

NIWAP

CONFERENCE



Strengthening Community and Organizational Responses: Serving Immigrant Victims of Domestic Violence, Sexual Assault, and Stalking

Investigating and Prosecuting Stalking Cases Involving Immigrant Victims

Opening Plenary
August 2023

NIWAP

National Immigrant Women's Advocacy Project
American University Washington College of Law

Introductions



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Thank You to OVW

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SPARC

STALKING
PREVENTION,
AWARENESS,
AND RESOURCE
CENTER

Investigating and Prosecuting Stalking Cases Involving Immigrant Victims

www.StalkingAwareness.org

*Practitioner guides

*Training modules

*Victim resources

*Webinars



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INNOVATIVE

Sustaining effective practices
and promoting systemic
change

INFORMED

Training, resources, and
assistance supported by
research and experience

PRACTICAL

Customized strategies that are
accessible, responsive, and
easy to apply

Defining Stalking



LEGAL/STATUTORY



BEHAVIORAL

STALKING DEFINITION: BEHAVIORAL

Stalking is a pattern of behavior directed at a specific person that would cause a reasonable person to feel fear for the person's safety or the safety of others; or suffer substantial emotional distress.





CONTEXT IS CRITICAL
in stalking cases.

Context



- * Something may be frightening to the victim but not to you
- * Stalking behaviors often have specific meanings
- * Stalking criminalizes otherwise non-criminal behavior

Actual Harm to Specific Victim

- * Establish through victim testimony
- * Most statutes specifically indicate that medical testimony and/or documentation is not required
- * Key to show how victim was impacted by changes in lifestyle, jobs, daily activities, online activity, etc...



CRIMINAL

FEDERAL LEVEL

**ALL 50 STATES, D.C.,
& U.S. TERRITORIES**

TRIBAL CODES

UNIFORM CODE OF MILITARY JUSTICE



IMMIGRATION RELIEF

U Visa

- Victim of **qualifying criminal activity** that is helpful, has been helpful, or is likely to be helpful to the investigation or prosecution of criminal activity and who has suffered mental or physical harm due to the crime

VAWA Self- Petition

- Victim of battery OR **extreme cruelty** by U.S citizen or lawful permanent spouse spouse, or U.S. citizen son/daughter that is over 21 may be eligible to self-petition

