

# **UNDERSTANDING STATE AND FEDERAL STALKING LAWS**

## **BAGELS AND BRIEFINGS**

### **OFFICE OF LEGISLATIVE RESEARCH AND GENERAL COUNSEL**

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John C. Feinauer  
Policy Analyst, Law Enforcement and  
Criminal Justice

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# **UNDERSTANDING STATE AND FEDERAL STALKING LAWS**

## **Outline**

**History**

**State Legislation**

**Model Legislation**

**Federal Legislation**

**Utah Laws**

**Sentencing**

**Key Elements**

**The Future**

## History

“An old problem with a new name”

New attention on a wide scale due to changes in mass media

Status Quo tools (protective orders, etc.) were deemed insufficient

Renewed interest in violent crime and women’s issues

Reformers sought a “preventative” tool

# UNDERSTANDING STATE AND FEDERAL STALKING LAWS

## Several high-profile cases in California:

- **Murder of model/actress Rebecca Shaeffer**
- **Assault of actress Theresa Saldana**
- **Murders of four women in Orange County, Ca.**

Rebecca Shaeffer



Theresa Saldana



# UNDERSTANDING STATE AND FEDERAL STALKING LAWS

## California 1990



- Narrow approach.
- Required a “credible threat of death or great bodily injury”
- Set the standard for other states to follow.
- Amended in 1994 to broaden the statute after a high-profile incident couldn’t be prosecuted.

### Current Code

Cal Pen Code § 646.9 . Stalking.

(a) Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking



# UNDERSTANDING STATE AND FEDERAL STALKING LAWS

## 1990

California passes first law in the country.



