

# What do the changes to the stalking law mean for survivors?

*Stalking is a key lethality indicator, particularly when the stalker is the survivor's current or former intimate partner.* Recognizing the signs of stalking and helping a survivor navigate their encounters with the criminal legal system through the life of the case are two crucial elements of bolstering survivor safety and preventing potentially lethal escalation.

The previous version of Texas's stalking statute was confusing and therefore difficult to utilize. The Texas Council on Family Violence (TCFV) heard from law enforcement and prosecutors that the statute needed clarification to be effective and close many of the previous version's gaps. Survivors also reported difficulty getting support from the legal system when being stalked. With that in mind, TCFV worked during the 88<sup>th</sup> Legislative Session to make substantial and significant changes to the statute, which is now in effect as [Texas Penal Code 42.072](#).

This tip sheet provides guidance on 1) what those changes are, 2) why they are helpful to survivors of domestic violence, and 3) how you as an advocate can provide critical assistance to those survivors faced with stalking.

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## How did the Texas stalking statute change?

Here are some of the changes to the stalking statute that are most relevant to your work as advocates when assisting stalking survivors.

### TEXAS PENAL CODE 42.072:

- » Expands the description of how a survivor *perceives* the stalker's actions beyond the state of mind included in the harassment statute, to fully capture and recognize the real fear a stalking survivor experiences because of the stalker's actions.
- » Clarifies the reasonable-person standard to allow juries to evaluate the effect of the stalker's actions from the perspective of a reasonable person "*in circumstances similar to the survivor*"
- » Adds to, and separates, the provisions for threats against the survivor's household members, family, and current or former dating partners so law enforcement (and prosecutors) can charge a stalker for actions against these individuals as well, even if no threat is made against the targeted person at all.

## What do these changes mean for survivors who are being stalked?

These updates to the stalking statute provide important support for survivors who are being stalked, especially in cases where their stalker is a current or former intimate partner.

- » Allows evidence to go before juries to hear why a particular action, which seems otherwise benign or non-threatening, would be perceived as a threat (and especially a threat of bodily harm/death) to a survivor. For example, receiving flowers to a new home address might be viewed as a lovely gesture to someone who has never been stalked; however, if a survivor receives those flowers at an address they worked hard to keep secret from their abuser, the gesture becomes terrifying.
- » Including “terrified or intimidated” allows survivors to elevate the fear standard when reporting, particularly where multiple contacts are made with law enforcement, which will, in turn, assist law enforcement officers in recognizing the reports as stalking.
- » Allowing the survivor to provide relationship context regarding threatening behaviors provides more meaningful protections for that survivor, because law enforcement and prosecutors alike can put themselves in the survivor’s shoes and truly understand where their fear is coming from.

## What does “Course of Conduct” mean?

A *course of conduct* is generally considered to be any two or more actions that, taken together, reasonably support a survivor’s fear that they are being stalked.<sup>1</sup> These are actions such as those below that serve to scare survivors.

### EXAMPLES OF COURSE OF CONDUCT:

- » Notes on car
- » Text messages/emails making reference to places the survivor has been recently (or further in the past) that make clear someone has been following or tracking the survivor
- » Unexpected deliveries to the survivor or their home that can reasonably be connected to their stalker
- » The survivor’s feeling of being “watched” by their stalker
- » Phone call hang-ups from strange/unknown numbers
- » Social media posts tagging the survivor in places they have been recently but were not with the person who is posting
- » Messages sent through survivor’s children/family/friends referring to survivor’s movements and/or events in their life that the stalker would have no way of knowing from the survivor themselves

All of the above are examples of things a survivor might describe to law enforcement when making a report for stalking, but the list is far from comprehensive. Finding patterns and helping a survivor recognize stalking events is the first step in supporting survivor safety, whether that’s through an official report to law enforcement or other safety planning options. **Remember:** *The survivor is the expert in their own safety, so reporting to law enforcement may not be the right move at any given time.*

<sup>1</sup> Texas state law does not specifically define “course of conduct” for charging purposes.

## What kind of “proof” will a survivor need when reporting to law enforcement?

Whether or not, or when, a survivor might choose to report to law enforcement, documenting the stalker’s actions and keeping records of each incident is key, even when something happens to a survivor that feels like it shouldn’t be significant, or is just annoying.

### DOCUMENT, DOCUMENT, DOCUMENT!

- » **Create an evidence log**
- » Keep copies of any disturbing or otherwise relevant messages
- » Photos of deliveries (especially if they come with a delivery message)
- » Any strange location notifications on the survivor’s phone or social media posts where survivor is tagged but did not post
- » Photos (and hard copies, if possible) of any physical notes or messages left for a survivor on their car, at their home/school/place of employment/etc.

**Important note:** Some courts will accept electronic versions of evidence such as photos or text messages, but having printed hard copies is usually a good idea, so the survivor can turn those into law enforcement if need be. If a survivor cannot print their texts or photos, advocates often can serve a crucial role in this part of the process.

Record everything as soon as the survivor begins to feel it has gone beyond just annoyance. The fear standard is tied to the *survivor’s experience* for a reason, and the changes to the law regarding the evidence of prior relationships between the accused stalker and the survivor that prosecutors are allowed to present to juries at trial are designed to enhance the juries’ understanding of why any particular action would produce fear, terror, intimidation, or perception of a threat for that survivor.

Even if survivors don’t make multiple reports to law enforcement, once a report has been initiated, advocates will sometimes need to support the survivor to produce *all* the evidence the survivor may have of any stalking behaviors/actions that have happened up to and including the incident underlying that initial report.

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## Special Considerations for Advocates in Stalking Cases

While advocates are often a stalking survivor’s first call to report stalking behaviors, that call is rarely the first incident of noted behaviors. Advocates should remember that when multiple law enforcement agencies (possibly across counties or jurisdictions) coordinate the response, it may help to discuss that with the survivor. For advocates whose service area may encompass two or more counties, having good working relationships with the law enforcement agencies in those areas can greatly support survivors.

Additionally, relationships with these agencies can help open the door to new ideas and techniques like providing insight and advice on best practices for trauma-informed interviews, among other things.

## Safety Planning with Survivors of Stalking

*The survivor is the expert in their own safety.* This core principle will help focus efforts in assisting stalking survivors as they view the big picture and decide whether reporting stalking behaviors is the right move for them at any given time. For some survivors, making a record of the incident(s) as soon as it happens is their best option. For others, however, filing a report can have negative, and possibly even fatal, consequences for the survivor and/or their loved ones.

Since every survivor has different needs at the time they are seeking help, each safety plan will need to be different, and have different priorities, all focused on meeting the survivor where they are.

**The National Network to End Domestic Violence (NNEDV) has developed guidance documents for advocates to use when helping a survivor with their safety plan, and that resource can be found here:**

<https://nnedv.org/resources-library/safety-planning/>

**Another helpful resource can be found at the Stalking Prevention, Awareness, and Resource Center (SPARC) website:**

<https://www.stalkingawareness.org/wp-content/uploads/2022/05/Safety-Strategies.pdf>

### HOW YOU CAN HELP STALKING SURVIVORS

Survivors who are being stalked often do not seek help from law enforcement because they fear, or even expect, that the stalker's behavior will be dismissed. By assisting survivors in analyzing the risk and safety planning around stalking behaviors, advocates will be better equipped to help survivors assess and evaluate whether and when to report the behaviors to law enforcement and support them in safety planning.

To do this, advocates need to have a sense not only of the elements of stalking, but what may help a survivor feel prepared to make a report or communicate with criminal legal system professionals.

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