Stalking Prevalence and Behavior

Stalking Prevalence

NEARLY
1 in 3 women



&

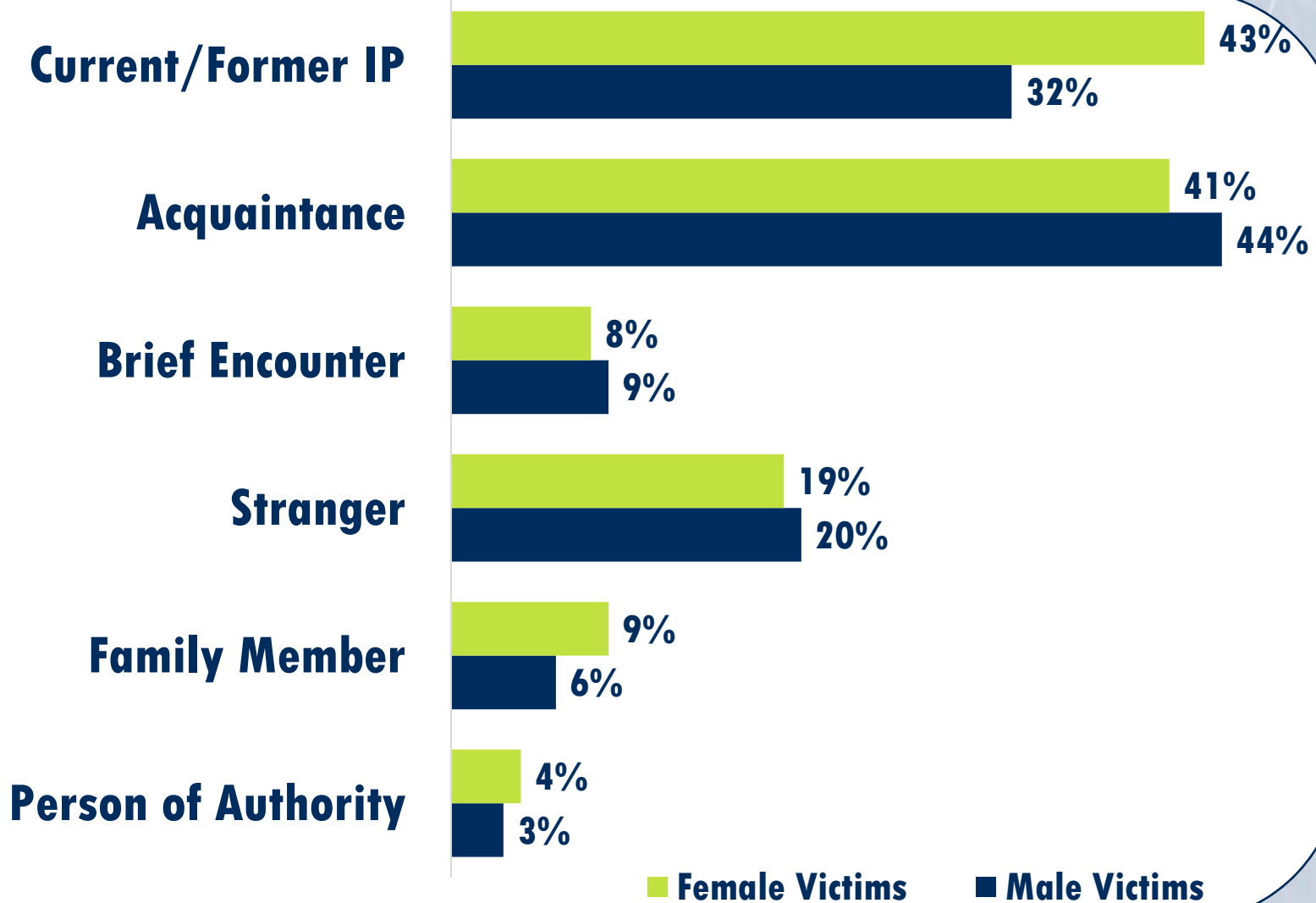
NEARLY
1 in 6 men



experience **stalking** in their lifetimes.

Smith, S.G., Basile, K.C., & Kresnow, M. (2022). The National Intimate Partner and Sexual Violence Survey (NISVS): 2016/2017 Report on Stalking. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.

Victim and Offender Relationships



Understanding Stalking: Stalking Behaviors

SLII Framework





SURVEILLANCE

- **Follow**
- **Watch**
- **Wait**
- **Show up**
- **Tracking software**
- **Obtain information about victim**
- **Proxy stalking**

LIFE INVASION



- **Unwanted contact at home, work, etc.**
- **Showing up**
- **Phone calls**
- **Property invasion**
- **Public humiliation**
- **Harass friends/family**

INTIMIDATION



- **Threats**
- **Property damage**
- **Symbolic violence**
- **Forced confrontations**
- **Threaten or actually harm self**
- **Threats to victim about harming others**



INTERFERENCE

- **Financial and work sabotage**
- **Ruining reputation**
- **Custody interference**
- **Keep from leaving**
- **Road rage**
- **Attack family/friends/pets**
- **Physical/sexual attack**

Small Group Discussion

- * How might each of the following behaviors look in a case involving an immigrant survivor?
 - * Surveillance
 - * Life Invasion
 - * Intimidation
 - * Interference

Large Group Report Back:

How might this surveillance look in stalking cases involving immigrants?



SURVEILLANCE

- **Leverage a small, insular community to monitor, find the victim**
- **Wait for, find the victim in venues, businesses, neighborhoods, or online spaces known for attracting immigrant community members**
- **Leverage cultural norms to obtain information about the victim from community members**
- **Use one's privilege as an English speaker to communicate on behalf of the victim and gain access to privileged, private, or confidential info and places**

Large Group Report Back :

How might life invasion look in stalking cases involving immigrants?

LIFE INVASION



- **Purposely and publicly mispronounce the victim's name or use a name they don't want to be used**
- **Publicly use anti-immigrant slurs against the victim, or more specific slurs against their culture, country of origin, ethnic/racial background**
- **Slander the victim in culturally-specific or immigrant spaces**
- **Show up at culturally-specific or immigrant events, knowing the victim will be there and with the intent to upset, worry, frighten, slander, monitor, or humiliate the victim**

Large Group Report Back :

How might intimidation look in stalking cases involving immigrants?

INTIMIDATION



- **Threats to interfere with immigration processes, get the victim deported, or destroy important papers**
- **Symbolic violence, like destroying property from country of origin**
- **Threats to withhold language interpretation and/or falsely interpret**
- **Deface property with anti-immigrant epithets or slurs**

Large Group Report Back :

How might interference look in stalking cases involving immigrants?



