



DATE DOWNLOADED: Sat Apr 6 21:20:34 2024

SOURCE: Content Downloaded from [HeinOnline](#)

Citations:

Please note: citations are provided as a general guideline. Users should consult their preferred citation format's style manual for proper citation formatting.

Bluebook 21st ed.

Kristin J. Bouchard, Can Civil Damage Suits Stop Stalkers, 6 B.U. PUB. INT. L.J. 551 (1997).

ALWD 7th ed.

Kristin J. Bouchard, Can Civil Damage Suits Stop Stalkers, 6 B.U. Pub. Int. L.J. 551 (1997).

APA 7th ed.

Bouchard, K. J. (1997). Can civil damage suits stop stalkers. Boston University Public Interest Law Journal, 6(2), 551-566.

Chicago 17th ed.

Kristin J. Bouchard, "Can Civil Damage Suits Stop Stalkers," Boston University Public Interest Law Journal 6, no. 2 (Winter 1997): 551-566

McGill Guide 9th ed.

Kristin J. Bouchard, "Can Civil Damage Suits Stop Stalkers" (1997) 6:2 BU Pub Int LJ 551.

AGLC 4th ed.

Kristin J. Bouchard, 'Can Civil Damage Suits Stop Stalkers' (1997) 6(2) Boston University Public Interest Law Journal 551

MLA 9th ed.

Bouchard, Kristin J. "Can Civil Damage Suits Stop Stalkers." Boston University Public Interest Law Journal, vol. 6, no. 2, Winter 1997, pp. 551-566. HeinOnline.

OSCOLA 4th ed.

Kristin J. Bouchard, 'Can Civil Damage Suits Stop Stalkers' (1997) 6 BU Pub Int LJ 551

Please note: citations are provided as a general guideline. Users should consult their preferred citation format's style manual for proper citation formatting.

Provided by:

Fineman & Pappas Law Libraries

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at

<https://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your license, please use:

[Copyright Information](#)

NOTES

CAN CIVIL DAMAGE SUITS STOP STALKERS?

I. INTRODUCTION

When Joanne Stinson accepted two dinner dates with Richard Slaughter in 1992, she could not have foreseen the terror he would bring into her life.¹ After just two dates, Slaughter became obsessed with Stinson and made her life a living hell.² As Slaughter began vandalizing Stinson's car and peering in the windows of her home,³ Stinson became a stalking victim.⁴ For many women in Stinson's situation, the stalking culminates in murder before they can obtain judicial relief.⁵ Fortunately, Stinson escaped her ordeal without serious physical harm.⁶ Stinson's story is unique because she was the first stalking victim to convince a jury to award justice in the form of compensatory and punitive damages from her stalker.⁷

Stalking victims, like Stinson, often rely solely on temporary restraining orders for protection.⁸ These restraining orders, however, are often ineffective.⁹ Slaughter violated Stinson's temporary restraining order more than forty-one

¹ See *Maine Woman Files Lawsuit to Keep Stalker at Distance*, BANGOR DAILY NEWS, Sept. 18, 1993, available in 1993 WL 639676 [hereinafter *Maine Woman Files Lawsuit*].

² See *Trial Against Alleged Stalker Begins in Portland Courtroom*, BANGOR DAILY NEWS, March 14, 1995, available in 1995 WL 5879751 [hereinafter *Trial Against Alleged Stalker Begins*].

³ See *id.*

⁴ See Royal Ford, *Fending Off a Stalker Woman Wins \$650,000 in Suing Tormentor*, BOSTON GLOBE, March 28, 1995, at 1, 9.

⁵ An estimated 90% of American women killed by their husbands or boyfriends were stalked prior to their murders. See Colleen P. Flynn, *The New Jersey Antistalking Law: Putting an End to a "Fatal Attraction,"* 18 SETON HALL LEGIS. J. 297, 299 fn. 13, (citing Melinda Beck et al., *Murderous Obsession*, NEWSWEEK, July 13, 1992 at 60-61).

⁶ See Ford, *supra* note 4, at 1.

⁷ See *id.* The jury awarded Stinson \$150,000 in compensatory damages and \$500,000 in punitive damages. See *id.*

⁸ See *id.* Stinson obtained the restraining order against Slaughter in district court in Portland, Maine in October, 1992. See *id.* at 9.

⁹ See Flynn, *supra* note 5, at 305 (citing 138 CONG. REC. S9520, S9527 (daily ed. July 1, 1992) (statement of Sen. Cohen)). See also Joanne Furio, *Can New State Laws Stop the Stalker?*, Ms., Jan.-Feb. 1993, at 90 (husband threatened to "blow away" wife, after receiving the restraining order she had obtained against him).

times.¹⁰ The judicial system did not effectively assist Stinson until the court granted Stinson's request for a permanent restraining order and damages.¹¹ Fortunately, Stinson not only survived being stalked, but also obtained relief from the judicial system.¹²

Studies report an estimated 200,000 stalking cases in the United States each year.¹³ Battered women's advocates believe that this number is lower than the actual number of stalking incidents since it does not include the large number of unreported domestic stalking cases.¹⁴ A stalker is generally defined as someone who "willfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat with the intent to place that person in reasonable fear of death or great bodily injury."¹⁵ Under some stalking statutes the definition includes threats against a victim's family members.¹⁶ One forensic psychiatrist who studied stalking behavior for more than ten years found that mentally ill people who believe they have a relationship with their stalking target perpetuate most stalking incidents.¹⁷

As a partial response to stalking, Congress enacted the Violence Against Women Act (the "Act") in 1994.¹⁸ The Act allows victims of gender motivated violence to recover civil damages.¹⁹ The Act also includes a section entitled "National Stalker and Domestic Violence Reduction" which extends additional funding to states, thereby enabling them to fight stalking and domestic violence.²⁰

California enacted the nation's first state stalking law in 1990.²¹ Since then forty-seven states (plus the District of Columbia) have enacted specific stalking

¹⁰ See *Maine Woman Files Lawsuit*, *supra* note 1.