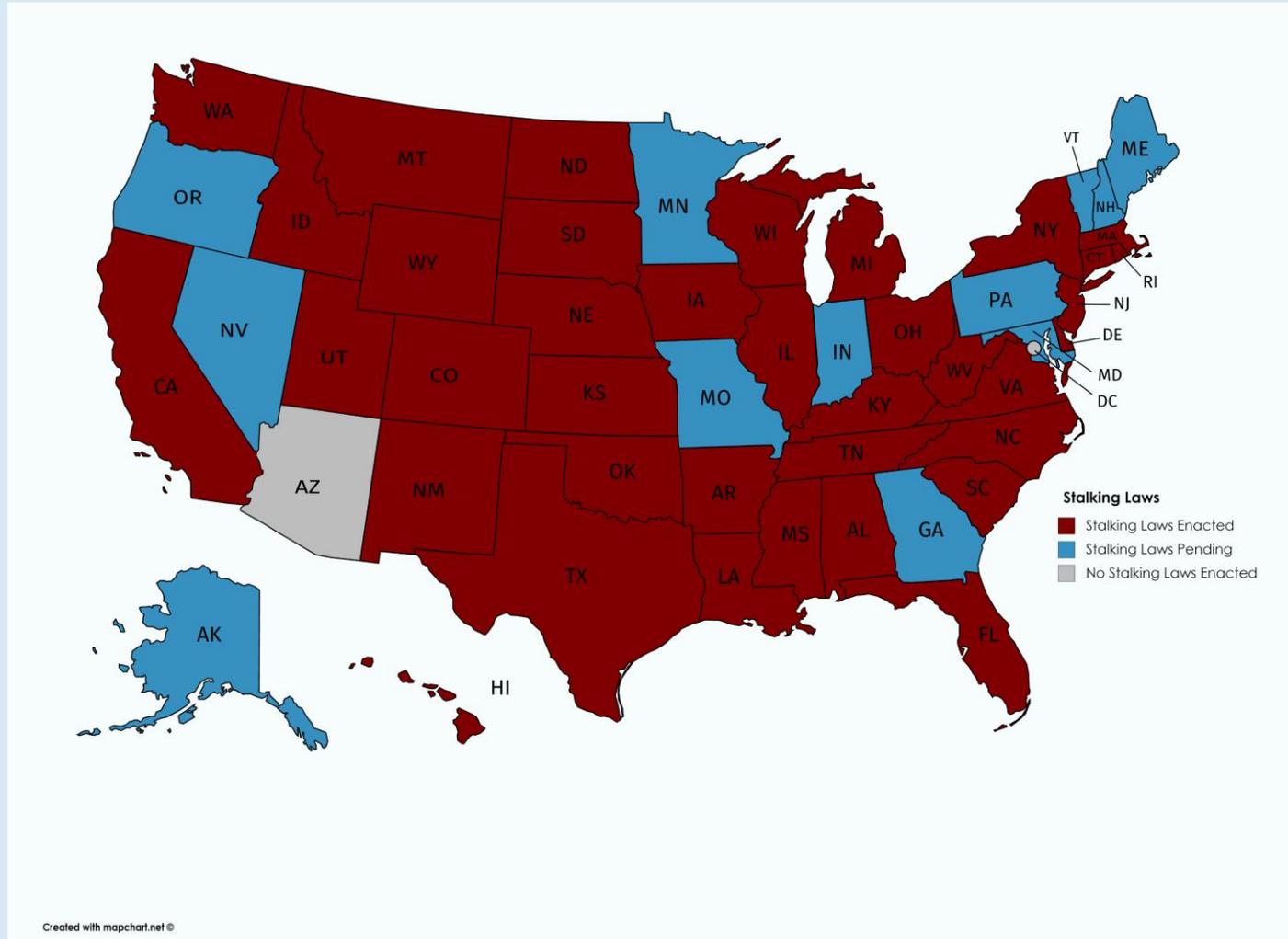


# UNDERSTANDING STATE AND FEDERAL STALKING LAWS

## 1992

29 states have enacted laws.

By early 1993, 36 states have enacted laws and 12 have pending legislation.

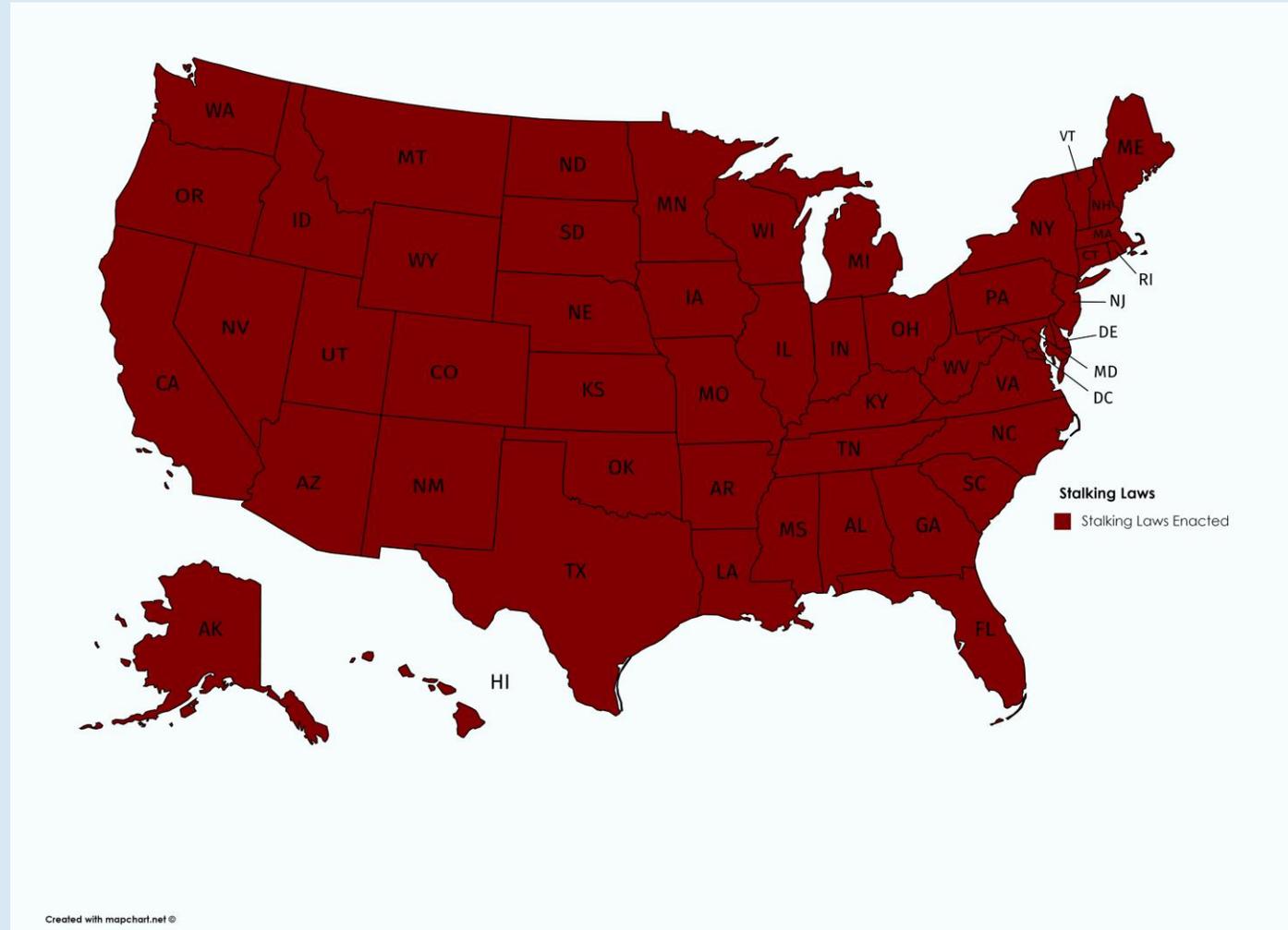




# UNDERSTANDING STATE AND FEDERAL STALKING LAWS

## 1993

All states and the District of Columbia have stalking laws.