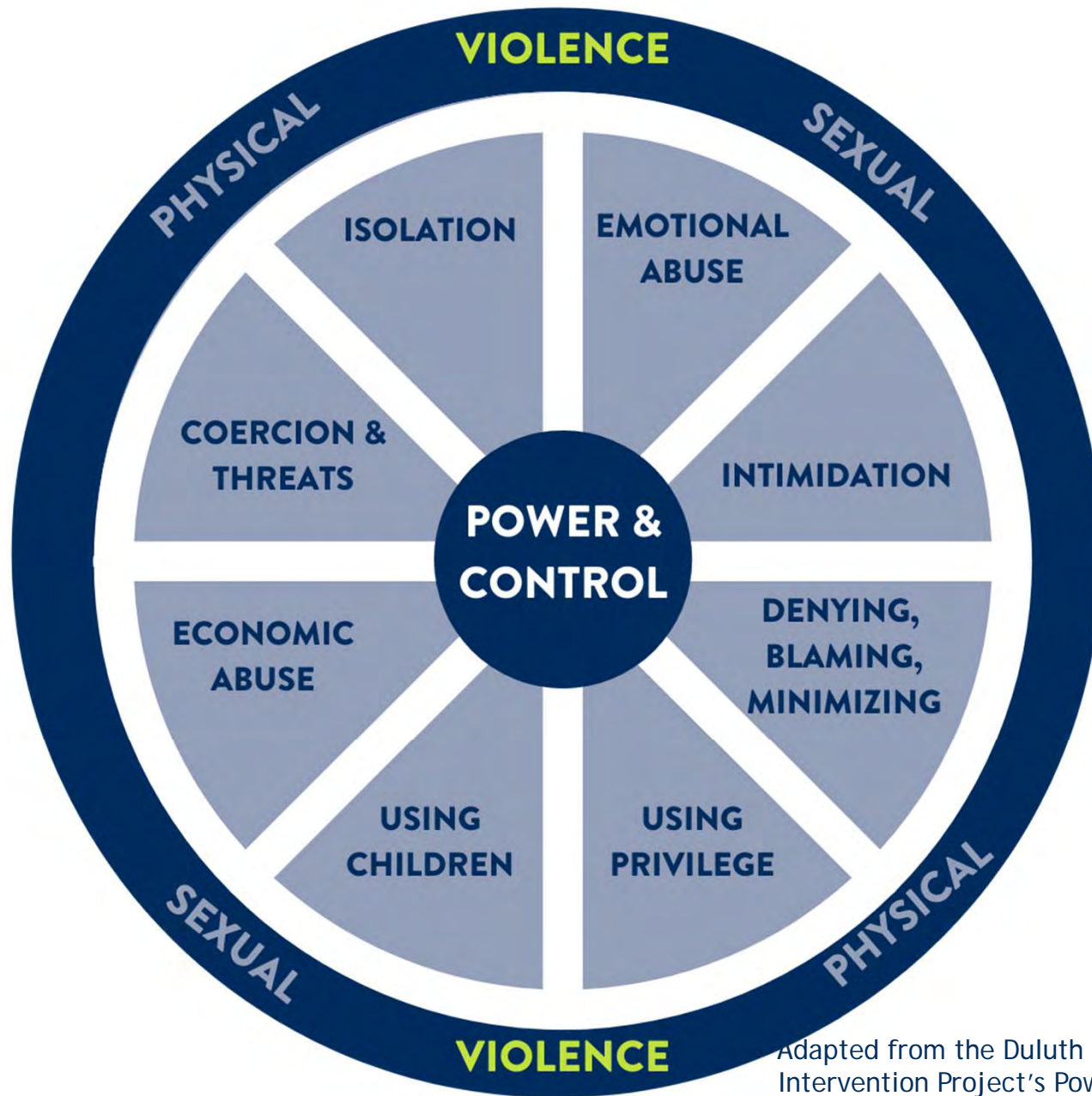
INTERFERENCE

THROUGH SABOTAGE OR ATTACK

- **Interfere with the immigration process**
- **Provide false immigration info to the victim or on legal documents about the victim**
- **Spread rumors about victim's immigration status or country of origin**
- **Limit, withhold, or destroy access to clothing, items, or culturally important traditions and communities vital to the victim's cultural identity or expression**
- **Exploit service providers' and responders' lack of knowledge about immigrants and the victim's specific culture to harm the victim**

Stalking and Intimate Partner Violence

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Intimate partner stalkers are more likely to:

physically approach the victim

be interfering, insulting, and threatening

use weapons

escalate behaviors quickly

re-offend

35



In **85%** of attempted
& **76%** of completed
intimate partner femicides,
stalking occurred in the year
prior to the attack.

Stalking is a Lethality Risk

Top 10 risk factors for intimate partner homicide

Risk for male perpetrated & female IPH victimization

1) Direct access to guns	11-fold increase in risk of IPH
2) Threatened victim with a weapon	7-fold increase in risk
3) Non-fatal strangulation	7-fold increase in risk
4) Perpetrated rape/forced sex	5-fold increase in risk
5) Controlling behaviors	6-fold increase in risk
6) Threatened to harm the victim	4-fold increase in risk
7) Abused victim while pregnant	4-fold increase in risk
8) Perpetrated stalking	3-fold increase in risk of IPH
9) Jealousy	2-fold increase in risk
10) Substance abuse	2-fold increase in risk

Spencer, C.M. & Stith, S.M. (2018). Risk Factors for Male Perpetration and Female Victimization of Intimate Partner Homicide: A Meta-Analysis. *Trauma, Violence, & Abuse* 21(3): 527-540.

Screening for Stalking

Has the Offender...

been tracking, following, or monitoring Victim in any way?



repeatedly invaded Victim's life/privacy by initiating unwanted contact with Victim?

significantly and directly interfered with Victim's life?

>physically/sexually assaulted Victim during course of conduct?

>forcibly kept Victim from leaving, held against will, caused serious accident, assaulted others, or seriously attacked Victim?



more than one time, intimidated or scared Victim through threats, property damage, threatening or actual harming of pets, or other means?

Investigative Strategies

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DESCRIBE

the big picture, beyond individual incidents



DOCUMENT

victim fear and harm



CONTEXTUALIZE

the threats. Why this victim? Why this time?

Victim & Offender History

Is there a prior relationship between the victim and suspect?

- Dating/intimate/sexual relationship?
Friends, classmates, co-workers, neighbors?

What was typical contact?

- Method? Frequency?

Is the suspect aware that their actions are unwanted?

- Remember, any contact by victim could increase risk.

Document Fear and Harm

Scenario - Large Group Discussion

“

Victim advised two days ago she was driving her vehicle and gets a funning feeling. She pulls over and tries to open the trunk and it won't open. She advised the previous evening the suspect entered her residence uninvited wearing the traditional wedding attire from their wedding that he wears when he follows her around town. He was crying and apologizing to her. He stated the reason she couldn't get in the trunk was because he was in there and he was holding it shut. Victim said earlier today she looked in the trunk and found a pillow and a rope he had used to tie the trunk shut.

Reasonable Fear: Evidence

Describe victim statements of fear

- Describe any accommodations made for safety

Document evidence of accommodations and/or safety measures taken:

- Time spent obtaining PO, relocation, efforts to keep address or location secret



Document Witness Corroboration of Fear

Victim's Workplace

- Did the victim ask others to screen calls? Did they change hours? Other accommodations requested?

