

## **STALKING IN INDIAN COUNTRY<sup>1</sup>**

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### **WHAT IS STALKING?**

Definitions of stalking vary from jurisdiction to jurisdiction. Different definitions may be used in criminal stalking codes and in civil stalking codes for protection order or restraining order purposes. The Stalking Resource Center defines stalking as "a course of conduct directed at a specific person that would cause a reasonable person fear."

Stalking can take a variety of forms. Stalkers may physically follow their victims, call them on the phone, send them letters or packages through the mail or through a courier, bombard their victims with emails or instant messages, photograph them from a distance or with hidden cameras, install surveillance software on their computers, and use global positioning systems (GPS) to track them in their cars. Tracking and intimidating a victim are stalking regardless of the method used.

### **BARRIERS TO RELIEF FOR NATIVE VICTIMS OF STALKING**

American Indian and Alaskan Native women are stalked at least twice as often as any other group.<sup>2</sup> Native women living on rural reservations face many barriers to safety. Native women may have limited access to telephones and transportation. In small communities where members tend to know everybody, victims may hesitate to contact law enforcement or seek other services out of shame or for fear that her stalker will find out. She may be deterred from contacting law enforcement because her stalker is a friend or relative of a law enforcement officer or service provider.

Many tribal law enforcement agencies are under-funded, under-staffed, and under-trained in the area of stalking. A small number of law enforcement officers may be responsible for responding to calls in a large geographic area. Their response time may be too lengthy to provide any meaningful protection for victims. Some tribal police

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<sup>1</sup> © 2004 Southwest Center for Law and Policy & Office on Violence Against Women, U.S. Department of Justice.

<sup>2</sup> National Violence Against Women Survey (NVAW) *cited in* Tjaden, Patricia & Thoennes, Nancy, "Stalking in America: Findings from the National Violence Against Women Survey," *National Institute of Justice Centers for Disease Control and Prevention Research in Brief*4 (April 1998).

departments do not have a 911 emergency system in place. Many tribes lack sufficient space in their jails to keep suspects in custody.

There may be confusion as to which law enforcement agency has jurisdiction over a call on “checkerboard” reservations. This may lead to additional delay or failure to respond to an emergency situation. There may also be an overlap in jurisdiction between tribe, state, local, and federal authorities depending on the exact location, the parties involved, and the act committed.

### **TRIBAL ANTI-STALKING CODES**

Many tribes lack codes to properly address stalking. As of 1999, only 21 Tribes had passed codes that address stalking. There are a number of important issues for Tribes to consider when developing a comprehensive response to stalking.

Some of the stalker’s behavior may constitute a crime in and of itself (for example, trespassing on her property to peep into her windows or harassing and intimidating her by making threatening telephone calls). However, some stalking behavior is not criminal by itself (following her on a public street; making a non-threatening telephone call). Such behavior may become criminal, however, when it becomes a pattern or course of conduct that places a victim in fear.

Tribal criminal codes should be broad enough to encompass the various methods that stalkers use to stalk their victims. A criminal code that defines stalking as “physically following” fails to protect victims who are stalked through the phone, mail, or computer.

Similarly, tribal code provisions that limit protection to victims whose stalker possesses the conscious intent to harass or harm their victim do not adequately protect victims. Many stalkers mistakenly believe that they have a relationship with the victim that does not truly exist. They may even erroneously believe that their attentions are welcomed by the victim. This belief, however inaccurate, may render the stalker immune from prosecution if the code requires a conscious intent to harass or harm the victim. Focusing on the effect of the stalker’s behavior on the victim provides better protection and safety for Native victims. Tribal stalking codes criminalizing behavior that would cause a reasonable person to fear may be more effective.

Civil provisions are also needed to ensure that stalking victims have access to protection orders or restraining orders. Stalkers may be

strangers, co-workers, family members, intimate partners, or persons who have had some previous relationship with their victim. Protection must be available regardless of whether the victim has had a previous relationship with her stalker. Stalkers take every opportunity they can to track and intimidate their victims. Protective provisions must be broad enough to protect victims at home, work, school, in public, or any other place.

### **RELEVANT FEDERAL LAWS**

In addition to being charged with crimes under tribal and state law, stalkers may be charged under the following federal laws:

#### **18 U.S.C. § 2261A Interstate Stalking**

(1) It is a federal crime to travel across state, tribal or international lines to stalk another person. The defendant must have the intent to kill, injure, harass, or intimidate the victim, or to place the victim, a family member, or a spouse or intimate partner of the victim, in fear of death or serious bodily injury. This crime is punishable by a period of incarceration from five years to life.

(2) It is a federal crime to stalk another person across state, tribal or international lines, using regular mail, e-mail, or the Internet. The defendant must have the intent to kill or injure the victim, or to place the victim, a family member, or a spouse or intimate partner of the victim in fear of death or serious bodily injury. This crime is punishable by a period of incarceration from five years to life.

#### **18 U.S.C. 875(c) Interstate Communications**

It is a federal crime to transmit in interstate or foreign communications, any threat to kidnap or injure another person. This crime is punishable by a period of incarceration up to five years.

#### **47 U.S.C. 223(a)(1)(C) Harassing Telephone Calls in Interstate Communications**

It is a federal crime to use a telephone or other telecommunications device to annoy, abuse, harass, or threaten another person at the called number. This crime is punishable by a period of incarceration up to two years.

If you suspect that a stalker has violated any of these federal laws, contact tribal and federal law enforcement authorities.