¹¹ See *id.*

¹² See Ford, *supra* note 4 at 1.

¹³ See Robert P. Faulkner and Douglas H. Hsiao, *And Where You Go I'll Follow: The Constitutionality of Antistalking Laws and Proposed Model Legislation*, 31 HARV. J. ON LEGIS. 1, 4 (citing David Holmstrom, *Efforts to Protect Women from Stalkers Gain Momentum at State, Federal Levels*, CHRISTIAN SCIENCE MONITOR, Dec. 22, 1992 at 1 ("About 200,000 stalking cases are reported each year nationwide, victims' rights organizations estimate.")).

¹⁴ Battered women's advocates believe that when a woman leaves her batterer, he often follows or stalks her before assaulting or killing her. See Toni Locy, *Stalking Bill Signed by Weld; Aim is to Protect Battered Women*, BOSTON GLOBE, May 19, 1992, at 21.

¹⁵ Brenda A. Sanford, Note, *Stalking Is Now Illegal: Will a Paper Law Make a Difference?*, 10 T.M. COOLEY L. REV. 409, 413 (citing R.I. GEN. LAWS § 11-59-2(a) (1992); S.D. CODIFIED LAWS ANN. § 22-19A-1 (1992)).

¹⁶ See CAL. PENAL CODE § 646.9(a) (West 1992); IDAHO CODE § 18-7905 (1992); and OKLA. STAT. ANN. tit. 21 § 1173(E)(3) (West 1993).

¹⁷ See Maria Puente, *Legislators Tackling the Terror of Stalking*, USA TODAY, July 21, 1992, at 9A, available in 1992 WL 8404408.

¹⁸ See 42 U.S.C. §§ 13931-14040 (1994).

¹⁹ See *id.* at § 13981(c).

²⁰ See *id.* at §§ 14031-14040.

²¹ See CAL. PENAL CODE § 649.9 (West Supp. 1996).

legislation.²² Four of these states - California, Oregon, Michigan and Wyoming - have also enacted stalking statutes which expressly provide for recovery of civil damages from stalkers.²³

This Note examines the use of civil suits to obtain compensatory and punitive damages in stalking cases and argues that such suits are critical in the war against stalking. Part II of this Note examines Joanne Stinson's case as a precedent-setting model for civil suits against stalkers. Part III discusses the problems involved with the criminal prosecution of stalking cases. Part IV reviews the stalking statutes that provide for civil damage suits. Part V examines the Oregon civil stalking statute and proposes the necessary elements of a state civil stalking statute. In conclusion, Part VI discusses the reasons why civil suits are a desira-

²² See ALA. CODE §§ 13A-6-90 to -94 (1994); ALASKA STAT. § 11.41.260-.270 (Michie Supp. 1995); ARIZ. REV. STAT. ANN. § 13-2921 (West Supp. 1996); ARK. CODE ANN. § 5-71-229(a), (b), & (c), § 5-13-301 (Michie 1993); CAL. PENAL CODE § 646.9 (West Supp. 1996); CAL. CIV. CODE § 1708.7 (West Supp. 1996); COLO. REV. STAT. § 18-9-111 (Supp. 1996); CONN. GEN. STAT. ANN. § 53a-181d (West 1994); DEL. CODE ANN. tit. 11, § 1312A (1995); D.C. CODE ANN. § 22-504 (1996); FLA. STAT. ANN. § 784.048 (West Supp. 1996); GA. CODE ANN. § 16-5-90 to -93 (1996); HAW. REV. STAT. § 711-1106.5 (1994); IDAHO CODE § 18-7905, § 39-6312 (Supp. 1995); ILL. COMP. STAT. ANN. § 5/12-7.3 to -7.4 (West 1993 & Supp. 1996); IND. CODE ANN. § 35-45-10 (West Supp. 1996); IOWA CODE § 708.11 (1993) (amended 1996); KAN. STAT. ANN. § 21-3438 (1995); KY. REV. STAT. ANN. § 508.140 - .150 (Michie Supp. 1996); LA. REV. STAT. ANN. § 14:40.2 (West Supp. 1996); MD. ANN. CODE art. 27, § 121B (Supp. 1996); MASS. GEN. LAWS. ch. 265, § 43 (1993); MICH. COMP. LAWS ANN. § 600.2950a, 600.2954, § 750.411 h, i, § 771.2a (West Supp. 1996); MINN. STAT. ANN. § 609.749 (West Supp. 1996-97); MISS. CODE ANN. § 97-3-107 (1994); MO. ANN. STAT. § 565.225 (West Supp. 1996); MONT. CODE ANN. § 45-5-220 (Supp. 1996); NEB. REV. STAT. § 28-311.02 to .05 (1995); NEV. REV. STAT. § 200.571, .575, .581, .601 (1992); N.H. REV. STAT. ANN. § 173-B:7 (1994); N.H. REV. STAT. ANN. § 633:3-a (1996); N.J. STAT. ANN. § 2C:12-10 (West 1995); N.M. STAT. ANN. § 30-3A-1 (Michie Supp. 1996); N.Y. PENAL LAW § 240.25 (McKinney Supp. 1996); N.C. GEN. STAT. § 14-277.3 (Supp. 1995); N.D. CENT. CODE § 12.1-17-07.1 (Supp. 1995); OHIO REV. CODE ANN. § 2903.211 (Anderson 1993 and Supp. 1995); OKLA. STAT. ANN. tit. 21, § 1173 (West Supp. 1996-97); OR. REV. STAT. § 30.855, § 30.866, § 163.730, § 163.750 (1995); 18 PA. CONS. STAT. ANN. § 2709 (West Supp. 1996); R.I. GEN. LAWS § 11-59-1 to -3 (1994 and Supp. 1996); S.D. CODIFIED LAWS § 22-19A-1 to -7 (Michie Supp. 1996); TENN. CODE ANN. § 39-17-315 (Supp. 1996); TEX. CODE CRIM. P. ANN. art. 56.11 (West Supp. 1996-97); UTAH CODE ANN. § 76-5-106.5 (1995 and Supp. 1996); VT. STAT. ANN. tit. 13, §§ 1061, 1062, 1063 (Supp. 1996); VA. CODE ANN. § 18.2-60.3 (Michie 1996); WASH. REV. CODE ANN. § 9A.46.110 (West Supp. 1996-97); W. VA. CODE § 61-2-9a (1992 and Supp. 1996); WIS. STAT. § 165.829 (Supp. 1995); WIS. STAT. § 940.32 (1996); WYO. STAT. ANN. § 1-1-126, § 6-2-506 (Michie Supp. 1996). Maine is one of the only remaining states which does not have a specific stalking statute and has dealt with stalking under its harassment and terrorizing statutes.