Locations/Services Frequented by Victim

- Were places like daycare, schools, apartment building, religious spaces, or other locations asked to make accommodations and/or informed of the situation?

Others Who Communicated with Victim

- Did they ask friends, family, or others for help with the stalker?
- Did they meet with anyone else about their safety?
- Did they call 911 and/or inform other security professionals?

Document the Threat Features

- Nature and frequency of threats
- How detailed/graphic are the threats?

➤ Is there violence ideation?

- How are the threats communicated?



➤ Verbally? Voicemails? E-mails?
Gifts? Written notes?

➤ Are the threats public?
Communicated by a third party?
Communicated on social media?



Charging Stalking Behavior

Analyze Stalking Elements

Pattern of Behavior

```
graph TD; A[Pattern of Behavior] --> B[Directed at a person]; B --> C[Impact]; C --> D[On a person];
```

Directed at a person

Impact

On a person

Pattern of Behavior

- Course of conduct
 - Specific number of instances required
 - Over a certain period of time
- Continuity of purpose
- Behavior does not have to be illegal
- Separate incidents may also be charged as separate crimes

AE

Directed at a Person

- Stalking can affect multiple people
- Consider multiple stalking charges with different victims
- Online posts may not be “directed at a specific person”

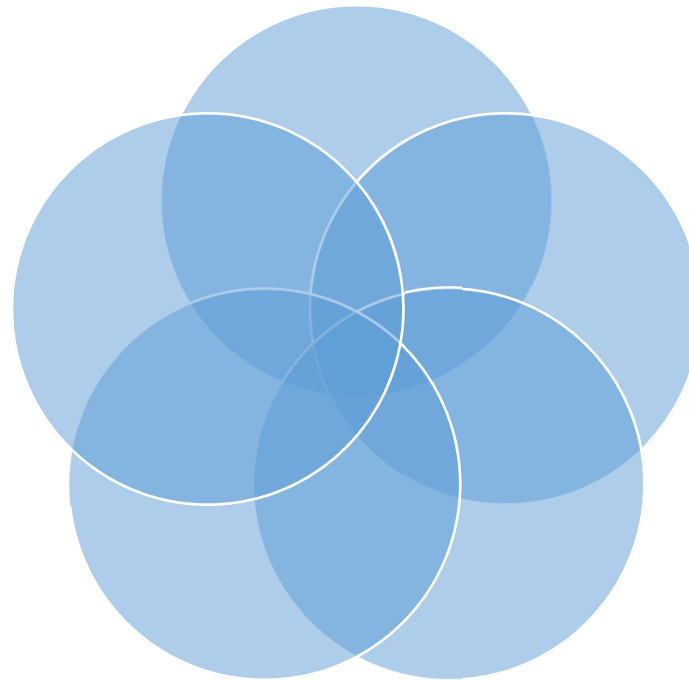
In a civil case, involving a business dispute, the court found that posts to online social media sites were not “directed to” a particular person.

David v. Textor, 189 So. 3d 871 (Fla. Dist. Ct. App. 2016)

