

## CALL NOTES

### **Expert Introductions**

- Michelle Garcia, Director of the Stalking Resource Center; **unable to attend do to a training, so the Deputy Director Rebecca Dreke was on the call in her stead**
- Gary Margolis, Co-Founder of Margolis Healey and Associates, LLC
- Owen Yardley, Chief of Police at University of Nebraska
- Doloris Stafford, Founder of D. Stafford and Associates, LLC
- Kristin Eliason, Staff Attorney at Network for Victim Recovery of DC (NVRDC); **unable to attend due to snow day rescheduling of court hearings**
- Leslie Gomez, Partner at Pepper Hamilton, LLP

### **Definition of Stalking**

(1) VAWA definition: Discussion started looking at the Model Stalking Code (see attached resource), which has substantial overlap with the VAWA definition. Key terms of interest are “course of conduct,” “would cause,” “reasonable person,” “substantial,” and “emotional distress.”

- **noted the model definition goes into mens rea of “purposeful” course of conduct, however this is not in the VAWA definition and therefore we did not focus our call time on this**

#### “Substantial”

- **deferred to longer discussion in general committee given the possible applicability beyond its use in stalking**

#### “Emotional distress”

- model definition provided (see pg. 25 of Model Stalking Code); should cover interference with finances and others behavior that may not be threatening, but is disruptive to the victim’s life
- question raised regarding whether professional discretion of law enforcement should be used to make this determination, which then requires officer training to ensure proper identification
  - o recommendation that focus be on the behavioral changes in a victim (which should be elicited in questioning) rather than self reporting of distress (victims not always reflective) to ensure objective determinations made
  - o State law models exist and will be provided by the Stalking Resource Center
- victim does not need to suffer emotional distress in fact (see “would cause” within the definition and model definition on pg. 25 of the Model Stalking Code attachment)

#### “Would cause”

- (see pg. 25 of Model Stalking Code)
- victim does not need to actually suffer emotional distress
- Model Stalking Code talks about a course of conduct that could cause distress, so similar concept here (though not tied to mens rea element as in the code per VAWA language)

### “Reasonable person”

- model definition provided (see pg. 25 of Model Stalking Code)
- noted that this should be further explained as “reasonable person with similar identities” or “under similar circumstances”

A final concern was noted regarding the use of “his or her” safety within the VAWA definition of stalking, as goal is to be inclusive of all victims, so encouragement for regulations to avoid gendered language.

### (2) Ongoing Nature: Discussion transitioned to focus on the “course of conduct” regarding patterns of behavior

- Department noted that intimidation under hate crimes had previously been used to address stalking, but now it will be separated out to no longer be governed by the regulations/best practices around that issue (though it may be informative)
- Noted there is a need for training and identification of patterns to determine “course of conduct”
- Suggestion that “continuation of purpose” may be a way to identify a single instance of stalking or that it be separated by behaviors (IMs versus following, etc)
- Concern about what happens to counting when there is an additional Clery crime that occurs during a stalking course of conduct
  - o conversation the moved to next week’s call because the definition and counting are highly interrelated
  - o suggestion that scenarios be collected to ensure definitions and counting are modeled with real world considerations in mind

## Counting Stalking Incidents

### (1) Clery geography & cyber stalking

- Suggestion that counting be based both on by either the sender or receiver’s physical location on campus as well as when university systems are accessed to facilitate the stalking (could cover distance learners\*)
  - o Concern noted that counting is difficult and constituency highly valued, so only the physical locations be considered
    - Mentioned that stalking is unique in addressing online behavior (with the exception of intimidation) so may be worth thinking beyond physical geography
    - Course of conduct may spread between on and off campus locations
  - o Concern noted that the regulations would have to be detailed regarding technology to cover system usage, which would further burden counters
  - o Noted that state jurisdictions have dealt with the issue, so examples can be provided by the Stalking Resource Center
    - Concern that some of these models are clunky given the Clery structure

- Noted that there are threat assessment concerns regardless of location of stalking given possible escalation to other crimes

\*By the end of this discussion there seemed to be a lot of agreement that physical location is best method to stay consistent with existing Clery geography

**Conclusion**

Schedule another call next week to discuss definition and counting of “course of conduct,” so doodle to be sent out by Amy.

- will collect stalking scenarios so that suggestions can address realities of various forms and locations of stalking behavior

At the end of the last call, Laura will draft up recommendations from the subcommittee to submit to the Department by February 1, 2014.