²³ See CAL. CIV. CODE § 1708.7 (West Supp. 1996); MICH. COMP. LAWS ANN. § 600.2954 (West Supp. 1996); OR. REV. STAT. § 30.866 (1995); WYO. STAT. ANN. § 1-1-126 (Michie Supp. 1996).

ble way for victims of stalking to obtain relief, regardless of whether they are concurrently seeking criminal relief.

II. JOANNE STINSON'S CASE

Joanne Stinson met Richard Slaughter briefly on Christmas Eve in 1991, when she picked up her grandmother at a relative's house in Maine.²⁴ Slaughter was an employee at Stinson's family's fish canning business.²⁵ She only vaguely remembered meeting him, but when her cousin asked if she would go out to dinner with him, she accepted.²⁶

After two dates with Slaughter, Stinson told him she no longer wished to see him.²⁷ He asked her out again anyway but she refused.²⁸ Even though she had turned him down, Slaughter waited for Stinson at the proposed date site and when she did not arrive, went to her house and accused her of standing him up.²⁹

In March 1992, Slaughter hired a private investigator, Thomas D'Alonso, to follow Stinson under the guise that she was his girlfriend and he suspected she might be cheating on him.³⁰ D'Alonso later testified in court that "Slaughter seemed 'obsessed' with her," and that D'Alonso had seen Slaughter following Stinson.³¹

Stinson obtained a temporary restraining order once she realized that Slaughter was following her,³² but this did little to stop him.³³ He continued stalking Stinson by looking in Stinson's windows, lurking in the woods near her home, and following her to softball games.³⁴ In addition, by posing as a potential buyer, Slaughter twice convinced a real estate agent to leave him alone inside Stinson's condominium.³⁵ The police eventually arrested Slaughter for violating the restraining order, but within ten days of his release on bail he began calling Stinson again.³⁶ Ultimately, the court only gave Slaughter a suspended sentence for his repeated restraining order violations.³⁷

A Maine police detective investigating Stinson's stalking performed a background check on Slaughter and discovered that in 1980 Virginia officials in-

²⁴ See Ford, *supra* note 4, at 9.

²⁵ See *id.*

²⁶ See *id.*

²⁷ See *id.*

²⁸ See *id.*

²⁹ See *id.*

³⁰ See *id.*

³¹ *Id.*

³² See *id.*

³³ See *Maine Woman Files Lawsuit*, *supra* note 1, at 2.

³⁴ See Ford, *supra* note 4 at 9.

³⁵ See *id.*

³⁶ See *Maine Woman Files Lawsuit*, *supra* note 1, at 3.

³⁷ See Ford, *supra* note 4, at 9.

dicted Slaughter for the fatal stabbing of Olivia Thorndike.³⁸ Authorities accused Slaughter of stalking Thorndike at home and work, prior to her death.³⁹ Two months before Thorndike's death, a court convicted Slaughter of assault for "smashing [Thorndike's] face and breaking her tooth" with a rock.⁴⁰ Additionally, just two days prior to her murder, "Slaughter told Thorndike's mother that her daughter was a dead woman."⁴¹ Unfortunately, Virginia officials withdrew Slaughter's indictment for Thorndike's murder when a key witness in the case disappeared.⁴²

The detective informed Stinson of Slaughter's past and instructed her to keep a journal of everything that Slaughter did.⁴³ This information about Slaughter's past only intensified Stinson's fear of Slaughter.⁴⁴ Unfortunately, the detective could not arrest Slaughter because under Maine criminal law, the individual stalking incidents were insufficient to bring a criminal indictment.⁴⁵

Frustrated by the inaction of the criminal justice system, Stinson's attorney advised her to file a civil suit against Slaughter.⁴⁶ Stinson's case was the first civil trial against an accused stalker in Maine.⁴⁷ Stinson told the jury that while she and her attorney "praised police for helping throughout the ordeal," civil action was necessary to protect her from the "individual and relatively benign acts of intimidation" performed by Slaughter which "can fall through the cracks of the criminal system."⁴⁸

Soon after Stinson filed her lawsuit seeking compensatory and punitive damages, Slaughter returned to Virginia and did not appear at the trial.⁴⁹ The jury nonetheless recognized the harm that Slaughter inflicted upon Stinson and awarded her \$150,000 in compensatory damages and \$500,000 in punitive damages.⁵⁰ Slaughter's attorney stated that he plans to appeal the verdict based on what he believes are "certain profound errors in the conduct of the case."⁵¹

³⁸ See *id.* Thorndike, like Stinson, had refused Slaughter after a few dates and then his stalking began. See *id.*

³⁹ See *id.*

⁴⁰ *Id.* at 9. During this same time Slaughter had four additional convictions for assaults on women in the same county in Virginia. See *id.*

⁴¹ *Id.*

⁴² See *id.* Virginia officials choose to withdraw the indictment rather than risk losing the case without the key witness, but retained the right to refile it in the future. See *id.*

⁴³ See *id.*

⁴⁴ See *id.*

⁴⁵ See *id.*

⁴⁶ See *id.*

⁴⁷ See *Trial Against Alleged Stalker Begins*, *supra* note 2. Similar civil lawsuits are currently pending in Texas and Oregon. See also Ford, *supra* note 4, at 9.