Required Impact

Cause severe
emotional distress

Annoy



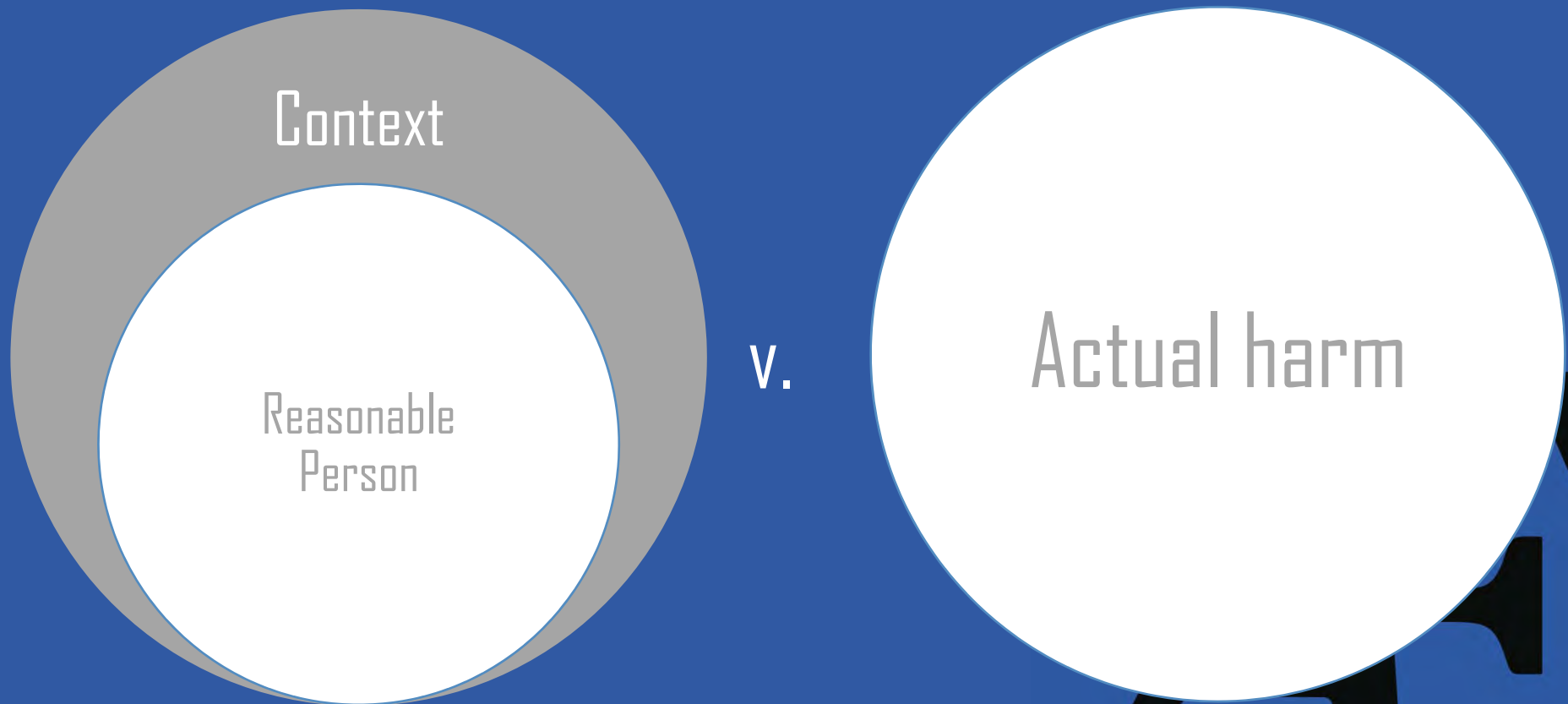
Harass

Instill fear

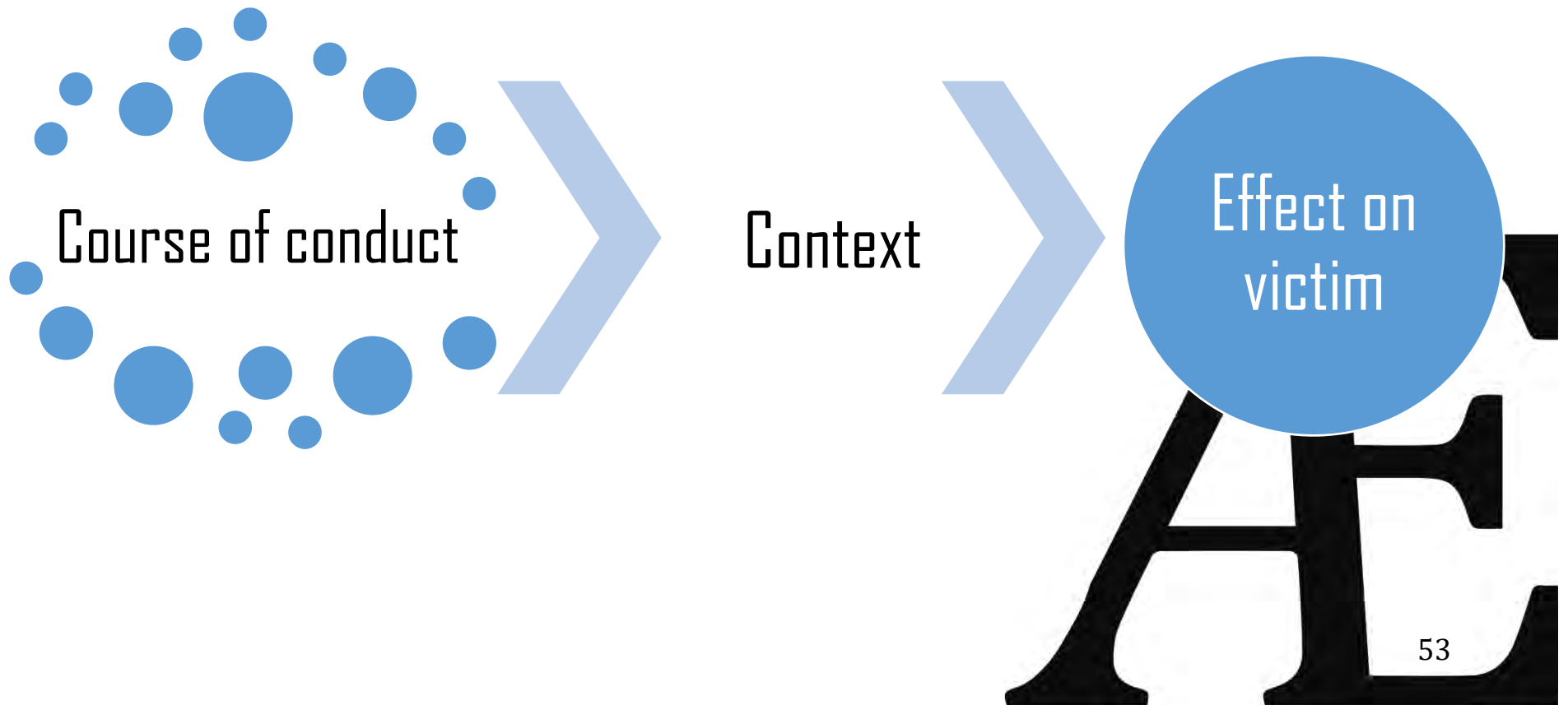
Embarrass

AE

“Reasonable Person” Standard



Context is Critical



Stalking-Related Charges

Harassment

Violation of
Protection Order

Video Voyeurism

Invasion of Privacy

Extortion

Wiretapping

Unauthorized Use of
Tracking Device

Nonconsensual
Distribution of
Intimate Images

Property Crimes

Burglary

Theft

Animal Cruelty

Computer Crimes

ID Theft

Witness Intimidation

Obstruction of
Justice

Charging Strategies

- Articulate stalking as a lethality indicator
- Introduce evidence of “course of conduct”
 - Does not require 404(b) motion
 - Presents more complete picture of relationship
 - Helps to explain victim behavior
 - Holds offender accountable for full range of criminal conduct
 - May require filing a Statement of Particulars
- Charge stalking against multiple victims

