

Stalking

What does it take for prosecutors to hold stalking offenders accountable?

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PROSECUTORS

As the most powerful decision-maker in the criminal justice system, prosecutors play a key role in holding offenders accountable and enhancing victim safety.

- Prosecutors have the most unchecked discretionary power in the U.S. criminal justice system.
- They decide:
 - Whether charges should be filed
 - What the charges should be
 - Who should be charged
 - Whether to offer a plea
 - Recommendations for punishments
- The issue? We know very little about how these decisions are made.
- Given that prosecutors are ultimately the ones who can hold stalking offenders accountable, this brief provides an overview of how prosecutors made decisions in cases of intimate partner stalking.

What is ~~S~~ Stalking?

Stalking involves a pattern of behavior directed at a specific person that would make a reasonable person fear for the safety of themselves or others.

Anti-stalking laws exist in all 50 U.S. states, territories, and tribal and military codes.

Stalking is a risk factor for severe intimate partner abuse and intimate partner homicide.

The most common and dangerous perpetrator of stalking is an intimate partner.

* National Center for Victims of Crime. (2007). The model stalking code revisited: Responding to the new realities of stalking. Washington, DC.

Outcomes of Stalking Cases

STALKING VICTIMS WHO CONTACT THE POLICE	30% to 50%
STALKING COMPLAINTS RESULT IN AN ARREST	12% to 23%
CONVICTION RATES FOR STALKING	12% to 24%

Why are stalking cases difficult to prosecute?

1. COMPLEX LEGAL STATUE: REQUIRES EVIDENCE OF (1) REPEATED UNWANTED CONTACTS AND (2) EMOTIONAL REACTION FROM VICTIM (E.G., FEAR AND/OR EMOTIONAL DISTRESS)
2. STALKING CRIMINALIZES NON-CRIMINAL BEHAVIORS (E.G., GIFTS, LETTERS, TEXTS)
3. CO-OCCURS WITH DOMESTIC VIOLENCE: STALKING BEHAVIORS OFTEN OVERLOOKED BY CRIMINAL JUSTICE ACTORS



How do prosecutors make decisions about cases?

Prosecutors use a convictability standard and prosecute cases that are likely to result in a conviction.

Prosecutors consider factors such as:

- Case seriousness
- Degree of victim injury
- Offender criminal history
- Offender risk of recidivism
- Strength of the evidence

Prosecutors also consider how judges, juries, and defense attorneys will evaluate the evidence, including the demographics, credibility, and lifestyles of the victim and offender. Cases are likely to be dismissed if there are issues that could jeopardize convictability.

This brief focuses on a study that examined prosecutorial decision making in stalking cases using a dataset of 268 arrests and nonarrests for domestic violence and stalking cases reported to Rhode Island law enforcement between 2001 and 2005.

The sample was limited to 141 cases where an offender was arrested for stalking or a DV-related offense (e.g., assault, disrupting 911 call, property destruction, protection order violation) against a female victim.

The study answered two questions:

1. What victim, offender, and situational case characteristics influenced the decision to accept versus reject stalking cases?
2. What characteristics influenced prosecutors to charge an offender with stalking versus another DV-related offense?



INFLUENTIAL FACTORS IN STALKING CASES

What influences prosecutors to accept stalking cases for prosecution?

After accounting for measures related to the seriousness of the offense, the offender's criminal history, the strength of the evidence, and demographic characteristics of the victim, only two factors predicted the decision to accept cases: the location of the offense and the demeanor of the victim.

The strongest predictor was victim demeanor: Cases where the victim was fearful were four times more likely to be accepted for prosecution.

Cases where the stalking behaviors occurred in public were three times more likely to be accepted.

What influences charging decisions?

Two factors significantly differentiated the charging decision: The location of the offense and whether the victim reported a history of physical assaults by the offender.

Cases where the victim reported a history of physical assaults were more likely to be charged with a DV-related offense.

Cases where the incident(s) occurred in public were five times more likely to be charged as stalking.

What does this mean?

A prosecutor's best stalking case is a victim's worst nightmare.

Prosecutors consider the location of the offense, victim demeanor, and a history of physical abuse when decided to move forward with stalking cases.

Stalking cases are likely to be prosecuted when the offenders' behavior terrorizes the victim and jeopardizes the safety of the community.

How can prosecutors enhance offender accountability in stalking cases?

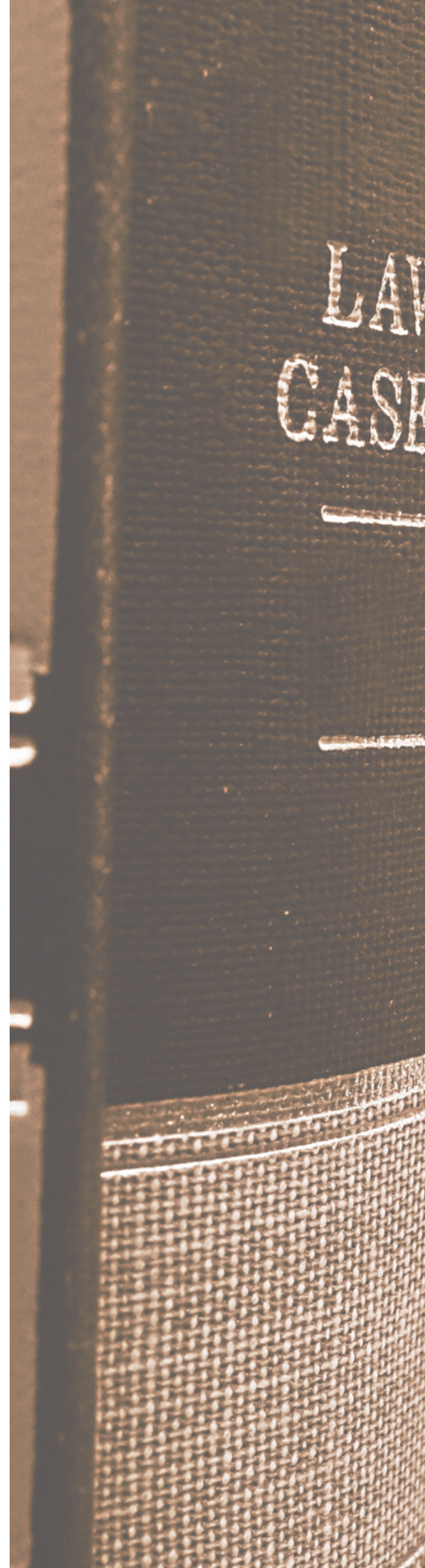
The fear element in stalking cases matters. Victims do not always articulate fear. Prosecutors and law enforcement should ask open-ended questions to establish the context of fear.

Questions should include

1. "what have you done differently as the result of the stalking behaviors?"
2. "what has changed in your life as the result of their behavior?"
3. "what did you think was going to happen if you did not make these changes?"

Stalking should be considered a form of coercive control and an extension of domestic violence

Prosecutors and law enforcement should approach sexual assault, domestic violence, and stalking as course-of-conduct crimes rather than as isolated events. There is often a pattern of behavior occurring both before and after the incidents in question.



Where do we go from here?

Develop and foster researcher-practitioner partnerships

Identify routine activities, operations, and decision-making practices in district attorney's offices

Survey and interview prosecutors about knowledge, attitudes, and perceptions of stalking

Improve training and technical assistance on the intersection of stalking, sexual assault, and domestic violence

More information on stalking resources and training opportunities provided by the Stalking, Prevention, Awareness, and Resource Center (SPARC)

<https://www.stalkingawareness.org/>