⁴⁸ Ford, *supra* note 4, at 9.

⁴⁹ See *id.*

⁵⁰ See *id.* Not even bankruptcy will protect Slaughter from paying the punitive damages, e.g. a portion of Slaughter's future pay can be attached. See *id.*

⁵¹ *Id.* Slaughter's lawyer claims that the court should not have allowed the prosecution to tell the jury about the record Slaughter had accumulated in Virginia. See *id.*

Based on Slaughter's history and his possible connection to Olivia Thorn-dike's death, Stinson still fears for her own safety and the safety of other women whom he may victimize.⁵² Since Stinson's suit against Slaughter was civil, not criminal, the jury could not send Slaughter to prison. Therefore, Slaughter is currently a free man who may decide to return to Maine in spite of the permanent restraining order.

III. STALKING CASES IN THE CRIMINAL SYSTEM

Stalking presents a unique problem for the criminal justice system. Cases can enter the criminal system in two different ways. If a stalker's conduct is significant enough to meet the criminal statutory requirements, the state can prosecute the stalker directly. Alternatively, if the stalking victim obtains a restraining order which the stalker later violates, the court may treat that violation as a criminal matter.⁵³

A. *Direct Stalking Prosecution*

Forty-eight states (plus the District of Columbia) have enacted statutes which criminalize stalking.⁵⁴ Prosecuting a stalker in the criminal justice system presents victims with both benefits and drawbacks that do not exist in the civil system. To convict a stalker in the criminal courts, the state must prove its case beyond a reasonable doubt. This standard is much more difficult for the state to meet than the preponderance of the evidence standard required in civil lawsuits. Additionally, in a criminal trial, the state controls the prosecution and the victim is merely a secondary player.

A criminal case, however, does have some added benefits. Unlike a civil trial, a judge or jury can sentence a convicted stalker to prison. Even after receiving a favorable award in a civil trial a victim is not guaranteed safety. The strongest argument for the criminal system, therefore, is that when the system convicts and jails a defendant, his victim is at least temporarily safe.

The Maine criminal justice system presents particularly difficult problems for stalking victims because the state has not yet enacted a statute specifically addressing stalking.⁵⁵ Maine currently prosecutes stalking cases under its terrorizing statute.⁵⁶ Unfortunately, many stalking incidents do not rise to the level of

⁵² See *id.*

⁵³ "Depending on state statutes and local procedures, violators of the protection orders may be charged with civil or criminal contempt or the misdemeanor offense of violating a court order." Flynn, *supra* note 5, at 304 n.38, (citing PETER FINN & SARAH COLSON, NAT'L INST. OF JUST. ISSUES & PRAC., CIVIL PROTECTION ORDERS: LEGISLATION, CURRENT COURT PRACTICE, AND ENFORCEMENT 1 (March 1990)).

⁵⁴ See *supra* note 22.

⁵⁵ See *id.*

⁵⁶ Maine Terrorizing statute:

1. A person is guilty of terrorizing if he communicates to any person a threat to commit or to cause to be committed a crime of violence dangerous to human life,

conduct required by that statute. Joanne Stinson, for example, could not have had the police arrest Richard Slaughter because his actions were not criminal under the Maine terrorizing statute.⁵⁷ This is a serious flaw in the criminal system. Even though a man with a history of violence against women was stalking Stinson,⁵⁸ the criminal justice system could not help her. The lack of a criminal remedy forced her to turn to the civil system for relief in the form of a monetary award and a protective order.⁵⁹

B. Restraining Orders

Courts can also protect women against stalkers by issuing temporary restraining orders. The central problem with these orders is that the legal system generally does not enforce them.⁶⁰ When courts fail to enforce restraining orders in stalking cases, actual and potential perpetrators receive a clear message that stalking is not a serious crime and that courts will not treat it seriously.

In 1992, Michael Cartier stalked and killed Kristin Lardner, who was his former girlfriend and a 21-year-old art student in Boston, Massachusetts.⁶¹ Lardner had ended her relationship with Cartier and obtained a temporary restraining order after he became abusive to her.⁶² Despite the order, Cartier shot and killed Lardner on a main street in Boston in broad daylight.⁶³ Cartier then fled the scene, went home, and killed himself.⁶⁴

This was not Cartier's first abusive relationship; he had previously abused an-

against the person to whom the communication is made or another, and the natural and probable consequences of such a threat, whether or not such consequence in fact occurs, is:

- A. To place the person to whom the threat is communicated or the person threatened in reasonable fear that the crime will be committed; or
- B. To cause evacuation of a building, place of assembly or facility of public transport.

2. Violation of subsection 1, paragraph A, is a Class D crime. Violation of subsection 1, paragraph B is a Class C crime.

ME. REV. STAT. ANN. tit. 17-A § 210 (West 1964).

⁵⁷ See Ford, *supra* note 4, at 9.

⁵⁸ See *supra* text accompanying notes 37-41.

⁵⁹ See Ford, *supra* note 4, at 9.

⁶⁰ For example, in Massachusetts in 1992, more than 6,000 men were arrested for allegedly violating restraining orders. Eight hundred of these men were placed on probation, and less than 100 of them were sent to jail. Prosecutors did not pursue the rest of the cases. GEORGE LARDNER, *THE STALKING OF KRISTIN, A FATHER INVESTIGATES THE MURDER OF HIS DAUGHTER* 256 (1995).

⁶¹ See *id.* at 3-6. Unfortunately, Cartier could not be pursued under the Massachusetts stalking law, which was not enacted by Governor Weld until May 18, 1992.

⁶² Lardner obtained a temporary restraining order on May 11, 1992 and then a permanent order, good for one year, on May 19, 1992. See *id.* at 33.

