

A Review of Statutes and the Role of the Forensic Psychiatrist in Cyberstalking Involving Youth

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Adolescents are increasingly exposed to Internet-facilitated crime as they spend more time online. The mental health risks and legal consequences for youth involved in cyberstalking are growing areas of concern. The nature of online stalking presents several challenges regarding investigation, fair adjudication, fact-finding, and legislation. Laws governing online stalking behaviors inconsistently reference the age of a victim or perpetrator as a factor for consideration in case disposition. During adjudication, the forensic psychiatrist may be asked to evaluate the victim or perpetrator involved in cyberstalking. This article focuses on the current legal landscape governing cyberstalking behavior involving adolescents, the roles a forensic psychiatrist may assume in this context, and the opportunity to bring a developmental perspective to these cases.

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Technology and social media are increasingly facilitating the risk-taking behaviors of teenagers and young adults¹ and the commission of crimes against them.² There is a growing need to understand how to protect and empower youth regarding safe use of online services. In 2015, a Pew Research Center survey estimated that nine out of ten teenage Americans between the ages of 13 and 17 years used the Internet daily, and almost one quarter of them were online “almost constantly.”³ This population’s Internet use has been correlated with increased legal, financial, and mental health risks for youth.⁴ These risks include online harassment and stalking.⁴

A study performed by the Crimes Against Children Research Center found that teenagers are at greater risk of exposure to online harassment (one in nine annually in 2010) as their time on the Internet has increased.⁵ A U.S. Department of Justice report in 2016 found that online youth sexual exploitation

was increasing.⁶ Youth victims of online sexual exploitation may experience symptoms of depression, substance abuse, dating violence, and suicidal ideation.⁶

This article presents an overview of state and federal cyberstalking legislation and describes the forensic psychiatrist’s role in evaluating a victim or perpetrator involved in cyberstalking behavior.

Methods

State and federal cyberstalking statutes were identified and reviewed using the Stalking Resource Center website created by the National Center for Victims of Crime,⁷ the webpage “State Cyberstalking, Cyberharassment, and Cyberbullying Laws” provided by the National Conference on State Legislatures,⁸ and the state cyberstalking law database on the Working to Halt Online Abuse (WHO@) website.⁹ Information from these sites was cross-referenced for accuracy and updates with the LexisNexis state law database and each state’s respective legislature website. A literature search was conducted using LexisNexis, the U.S. National Library of Medicine’s MEDLINE database, and Google Scholar. Search terms included cyberstalking, cyberharassment, cyberbullying, legislation, protective order, restraining order, juvenile, adolescent, child, stalking, sexual solicitation, and forensic psychiatry.

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Table 1 Definitions of Cyberstalking, Cyberharassment, and Cyberbullying

Cyberstalking	the use of electronic communications to repeatedly follow, threaten, or engage in malicious behaviors directed at one or more people
Cyberharassment	the use of electronic communications to annoy, bother, or torment one or more people for no legitimate purpose
Cyberbullying	the use of electronic communications by a minor to bother, annoy, or degrade another minor, usually during school-related events, but may also occur outside of the school context

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Overview of Cyberstalking Legislation

Legislatures have struggled to determine how to treat youth who engaged in or were affected by online crime.¹⁰ The terms cyberstalking and cyberharassment are frequently used interchangeably in the law and relevant literature. In this article, the term cyberstalking encompasses both online stalking and harassment behaviors. For generally accepted definitions and ways to distinguish between cyberstalking, cyberharassment, and cyberbullying, please refer to Table 1.¹¹

As cybercrime terminology became more widely used, so did federal statutes prohibiting such behavior. In October 1998, the federal government enacted the Children’s Online Privacy Protection Act (COPPA) with the intention of protecting youth from Internet-mediated crime.¹² This law requires that children under 13 years old obtain verifiable parental consent before disclosing personal information online.⁸ Adolescents 13 years old and older, who are particularly susceptible to behaviors that facilitate online harassment, are not protected by COPPA.¹³ Also in 1998, the federal government attempted to introduce the Child Online Protection Act (COPA) to restrict minors’ access to “harmful material”; however, it was found unconstitutionally overbroad and in violation of the First Amendment, and it ultimately was not passed.¹⁴

In 2000, the Child Internet Protection Act (CIPA) required federally funded schools and libraries to install Internet filters with the purpose of protecting youth from harmful material online.¹⁵ CIPA does not require regulation of access to chat rooms, instant messaging, or other social media.¹⁵ Another federal statute worth noting prohibits interstate facilitated sexual solicitation of youth over the Internet or phone; however, it does not explicitly restrict online sexual harassment in which there is no intent to groom or entice the youth to engage in sexual activity.¹⁶

Like the federal government, state governments also encounter challenges protecting youth from cy-

berstalking. State laws inconsistently cover behaviors to which youth are particularly vulnerable.¹⁰ For example, state cyberstalking statutes that allude to a victim or perpetrator’s age as a factor in case disposition are in the minority (see Table 2). Unless explicitly stated in its statutory language, a state may not have jurisdiction to prosecute cyberstalking behaviors when the victim, perpetrator, and Internet Service Provider (ISP) are in different states.¹⁷ In this case, the federal anti-stalking statute, amended in 2006 to include stalking conducted over the Internet, may cover the reported online behavior.^{18,19}

State cyberstalking laws vary widely, but several common themes are apparent. The following section contains an extended discussion of the components of cyberstalking laws particularly relevant to protecting children. Please refer to Table 2 for a state-specific tally of each component.