# UNDERSTANDING STATE AND FEDERAL STALKING LAWS

## State Variations

### Narrow approach:

- Limiting to the threat of physical violence

California

Colorado

Tennessee

### Broad approach:

- Encompasses potentially protected behavior

Florida

Idaho

Delaware

## Model Legislation

Any person who purposefully engages in a course of conduct directed at a specific person and knows or should know that the course of conduct would cause a reasonable person to:

- (a) fear for his or her safety or the safety of a third person; or
- (b) suffer other emotional distress is guilty of stalking.

# UNDERSTANDING STATE AND FEDERAL STALKING LAWS

## Federal Law

Interstate and foreign travel



18 U.S. Code § 2261A.Stalking

- (A) places that person in reasonable fear of the death of, or serious bodily injury to—
- (i) that person;
  - (ii) an immediate family member (as defined in section 115) of that person; or
  - (iii) a spouse or intimate partner of that person; or
- (B) causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to a person described in clause (i), (ii), or (iii) of subparagraph (A)

Passed in 1996 as part of the Violence Against Women Act



# UNDERSTANDING STATE AND FEDERAL STALKING LAWS

## Utah's Laws

### Criminal Stalking Statute - 76-5-106.5.

- (2) A person is guilty of stalking who intentionally or knowingly engages in a course of conduct directed at a specific person and knows or should know that the course of conduct would cause a reasonable person:
- (a) to fear for the person's own safety or the safety of a third person; or
  - (b) to suffer other emotional distress.
- (3) A person is guilty of stalking who intentionally or knowingly violates:
- (a) a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions; or
  - (b) a permanent criminal stalking injunction issued pursuant to this section.

### Civil Stalking Injunction- 77-3a-101.

Same definition of “stalking” as criminal statute.

“... (2) Any person who believes that he or she is the victim of stalking may file a verified written petition for a civil stalking injunction against the alleged stalker with the district court in the district in which the petitioner or respondent resides or in which any of the events occurred. A minor with his or her parent or guardian may file a petition on his or her own behalf, or a parent, guardian, or custodian may file a petition on the minor's behalf.”