⁶³ See *id.*

⁶⁴ See *id.* at 6.

other girlfriend, Rose Ryan.⁶⁵ Ryan, like Lardner, received a restraining order against Cartier which proved ineffective.⁶⁶ Cartier subsequently violated the order by writing to her from jail, where he was serving a one-year sentence for attacking her.⁶⁷ Instead of ordering Cartier to complete his sentence and having him arrested for the restraining order violation, the court ordered him to attend an "Alternatives to Violence" class once a week for six weeks as a condition of his probation.⁶⁸

When Cartier received Lardner's temporary restraining order, he called her and asked that she drop it, and other charges against him.⁶⁹ Lardner immediately called the police and reported this violation.⁷⁰ When Lardner obtained her permanent order against Cartier, the court should have ordered the police to arrest him for violating his probation⁷¹ and the temporary restraining order.⁷² In Massachusetts, there is a mandatory arrest law for restraining order violations which the court failed to enforce against Cartier.⁷³ Lardner's complaint charging Cartier with assault with a deadly weapon and with violating the restraining order were still in the clerk's office when Cartier killed her.⁷⁴ The failure to enforce these laws against Michael Cartier cost Kristin Lardner her life.

Joanne Stinson also turned to the criminal justice system for protection when Richard Slaughter began stalking her.⁷⁵ Unable to obtain criminal sanctions against Slaughter for his conduct,⁷⁶ Stinson sought protection in the form of a restraining order to keep him away.⁷⁷ Stinson's restraining order, similar to Lardner's proved ineffective since Slaughter subsequently violated the restraining order forty-one times.⁷⁸ When the state finally brought charges against him for the violations, the court only gave him a suspended sentence.⁷⁹

⁶⁵ See *id.* at 146.

⁶⁶ See *id.*

⁶⁷ See *id.*

⁶⁸ When Cartier violated his probation by not attending, the judge found him in "technical violation" of his probation and re-ordered that he attend the program. See *id.* at 150.

⁶⁹ See *id.* at 201.

⁷⁰ See *id.*

⁷¹ "Cartier was on probation from several prior criminal offenses and should have been forced to surrender based on the issuance of the restraining order, which constituted a violation of his probation." *Id.* at 33 (quoting Police Sargeant Robert G. Simmons, who had helped Lardner get her first court order against Cartier).

⁷² Cartier was in the courthouse when the judge issued the permanent restraining order and did not order him arrested. See *id.* at 201.

⁷³ See *id.* at 208.

⁷⁴ See *id.* at 209.

⁷⁵ See Ford, *supra* note 4, at 9.

⁷⁶ See *id.*

⁷⁷ See *id.*

⁷⁸ See *Maine Woman Files Lawsuit*, *supra* note 1, at 2.

⁷⁹ See Ford, *supra* note 4, at 9.

In these both these cases the women did exactly what the law called for them to do. They both obtained restraining orders after suffering abuse and contacted the police to report violations of the restraining orders.⁸⁰ Nevertheless, the courts did not jail either of these abusive men for violating the orders.⁸¹ Unfortunately, not only is the failure of a restraining order common, but the current criminal system also fails to keep track of stalkers properly.⁸²

Joanne Stinson was lucky that she was not murdered like Kristin Lardner. The fact that many of the men with outstanding restraining orders against them have previous criminal records further establishes the need for strict enforcement of these orders.⁸³ If authorities jailed restraining order violators, it would send a message to repeat offenders and could lower the number of violations.

Considering the failure of the criminal system to enforce these orders, women must have other remedial options available to them. The civil system presents a solution that may be more effective in lowering the number of stalking incidents.

IV. REVIEW OF STATUTES PROVIDING FOR CIVIL DAMAGES FOR STALKING

Unfortunately, Stinson's story is not unusual. Experts have estimated that "as many as one out of every twenty women will be followed or harassed at some point in her life by a former boyfriend or husband, or even by an obsessed stranger."⁸⁴ In response to this problem, the federal Violence Against Women Act of 1994 (the "Act")⁸⁵ and four state statutes provide for the recovery of civil damages in stalking cases.⁸⁶ Civil suits are important, as either an addi-

⁸⁰ Joanne Stinson obtained a restraining order against Richard Slaughter. *See id.* at 6. Kristin Lardner obtained a restraining order against Michael Cartier. LARDNER, *supra* note 60, at 33.

⁸¹ Slaughter received a suspended sentence for his repeated violations of the restraining order. *See Ford, supra* note 4, at 9. Michael Cartier was merely told to stay away from Lardner and was not arrested at all for his violations of the restraining order or his probation. *See LARDNER, supra* note 60, at 33.

⁸² In Massachusetts alone in 1992 there were over 6,000 violations of restraining orders. *See LARDNER, supra* note 60, at 256. One study found that almost three out of every ten (29.7 percent) of those who had restraining orders entered against them allegedly violated the order or were arrested for some violent crime within six months of the order's issuance. *See id.* at 256.

⁸³ "In an analysis of 18,369 male defendants against whom restraining orders were issued in the state from September 8, 1992 to March 9, 1993, the study found 74.8 percent had prior criminal records and 48.1 percent had histories of violent crime. The criminal records were probably understated since they did not contain any information on offenses outside of Massachusetts." LARDNER, *supra* note 60, at 319 n.17.

⁸⁴ Flynn, *supra* note 5, at 301 n.28 (citing Howard Kohn, *The Stalker*, REDBOOK, Apr. 1993, at 106). "Moreover, women between the ages of 20-45, whether single or divorced, are the most common target for stalkers." *Id.*

⁸⁵ 42 U.S.C. §§ 13701-14040 (1994).

