

What does the new stalking law mean for prosecutors?

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 88th Legislative Session to make substantial and significant changes to the statute, which is now in effect as [Texas Penal Code 42.072](#). (PC 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 a prosecutor can provide critical assistance to those survivors faced with stalking.

How did SB 1717 change Texas's stalking statute?

Understanding the real-world implications for survivors of the changes listed below in these circumstances will enhance your ability to charge and try stalking cases more effectively in the future.

SB 1717'S KEY NEW PROVISIONS FOR PROSECUTING STALKING:

- » Amends the criminal codes to allow prosecutors (and defendants) to introduce evidence/context for prior relationship(s) between stalker and victim
- » Expands the description of how a survivor *perceives* the stalker's actions beyond the state of mind included in the harassment statute, so a victim that feels "terrified or intimidated" meets the explicit fear standard
- » Clarifies the reasonable-person standard to allow juries to evaluate the stalker's actions from the perspective of a reasonable person "*in circumstances similar to the victim*"
- » Adds to, and separates, the provisions for threats against the victim's household members, family, and current or former dating partners as distinct qualifying actions by the stalker for meeting elements of the crime for charging purposes

How You Can Help Victims of Stalking

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. Prosecutors are the final authority in determining which cases are charged, which are dismissed, and at which stage of the criminal legal process those actions are taken. For a victim, a prosecutor's decision on whether to charge a stalker can be the difference between life or death.

PC 42.072's key new provisions give prosecutors significantly expanded capacity to present their cases from a well-rounded perspective, and to supply important context to factfinders at trial for how a stalker's actions affect their victims.

- » Amends Article 38.46 of the Code of Criminal Procedure to expands the provision allowing juries to hear evidence of 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 victim whose former or current intimate partner has conditioned them to expect harm as a result of that particular action by placing the reasonable person standard "*in circumstances similar to the circumstances of the alleged victim.*"
- » Includes "terrified or intimidated" in the list of potential emotional reactions a victim must feel to create the basis for a stalking charge. This, in turn, allows law enforcement officers and prosecutors to personalize the fear standard to that specific victim, particularly when the victim and stalker have a prior relationship that provides additional context to the actions committed.

- » 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 victim’s fear that they are being stalked.¹ From a prosecution perspective, this can be any collection of contacts made by the stalker with the targeted person that creates the necessary emotional reaction in the targeted person that would rise to the statute’s fear standard.

When evaluating a set of facts for charging purposes, it is important for you as a prosecutor to place yourself *first* in the mind of the victim to see these actions through the updated fear-standard lens. That perspective will require gathering the necessary context for the stalker’s actions from the report(s) a victim has made to law enforcement, including any history of domestic violence and/or coercive control by the stalker against the victim. Using the victim’s lived experience is a crucial component for prosecutors evaluating these cases for charging purposes.

Some of the stalker’s actions, viewed individually, may not rise to the level of stalking behaviors; however, prosecutors must consider the totality of the victim’s circumstances to determine whether that course of conduct might meet the charging standard when viewed collectively and through the appropriate lens. Prosecutors must be able to connect these actions with the defendant by proper evidence, but using the survivor’s knowledge of their stalker as a guideline can be a helpful strategy when assessing and evaluating those behaviors.

EXAMPLES OF ACTIONS THAT COULD HELP ESTABLISH A COURSE OF CONDUCT IN STALKING CASES:

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

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

Remember: *The victim is the expert in their own safety, and reporting an incident or incidents to law enforcement can often result in escalation of a stalker's behaviors, particularly when the stalker is the victim's current or former intimate partner.* If you are evaluating a case for potential stalking charges, it is vital to recognize that a victim's decision to report these experiences to law enforcement means the situation has become so serious that the victim believes reporting is the best and safest option. A victim who has taken the important step of reporting is a victim who is experiencing real fear, in real time.

Changes to other laws can allow a prosecutor to expand their analysis of potential stalking charges by allowing the prosecutor to consider and assess evidence or proof of certain actions by the stalker (like a stalker who uses locational tracking via "Find My iPhone," for example).² Given these changes that create criminal offense for physically or electronically tracking a person's location, prosecutors whose evaluation of stalking cases for charging can use such evidence to develop a clearer understanding of the stalker's intention from their actions.

Safety Planning with Survivors of Stalking

Safety planning with survivors of stalking is not "just an advocate's job." As prosecutors, safety planning with survivors is a crucial step for successful stalking prosecutions. Having well-informed and properly trained victim assistance coordinators on staff in your office is a key component of an effective prosecution strategy, particularly in domestic violence cases. Prioritizing safety planning training for victim assistance coordinators and working with your local family violence program to obtain that training will go a long way towards achieving this goal.

Remember: *The victim is the expert in their own safety, and they must be given full agency over the choices they make regarding safety planning.* If you are working with a survivor, they have already made the difficult choice to report the stalking to law enforcement, and they will need your support in further safety decisions.

If you have questions or need help working with a survivor on safety planning, contact your local family violence program to get the survivor connected with an advocate who can help them create an effective safety plan that will meet the survivor's needs and support the survivor's peace of mind and mental health as they navigate the criminal legal process.

For a list of local family violence programs in your area, please click [here](#).

This project was supported by Subgrant No. 3073108 awarded by the state administering office for the Office on Violence Against Women, U.S. Department of Justice's STOP Formula Grant Program. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the state or the U.S. Department of Justice.

² See, e.g., recent changes to [Code of Criminal Procedure Article 7B.005\(a\)](#); [Code of Criminal Procedure Article 17.292\(c\)](#); [Penal Code Chapter 20\(A\).02](#); [Penal Code Chapter 42.072](#); relating to offenses related to tracking (electronically or physically) or following another person.