violence. Millions of victims in the United States, and thousands in Texas, have attributed their sense of empowerment and control through the issuance of protective orders. In many ways, they have been a light at the end of a long dangerous tunnel for victims. As such, stalking protective orders can help Texas courts and law enforcement personnel confront stalking, the darkest of crimes. It is time for the legislature to take action and enact stalking protective orders so that Texas stalkers will be kept at bay.

²⁷² Mullen, *supra* note 32, at 234.

²⁷³ See *supra* note 12. The National Network to End Domestic Violence (NNEDV) has released a CD that “teaches victims how their abusers may be employing technology to trace their every move.” Texas shelters can consider distributing the CD, which also instructs users how to use technology more safely to their advantage. *National Network to End Domestic Violence Fund Introduces New Tool to Outsmart Abusers and Stalkers in Today’s High-Tech World*, PR NEWSWIRE ASS’N, available at http://www.ncdsv.org/publications_stalking.html (last accessed January 14, 2010) (follow link to article).

²⁷⁴ See www.abanet.org/domviol/pubs.htm (last accessed January 5, 2010).

²⁷⁵ See TEX. CONST. art. 1, § 30.