SHARP: Stalking Harassment and Risk Profile

www.coercivecontrol.org
www.stalkingrisk.com



**Narrative Report &
Risk Profile**



**Safety Planning
Suggestions**

14 Risk Factors in Stalking Cases



BIG PICTURE

- Course of Conduct
- Escalation, Triggers
- Nature and context of threats
- Threat follow-through, capability



STALKER HISTORY

- History of abuse to victim
- History of abuse to others
- Guns, weapons & training
- Criminal history, mental health, substance abuse

STALKER MINDSET



- Resistance & Persistence
- Stalker Motive
- Proxy Stalking

VICTIM VULNERABILITY



- Fear, life impact
- Use of Technology
- Victim Vulnerability

Impact on Victims

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Advise Disengagement

Recommend no contact with the stalker

- Explain intermittent reinforcement

***BUT* realize victims engage in behaviors to keep themselves safe.**

- Maintain contact, negotiation, minimizing threat
- Contact may be a safety strategy

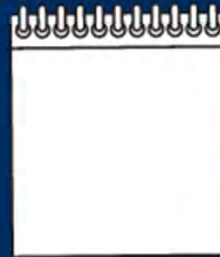


Working with Stalking Victims



SAFETY

ADVOCACY



DOCUMENTATION

SUPPORT



What is Safety Planning?

An individualized plan that identifies specific strategies and interventions that may increase safety.

- Provides practical ways to decrease risk
- Puts victims in contact with a variety of services, agencies, and individuals who can help
- Focuses on physical AND emotional well-being



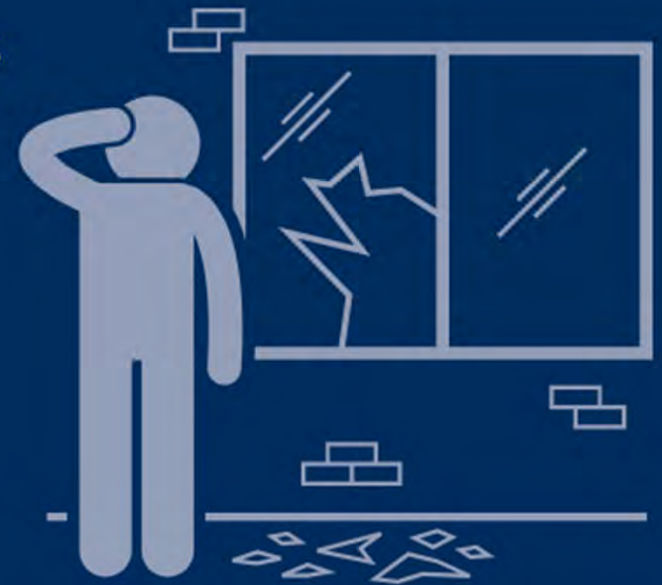
STALKING INCIDENT LOG

Date	Time	Description of Incident	Location of Incident	Witness Name(s) (Attach Address and Phone #)	Police Called (Report #)	Officer Name (Badge #)

Law Enforcement Strategies

Policies & Procedures

- **Does your agency have a stalking policy?**
- **How are non-IP stalking cases identified?**
 - What training exists for dispatch, patrol?
 - Incident reports, call logs
- **Property crimes vs. crimes against persons**
- **Report reviews to screen for stalking**



Identifying Stalking Cases on Calls for Service

StalkingAwareness.org/law-enforcement-resources

IDENTIFYING STALKING SEXUAL HARASSMENT



Offenders may use sexual harassment, nonconsensual distribution of intimate images, indecent exposure, or other sexual offenses as

1. What is your relationship with the suspect?
2. Have they embarrassed you?
 - Have they called you inappropriately?
 - Have they stared at you?
 - Have they made inappropriate comments?
3. Have they repeated the behavior?
 - Have they sent you inappropriate text, photos, or social media posts?
 - Have they repeated the behavior in person?
 - Have they shared information about you with others?
4. Have they made you feel uncomfortable?
5. Have they threatened you?
6. Have they forced you to do something you didn't want to do?
7. Do you believe the behavior is unwanted?
8. Can you describe the behavior?
9. Have you changed your behavior?

IDENTIFYING STALKING HARASSMENT



Any form of harassment should be evaluated for stalking, whether the suspect is known or unknown to the victim.

1. What is your relationship with the suspect?
2. What contact and communication do you have with the suspect? Text? Social media? What did that communication consist of?
3. Do you believe the suspect knows you are being stalked?
4. Was there something that prompted the behavior?
5. Has this ever happened before?
6. Describe the frequency and duration of the behavior.
7. Did anyone else witness or become aware of the behavior?
8. Have you experienced any unknown or unrecognized numbers, unfamiliar callers, or text messages?
9. Are there any other odd, out of place, or suspicious behaviors?
10. Do you have a feeling of being watched or followed?
11. Have you collected any evidence (photos, text messages, or emails)?
12. Has anyone else—friends, family, or neighbors—witnessed the behavior?
13. Have you changed your routines or behaviors?
14. How do you think the suspect will behave in the future?