⁸⁶ *See* CAL. CIV. CODE § 1708.7 (West Supp. 1996); MICH. COMP. LAWS ANN. § 600.2954 (West Supp. 1996); OR. REV. STAT. § 30.866 (1995); and WYO. STAT. ANN. § 1-1-126 (Michie Supp. 1996).

tional remedy to criminal stalking charges or in place of criminal charges, if a stalking case fails to satisfy the state's criminal statutory requirements. The Act and the four state statutes discussed in this section all allow for civil recovery regardless of whether a criminal suit is also pending.⁸⁷

A. Federal "Violence Against Women Act"⁸⁸

Part F of the Act is entitled "National Stalker and Domestic Violence Reduction."⁸⁹ Under this section, "[t]he Attorney General is authorized to provide grants to States and units of local government to improve processes for entering data regarding stalking and domestic violence into local, State, and national crime information databases."⁹⁰ The statute provides extensive guidance regarding grant eligibility requirements,⁹¹ grant application procedures,⁹² and the disbursement of grant funds.⁹³

The Act also requires training programs for judges "to ensure that a judge issuing an order in a stalking or domestic violence case has all available criminal history and other information, whether from State or Federal sources."⁹⁴ Under the Act, each state must submit annual reports to Congress regarding the "incidence of stalking and domestic violence" cases in the state.⁹⁵ Establishing an accurate database of the frequency of these incidents raises societal awareness of the enormity of the problem and allows for measurement of progress after administration of the grants and training programs.

In addition, the Act includes a section devoted to "Civil Rights Remedies for Gender-Motivated Violence."⁹⁶ Under this section,

A person (including a person who acts under color of any statute, ordinance, regulation, custom, or usage of any State) who commits a crime of violence⁹⁷ motivated by gender⁹⁸ and thus deprives another of the rights de-

⁸⁷ See 42 U.S.C. §§ 13701-14040 (1994); CAL. CIV. CODE § 1708.7 ; MICH. COMP. LAWS ANN. § 600.2954; OR. REV. STAT. § 30.866 (1995); WYO. STAT. ANN. § 1-1-126.

⁸⁸ 42 U.S.C.A. §§ 13701-14040.

⁸⁹ *Id.* at §§ 14031-40.

⁹⁰ *Id.* at § 14031(a).

⁹¹ See *id.* at § 14031(b).

⁹² See *id.* at § 14033.

⁹³ See *id.* at § 14034.

⁹⁴ *Id.* at § 14036.

⁹⁵ *Id.* at § 14039.

⁹⁶ *Id.* at § 13981.

⁹⁷ "Crime of Violence" is defined as

an act or series of acts that would constitute a felony against the person or that would constitute a felony against property if the conduct presents a serious risk of physical injury to another, and that would come within the meaning of State or Federal offense described in § 16 of title 18 [United States Code].

Id. at § 13981(d)(2)(A).

Crime of violence is defined in 18 U.S.C. § 16 as

(a) an offense that has as an element the use, attempted use, or threatened use of

clared in subsection (b) [the right to be free from crimes of violence motivated by gender] shall be liable to the party injured, in an action for the recovery of compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate."⁹⁹

This statute allows for recovery of compensatory damages as well as punitive damages. Such dual recovery enables a victim to recover fully in cases where compensatory damages do not redress all of a victim's damages. Victims can enforce their civil rights cause of action under this section in either federal or state courts,¹⁰⁰ *regardless of whether the state is also pursuing criminal charges.*¹⁰¹

The commitment to combating stalking on a national level is critical as a policy matter. But, the Commerce Clause of the United States Constitution limits the federal government's power in this area to interstate stalking cases.¹⁰² State statutes forbidding stalking are still necessary to address those incidents of stalking which do not cross state lines or use the mail, but are purely intrastate in nature.

B. State Statutes

The ability to pursue a stalker in civil as well as criminal court provides victims with an additional weapon against their stalkers. Each of the four state statutes expressly providing for civil suits contain certain critical provisions necessary for combating stalking.¹⁰³ Most important is the provision for recovery of civil damages from a stalker.¹⁰⁴

All four statutes allow victims to recover both compensatory and punitive

physical force against the person or property of another, or (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

18 U.S.C. § 16 (1994).

⁹⁸ "[C]rime of violence motivated by gender' means a crime of violence committed because of the gender or on the basis of gender, and due, at least in part, to an animus based on the victim's gender." 42 U.S.C. § 13981(d)(1).

⁹⁹ *Id.* at § 13981(c).

¹⁰⁰ *See id.* at § 13981(e)(3).

¹⁰¹ *See id.* at § 13981(d)(2)(A).

¹⁰² *See Flynn, supra* note 5, at 311 n.86, (citing H.R. 740 § 2, 103d Cong., 1st Sess. (1993)). "The federal antistalking bill can be applied if the stalker crosses a state border during or in the process of committing the offense, if the stalker uses the mail or an 'instrumentality of interstate commerce' in the course of stalking, or if the stalking occurred 'in the special maritime and territorial jurisdiction of the United States.'" *Id.*

¹⁰³ *See* CAL. CIV. CODE § 1708.7 (West Supp. 1996); MICH. COMP. LAWS ANN. § 600.2954 (West Supp. 1996); OR. REV. STAT. § 30.866 (1995); WYO. STAT. ANN. § 1-1-126 (Michie Supp. 1996).

¹⁰⁴ *See* CAL. CIV. CODE § 1708.7(c); MICH. COMP. LAWS ANN. § 600.2954(1); OR. REV. STAT. § 30.866(4); WYO. STAT. ANN. § 1-1-126(a).

damages.¹⁰⁵ This dual recovery is crucial to victims because losing defendants must pay punitive damages even if they declare bankruptcy.¹⁰⁶ A punitive damage award also sends an important message to the defendant and prospective stalkers that the state will not tolerate stalking and will punish it in a concrete way, even if not by imprisonment.¹⁰⁷

Three of these state statutes go even further and expressly provide for the recovery of "reasonable attorneys fees" following a favorable result in a stalking suit.¹⁰⁸ Attorney fee recovery provisions allow victims to pursue their stalkers, in court, with the knowledge that, if they succeed, they will not have to pay their own attorney's fees (which can be very high) out of their award. This may further encourage victims to initiate a civil suit, regardless of whether they are also pursuing the matter in criminal court.