# UNDERSTANDING STATE AND FEDERAL STALKING LAWS

## Sentencing

### Model Legislation

- **Stalking is a felony.**
- **Four potential aggravating factors.**

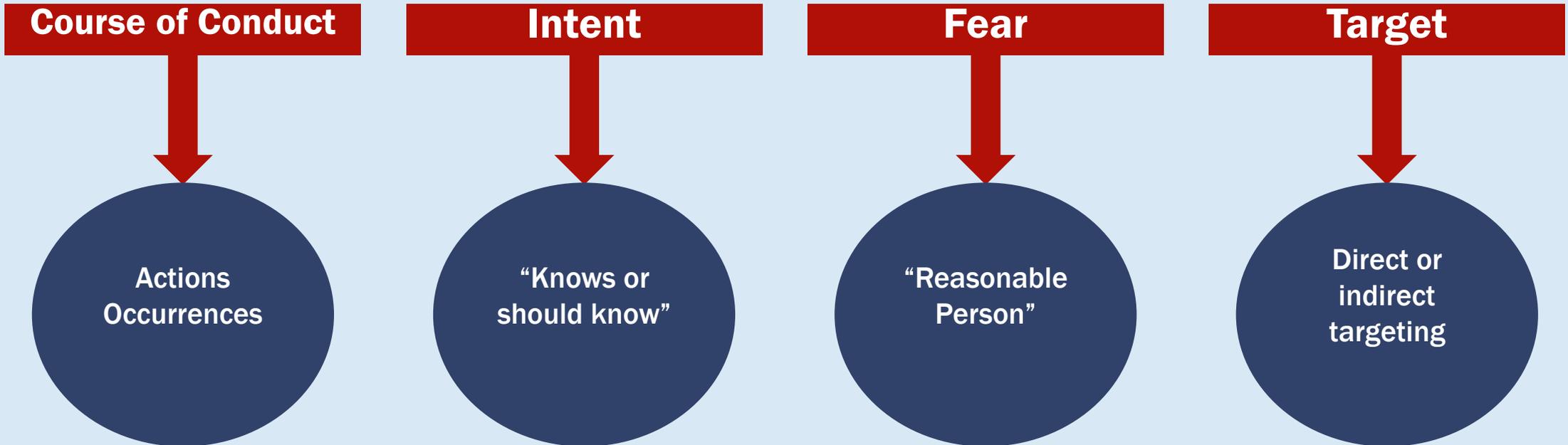
### Utah Statute

- **Class A misdemeanor if first offense or stalking injunction violation.**
- **Third degree felony if previously convicted or a cohabitant.**
- **Second degree felony if uses a dangerous weapon or has been previously convicted two or more times.**



# UNDERSTANDING STATE AND FEDERAL STALKING LAWS

## Key Elements





# UNDERSTANDING STATE AND FEDERAL STALKING LAWS

## Course of Conduct

- **What acts are included?**

- Some states leave the actions more open (model, “includes but not limited to”) some states provide a list.

- **How many occurrences?**

- Most common: “a pattern of conduct composed of a series of 2 or more...”
- Some states (AR) outline a structure of time.

- **What was the outcome?**

- Emotional distress

## Model Legislation

“Course of conduct” means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person’s property.”



# UNDERSTANDING STATE AND FEDERAL STALKING LAWS

## Utah Statute

"Course of conduct" means two or more acts directed at or toward a specific person, including:

- (i) acts in which the actor follows, monitors, observes, photographs, surveils, threatens, or communicates to or about a person, or interferes with a person's property:
  - (A) directly, indirectly, or through any third party; and
  - (B) by any action, method, device, or means; or
  
- (ii) when the actor engages in any of the following acts or causes someone else to engage in any of these acts:
  - (A) approaches or confronts a person;
  - (B) appears at the person's workplace or contacts the person's employer or coworkers;
  - (C) appears at a person's residence or contacts a person's neighbors, or enters property owned, leased, or occupied by a person;
  - (D) sends material by any means to the person or for the purpose of obtaining or disseminating information about or communicating with the person to a member of the person's family or household, employer, coworker, friend, or associate of the person;
  - (E) places an object on or delivers an object to property owned, leased, or occupied by a person, or to the person's place of employment with the intent that the object be delivered to the person; or
  - (F) uses a computer, the Internet, text messaging, or any other electronic means to commit an act that is a part of the course of conduct.

## Intent

- **General Intent**

- The stalker intends the actions in which he/she engages.
- The stalker does not necessarily intend the consequences.

- **Specific Intent**

- Intends the consequences of his/her actions.



# UNDERSTANDING STATE AND FEDERAL STALKING LAWS

## Model Legislation

Any person who purposefully engages in a course of conduct directed at a specific person and knows or should know that the course of conduct would cause a reasonable person to:

- (a) fear for his or her safety or the safety of a third person; or
- (b) suffer other emotional distress is guilty of stalking.

## Utah Statute

A person is guilty of stalking who intentionally or knowingly engages in a course of conduct directed at a specific person and knows or should know that the course of conduct would cause a reasonable person

## Fear

- **Standard of Fear**

- Victim must prove the experience of actual fear.
- “Reasonable person” would experience fear.

- **Level of Fear**

- What type of fear did they experience? (terrorized, frightened, intimidated, or threatened)
- Emotional Distress

(b) “Emotional distress” means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

## Fear

**“Fear is the common currency of the stalker. Conduct that creates fear in others is what stalking laws essentially seek to eliminate.”**

- D. Beatty

**“Since stalking statutes criminalize what otherwise would be legitimate behavior, based upon the fact that the behavior induces fear; the level of fear in a stalking victim is a crucial element.”**

- Drafters of the Model Stalking Code

## Target

- **Broad Association**

- “fear for his or her safety or the safety of a third person”

- **Narrow Association**

- **Ex: Arizona**
  - the victim, the victim’s family member, domestic animal or livestock;
  - a person with whom the victim has or has previously had a romantic or sexual relationship;
  - a person who regularly resides in the victim’s household or has resided in the victim’s household within the six months before the last conduct occurred.



# UNDERSTANDING STATE AND FEDERAL STALKING LAWS

## Cyberstalking

New Challenges Presented by the Internet

Cyberstalking ← Cyberbullying ← Electronic Harassment

Utah Stalking Statute



“Uses a computer, the Internet, text messaging, or any other electronic means to commit an act that is a part of the course of conduct.”



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## Discussion