IDENTIFYING STALKING BEHAVIORS

Stalking includes a wide range of threatening and disturbing behaviors that can be classified into four categories: [Surveillance](#), [Life invasion](#), [Intimidation](#), and [Interference through sabotage or attack \(SUA\)](#). These categories overlap and build on each other. **When victims report to law enforcement, it is the officer's responsibility to identify and name the crimes that occurred—but victims of stalking often do not identify their victimization as stalking and are unlikely to use the word 'stalking' to describe what they're experiencing.**

Instead of asking victims if they are being stalked, officers should ask specific questions about [SUA stalking behaviors](#) to determine if they are experiencing stalking. The questions in this guide are meant to help identify stalking in the early stages of police response, during calls for service and investigations of other identified crimes.

Stalking reports might sound like:

"My ex has gotten weird."

"Someone's harassing me."

"My neighbor is being creepy."

IDENTIFYING STALKING

Verify if the theft, burglary, or other crime has a reason the suspect is

IDENTIFYING STALKING AS A CRIME

CHARGING STALKING AS A CRIME

Prevalence, stalking is often overlooked as a standalone crime as well as when it co-occurs with other crimes. In a recent study of police departments, researchers reviewed nearly 1,800 domestic violence calls for service. While 1,800 calls for service were reviewed, only 1,800 calls for service were identified as stalking—but police had only charged stalking in one. Damage, trespassing, and gifts or

Investigations & Report Writing

StalkingAwareness.org/law-enforcement-resources

- Has the suspect ever taken photos or videos of you without your consent?
- Has the suspect ever shared/posted photos or videos online of you without your consent (even if they were taken by someone else)?

- 22) Do you believe the suspect is a stalker?
- 23) Do you think the suspect is a stalkerware? Are they using stalkerware on someone else?



- 24) Approximately when did the stalking begin?
- Has it been continuous?
 - Coincided with a significant event?
- 25) Does the suspect register with you?
- 26) Does the suspect both stalk and harass you?
- 27) Has the suspect's behavior changed over time?
- 28) In a typical day / week, how often does the suspect stalk you?
- 29) In a typical day / week, how often does the suspect harass you?
- 30) In a typical day / week, how often does the suspect threaten you?



- 31) Have you ever gotten a restraining order against the suspect?
- 32) Have you ever made a police report against the suspect?
- 33) Have you ever increased your security measures?
- 34) Have you ever spent money on legal fees?
- 35) Did you ever move, change your phone number, or change your institution, etc. because of the suspect's behavior?
- 36) Has the suspect's behavior affected your work or school?
- Did you change your work or school schedule?
 - Has this had an impact on your mental health?
 - What if anything have you done to protect yourself?

KEY POINTS IN STALKING INVESTIGATIONS & REPORT WRITING

- 1) Listen closely to victims—enough to write a report.
 - Stalkers are inventive and can be very frightening to victims.
 - It is important to ask the victim for details about the behavior.
- 2) Screen for SLII stalking behaviors (surveillance, life invasion, intimidation, sabotage or attack).
 - Look at the duration, intensity, and frequency of the behavior.
 - Stalking needs to be viewed in context or view of the victim's fear.
- 3) To assess fear/distress, consider the victim's behavior.
- 4) Connect the victim with support.
- 5) While technologies can help identify stalkers who use technology, it is important to ask the victim for details about the behavior.
 - When asking questions, be sure to ask the victim how to document the behavior.
- 6) Because of the nature of stalking, it is important to document protocols related to response, such as Restraining Order Violations, and other legal actions.



When first meeting with a victim...

STALKING CASES: LAW ENFORCEMENT INVESTIGATIONS AND REPORT WRITING

INVESTIGATING STALKING SLII BEHAVIORS

Stalking is a prevalent and dangerous crime that requires thorough investigation and documentation. Too often, stalking goes unrecognized, uncharged, and/or unprosecuted—and stalkers are not held accountable for all of their crimes. Victims of stalking often do not identify their victimization as stalking and are unlikely to use the word 'stalking' to describe what they're experiencing. Research and practice show that **officers should ask specific questions about stalking behaviors rather than simply asking if someone has been stalked/harassed.**

Questions about stalking behaviors can be grouped into the four SLII categories: Surveillance, Life invasion, Intimidation, and Interference through sabotage or attack (SLII). These categories overlap and build on each other.

The questions below are meant to guide law enforcement investigations and documentation to help capture the full context of the situation, including the suspect's behaviors, what the behaviors mean to the victim, and the duration, intensity, and frequency of the behaviors.

These questions are useful when conducting investigations, reviewing reports, and training law enforcement. To learn more about stalking and law enforcement response, visit www.StalkingAwareness.org/law-enforcement-resources.