All four of these state statutes allow stalking victims to pursue their stalkers in civil court, regardless of whether the stalker is the subject of a criminal prosecution.¹⁰⁹ These provisions aid many stalking victims who may not be able to meet the strict statutory requirements for a criminal suit.¹¹⁰ Additionally, in a criminal trial the prosecution must prove the defendant's guilt beyond a reasonable doubt. In a civil trial, however, the burden of proof is preponderance of the evidence. Thus, it is much easier for victims to meet the civil burden than the criminal burden.

Civil suits are simply another tool enabling the stalking victim to fight the growing stalking problem. Without civil suits, victims are left with only the criminal system, which often fails to protect them.¹¹¹ Since the federal statute is limited by the Commerce Clause of the United States Constitution, individual states need to take the initiative and enact stalking statutes that allow for the recovery of civil damages. State legislation would combat stalking on a local and state level, and provide some compensation to victims of stalking.

¹⁰⁵ See CAL. CIV. CODE § 1708.7(c); MICH. COMP. LAWS ANN. § 600.2954(1); OR. REV. STAT. § 30.866(4); WYO. STAT. ANN. § 1-1-126(a).

¹⁰⁶ See Ford, *supra* note 4, at 1 (noting that a portion of Slaughter's future pay could be attached to pay for the punitive damage part of Stinson's award).

¹⁰⁷ Punitive damages "are intended to solace the plaintiff for mental anguish, laceration of his feelings, shame, degradation, or other aggravations of the original wrong, or else to punish the defendant for his evil behavior or to make an example of him . . ." BLACK'S LAW DICTIONARY 390 (6th ed. 1990).

¹⁰⁸ MICH. COMP. LAWS ANN. § 600.2954(1); OR. REV. STAT. § 30.866(4)(c); and WYO. STAT. ANN. § 1-1-126(a).

¹⁰⁹ See CAL. CIV. CODE § 1708.7(e); MICH. COMP. LAWS ANN. § 600.2954(2); OR. REV. STAT. § 30.866(7); WYO. STAT. ANN. § 1-1-126(c).

¹¹⁰ For example, in Joanne Stinson's case, Slaughter's stalking did not meet the requirements to bring a criminal indictment under Maine law. See Ford, *supra* note 4, at 9.

¹¹¹ See Flynn, *supra* note 5, at 299 n.13 (citing Melinda Beck et al., *Murderous Obsession*, NEWSWEEK, July 13, 1992 at 60-61 (estimating that 90% of American women killed by their husbands or boyfriends were stalked prior to their murders)).

V. PROPOSED LEGISLATION

States that have not yet enacted statutes allowing for civil suits as a result of stalking must do so to provide their citizens with alternatives or supplements to the existing criminal justice system. A civil stalking statute must clearly define the conduct that it forbids, while allowing for full compensation of stalking victims.

Oregon originally enacted civil stalking legislation in 1993.¹¹² Critics challenged the criminal and civil stalking statutes as unconstitutionally vague and overbroad.¹¹³ The statute initially defined stalking as a "person, *without legitimate purpose*, intentionally, knowingly or recklessly engag[ing] 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."¹¹⁴ The courts determined that the language "without legitimate purpose" was unconstitutionally vague.¹¹⁵ In June, 1995, the Oregon legislature removed the challenged language and enacted the existing version, which the American Civil Liberties Union and several women's groups whom had criticized the previous law, now support.¹¹⁶

The civil statute as amended in 1995 provides a comprehensive model of protection for victims of stalking.¹¹⁷ The statute allows victims to sue their stalkers

¹¹² See OR. REV. STAT. § 30.866.

¹¹³ See Chastity Pratt, *Challenge to Revised Stalking Law Fails*, PORTLAND OREGONIAN, Nov. 4, 1995, at A1 available in 1995 WL 9205451.

¹¹⁴ OR. REV. STAT. § 30.866(1)(a) (1993) (amended 1995) (emphasis added).

¹¹⁵ Oregon v. Norris-Romine, 894 P.2d 1221 (Or. Ct. App. 1995) (dismissing cases against defendants charged with violating stalking protective orders because language in statute unconstitutionally vague).

¹¹⁶ See Pratt, *supra* note 113.

¹¹⁷ Oregon's civil stalking statute as amended in June 1995 provides that:

(1) 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.

(2) At the time the petition is filed, the court, upon a finding of probable cause based on the allegations in the petition, shall enter a temporary court's stalking protective order that may include, but is not limited to, all contact listed in ORS 163.730. The petition and the temporary order shall be served upon the respondent with an order requiring the respondent to personally appear before the court to show cause why the temporary order should not be continued for an indefinite period.

(3)(a) At the hearing, whether or not the respondent appears, the court may continue the hearing for up to 30 days or may proceed to enter a court's stalking protective

for damages and for a stalking protective order.¹¹⁸ In addition, it provides for recovery of both compensatory and punitive damages.¹¹⁹ A victim needs the ability to obtain a protective order backed by the criminal system as well as monetary damages as compensation. Punitive damages are also necessary to fully compensate stalking victims whose damages extended beyond compensatory damages. The statute also allows victims to recover attorney fees and costs.¹²⁰ Therefore, if the suit is successful, the victim's award is not mitigated by those costs.

Another benefit of the Oregon statute is that victims may bring a civil suit in conjunction with a criminal suit, not in replacement of one.¹²¹ Consequently, victims may concurrently pursue their stalkers in civil court and criminal court. The outcome of the criminal case has no impact on the civil suit because the burden of proof is different in a civil trial,¹²² and the two suits are meant to be separate judicial actions.¹²³

The statute protects both the victim and the victim's family and household members.¹²⁴ This protection is necessary to close a possible loophole in anti-stalking laws. Anti-stalking statutes need to be as comprehensive as possible to fully combat the stalking problem. When states enact criminal stalking statutes they are acknowledging that stalking is a serious problem.¹²⁵ To further demonstrate their commitment to combating this problem, states must also enact civil stalking statutes.

order and take other action as provided in ORS 163.738.