Prosecution Strategies

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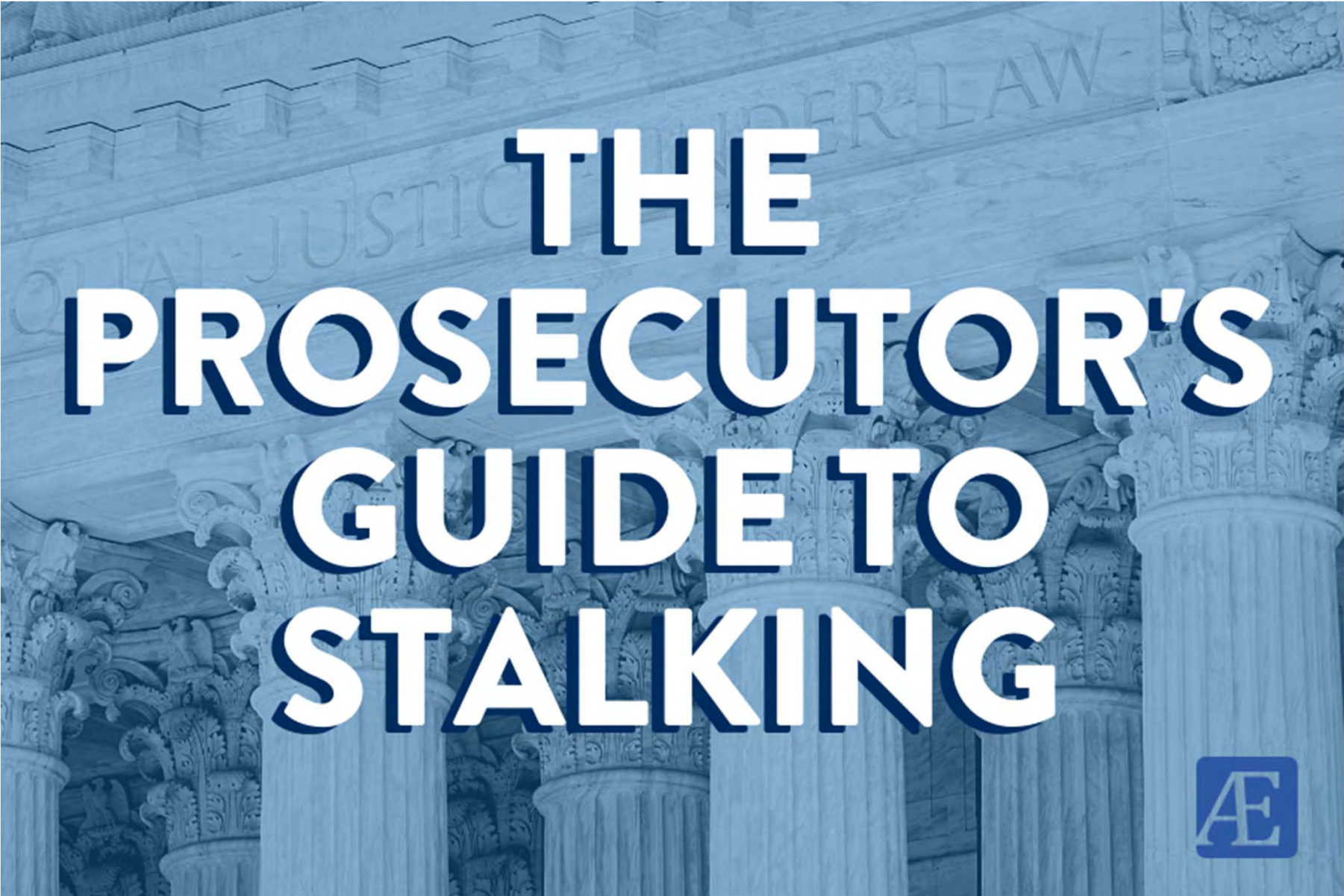
Prosecution Strategies

- Charge stalking within intimate partner violence/domestic violence
- What can be charged NOW
 - ...to help with a future stalking charge?
 - ...to address the behavior?
- Acts intended to elicit a reaction from the victim (even if not directed at victim) can be part of the course of conduct
 - Intent: the victim would see/hear, evidence of context of threat may = intent

Prosecution Strategies (continued)

- Use risk assessments
- Use firearm prohibitions
- Oppose defense demands for private or confidential victim information
- Use expert testimony
- Forfeiture by wrongdoing for unavailable victims/witnesses





THE PROSECUTOR'S GUIDE TO STALKING



Advocacy

Advocacy Strategies

- * Specific training on stalking
- * Support groups
- * Safety planning/risk assessment
- * Assistance with CPO
- * Documentation
- * Shelter options?
- * Organizational checklist

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Judicial Officer Checklist for Common Behaviors Associated with Stalking

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Addressing Stalking: A Checklist for Domestic and Sexual Violence Organizations

Because there are very few stalking-specific service providers, stalking sexual violence programs to assist them with safety planning and response to stalking, consider the following:

- Does your organization...

STALKING RESPONSE CHECKLIST

- Your website links to [Victim Connect](#) (the referral hotline for victims of crime, including stalking).
- Your website provides definitional information/fact sheets on stalking (see [these resources](#)).
- Your website provides a link to a [stalking log](#) that victims can use to document evidence of stalking.
- Your website features stories that focus on or include stalking.
- Your website notes that January is National Stalking Awareness Month.

Social Media



Responding to Stalking: A Guide for Advocates



Going Forward

Recognize the prevalence and scope of stalking behavior

Identify elements of stalking statutes and analyze cases in relationship to those elements

Charge stalking and co-occurring crimes

Collaborate to hold offenders accountable and promote victim safety and privacy

Technical Assistance and Materials

- NIWAP Technical Assistance:
 - Call (202) 274-4457
 - E-mail info@niwap.org
 - Web Library:
www.niwaplibrary.wcl.american.edu
- Materials for this Workshop:
 - <https://niwaplibrary.wcl.american.edu/BostonDiscovery>
- Contact NIWAP to provide training for your jurisdiction