(b) If respondent fails to appear after being served as required by subsection (2) of this section, the court may issue a warrant of arrest as provided in ORS 133.110 in order to ensure the appearance of the respondent in court.

(4) The plaintiff may recover:

- (a) Both special and general damages, including damages for emotional distress;
- (b) Punitive damages; and
- (c) Reasonable attorney fees and costs.

(5) An action under this section must be commenced within two years of the conduct giving rise to the claim.

(6) Proof of this claim shall be by a preponderance of the evidence.

(7) The remedy provided by this section is in addition to any other remedy, civil or criminal, provided by law for the conduct giving rise to this claim.

(8) No filing fee, service fee or hearing fee shall be charged for a proceeding under this section if a court's stalking order is the only relief sought.

OR. REV. STAT. § 30.866 (amended 1995).

¹¹⁸ See *id.* at § 30.866(1).

¹¹⁹ See *id.* at § 30.866(4)(a) and (b).

¹²⁰ See *id.* at § 30.866(4)(c).

¹²¹ See *id.* at § 30.866(7).

¹²² See *id.* at § 30.866(6).

¹²³ See *id.* at § 30.866(7).

¹²⁴ See *id.* at § 30.866(1)(A).

¹²⁵ See *supra* note 22.

VI. CONCLUSION

Civil suits are not a panacea to the problem of stalking. These suits can present problems as well as solutions for victims. For example, if the victim is not allowed to recover attorney fees under the state statute,¹²⁶ the victim's recovery will be reduced by the payment of those fees. Furthermore, if the victim does not succeed, those fees will be out-of-pocket expenses which the victim may not be able to afford. By comparison, if the stalker is pursued through a criminal prosecution, the state will bear the financial burden of prosecution and the victim will incur no attorney's fees.¹²⁷ Despite some benefits, as discussed in section III of this Note, the criminal system presents also many drawbacks for stalking victims. Civil suits empower victims by providing them with another avenue to deter the stalker's behavior. This is not to say that stalking victims should not use the criminal system. Rather, they should use criminal prosecution in conjunction with the civil system, if possible.¹²⁸ If a stalker is aware that his actions could result in a large damage award, he may be more hesitant to continue his harassing behavior.¹²⁹

The Violence Against Women Act¹³⁰ illustrates that Congress acknowledged this problem and is attempting to combat it to the full extent of the federal government's power. The federal government's regulations are limited by the Constitution's Commerce Clause so the federal government can only regulate those stalking incidents which involve activities crossing state lines or an "instrumentality of interstate commerce."¹³¹ Each individual state must step in and legislate to close the federal statute's gaps.

States have indicated that they are willing to join the fight against stalking with the enactment of their criminal stalking statutes.¹³² Those states which have

¹²⁶ See, e.g., CAL. CIV. CODE § 1708.7(c) (West Supp. 1996) (providing civil suits against stalkers for recovery of compensatory and punitive damages, but does not allow for recovery of the victim's attorney's fees).

¹²⁷ In a criminal prosecution, the state is the plaintiff pursuing the action and, therefore, the state bears the cost of the investigation and trial.

¹²⁸ The federal statute and the state statutes which provide for the recovery of civil damages as a result of stalking all allow for those suits to be brought regardless of whether criminal prosecution is also pending. Therefore, both can be pursued simultaneously. See 42 U.S.C. §§ 13701-14040 (1994); CAL. CIV. CODE § 1708.7; MICH. COMP. LAWS ANN. § 600.2954 (West Supp. 1995); OR. REV. STAT. § 30.866; WYO. STAT. ANN. § 1-1-126 (Michie Supp. 1996).

¹²⁹ Not even bankruptcy will protect a defendant from paying the punitive damages portion of an award, for example, a portion of future pay can be attached. See Ford, *supra* note 4, at 1.

¹³⁰ 42 U.S.C. §§ 13701-14040. See *supra* text accompanying notes 88-102.

¹³¹ Flynn, *supra* note 5, at 311 n.86, (citing H.R. 740 § 2, 103d Cong., 1st Sess. (1993)). "The federal antistalking bill can be applied if the stalker crosses a state border during or in the process of committing the offense, if the stalker used the mail or an 'instrumentality of interstate commerce' in the course of stalking, or if the stalking occurred 'in the special maritime and territorial jurisdiction of the United States.'" *Id.*

¹³² See *supra* note 22.

not yet enacted civil stalking statutes need to pass legislation permitting civil suits and follow the lead of the federal government,¹³³ California,¹³⁴ Oregon,¹³⁵ Michigan,¹³⁶ and Wyoming.¹³⁷

State legislators should use the Oregon civil stalking statute¹³⁸ as a guide when enacting this type of legislation. Experts estimate "as many as one out of every twenty women will be followed or harassed at some point in her life by a former boyfriend or husband, or even by an obsessed stranger."¹³⁹ Stalking is an overwhelmingly prevalent problem in our society which must be stopped. States must offer victims as many avenues for relief as possible. Therefore, the availability of criminal and civil sanctions is necessary to protect and compensate victims to the fullest extent possible.

Kristin J. Bouchard

¹³³ See 42 U.S.C. § 13701-14040.

¹³⁴ See CAL. CIV. CODE § 1708.7 (West Supp. 1996).

¹³⁵ See OR. REV. STAT. § 30.866 (1995).

¹³⁶ See MICH. COMP. LAWS ANN. § 600.2954 (West Supp. 1996).

¹³⁷ See WYO. STAT. ANN. § 1-1-126 (Michie Supp. 1996).

¹³⁸ See OR. REV. STAT. § 30.866.

¹³⁹ Flynn, *supra* note 5, at 301, (citing Howard Kohn, *The Stalker*, REDBOOK, Apr. 1993, at 106). "Moreover, women between the ages of 20-45, whether single or divorced, are the most common target for stalkers." *Id.*