Age Reference

Depending on the state, an online stalker may be subject to harsher legal consequences if the victim is a minor.¹⁸ At present, 19 states include an age reference in their cyberstalking laws, however, no two states treat youth stalkers or victims the same. The available literature on juvenile Internet-based risk-taking consistently demonstrates that minors are more likely to both engage in cybercriminal behaviors and become victims of multiple forms of cybercrime.²⁰ The adaptation of age references in cyberstalking statutes is in line with juvenile courts’ recent considerations of adolescent neuroscience principles in making fair rulings.^{21,22}

Several purposes may be served by creating cyberstalking laws that explicitly treat youth in a way that honors their vulnerability to cyberstalking behaviors and victimization. Possible benefits of age specification include special deterrence from acts that target minors; rehabilitative treatment for young, immature perpetrators with mental illness; and protection from severe criminal sanctions of young victims or third parties who were coerced into contributing to

Table 2 Components of Criminal Cyberstalking and Cyberharassment Laws by State

	Age of Offender	Age of Victim	Jurisdiction	Integrated Offline and Online*	Definition of Electronics	Evaluation Treatment†	Sex Offense Registration	Sexual Solicitation	Allows Use of a Device	Protective Order	Family Member‡
Alabama				■						■	■
Alaska		■		■				■			■
Arkansas					■	■		■	■	■	
Arizona				■	■				■	■	
California			■	■	■	■	■			■	■
Colorado			■	■	■			■		■	■
Connecticut		■	■	■	■	■				■	
Delaware	■	■		■				■	■	■	
District of Columbia			■	■	■						
Florida		■	■	■	■					■	■
Georgia				■	■	■				■	■
Hawaii				■	■	■					
Idaho		■		■						■	■
Illinois	■	■			■	■			■	■	■
Indiana				■	■			■		■	
Iowa											
Kansas				■	■				■	■	■
Kentucky				■				■		■	
Louisiana	■	■	■		■				■		
Maine				■						■	■
Maryland					■			■			
Massachusetts				■	■					■	
Michigan	■	■	■	■	■	■				■	■
Minnesota	■	■	■	■		■		■		■	
Mississippi			■				■		■	■	■
Missouri	■	■		■						■	■
Montana				■	■			■		■	
Nebraska		■		■						■	■
Nevada			■	■	■						■
New Hampshire			■	■						■	■
New Jersey			■	■	■					■	■
New Mexico		■		■		■		■		■	
New York	■	■		■							■
North Carolina			■	■	■				■	■	■
North Dakota			■	■						■	■
Ohio		■			■			■	■		■
Oklahoma			■	■					■	■	■
Oregon			■	■	■			■	■	■	■
Pennsylvania			■		■			■		■	■
Rhode Island		■		■	■			■		■	■
South Carolina				■	■			■	■	■	■
South Dakota		■		■				■	■	■	
Tennessee	■	■	■	■		■	■			■	■
Texas				■	■			■	■		■
Utah			■	■	■					■	■
Vermont		■	■	■				■			
Virginia			■	■				■		■	■
Washington			■		■			■		■	
West Virginia			■		■			■	■	■	■

Table 2 Continued

	Age of Offender	Age of Victim	Jurisdiction	Integrated Offline and Online*	Definition of Electronics	Evaluation Treatment†	Sex Offense Registration	Sexual Solicitation	Allows Use of a Device	Protective Order	Family Member‡
Wisconsin		■						■	■		■
Wyoming				■				■		■	■
Federal								■			■
Total	8	19	23	40	29	10	3	24	16	39	34

* States in which the same anti-stalking statute applies to both online and offline stalking behavior.

† States whose anti-stalking statute allows for court-mandated psychiatric evaluation or treatment for perpetrators either pre- or post-conviction.

‡ States whose anti-stalking statute explicitly criminalizes the transmission of threatening statements made to the victim about their family members.

an act of cyberstalking. Of the states that refer to age in their stalking or cyberstalking laws, 19 acknowledge the need to impose more severe punishments on those who offend against minors. Only eight states, however, acknowledge developmental immaturity as a factor in considering sentences for young offenders.

In *State v. Kohonen*,²³ the Court of Appeals of Washington considered the appeal of a youth adjudicated guilty of cyberstalking in the context of an adolescent’s state of mind. The court noted that a “reasonable person in her [the adolescent’s] position” (Ref. 23, p 20) would not have known her messages would be construed as a “true threat” and thus reversed the conviction. Table 3 summarizes the age variability in state cyberstalking laws.

Allowing the Use of a Device for Cyberstalking

Laws in 13 states specify that someone who knowingly allows another person to use a personal electronic device to perpetrate cyberstalking may be held criminally responsible. An example of this occurred in *Boston v. Athearn*,²⁴ when the Georgia Court of Appeals held in 2014 that parents could be found negligent for allowing their child’s false and offensive statements online to remain posted after learning of their existence. In general, an adolescent’s risk of delinquent behavior is mitigated by increased parental involvement²⁵; however, cyberstalking may be difficult for parents to supervise.²⁶

Sexual Solicitation and Offender Registration

In the course of cyberstalking, behaviors such as sexual solicitation, exchanging sexually explicit images, and grooming to perform sexual acts over video may occur.²⁷ Risk factors make certain youth particularly vulnerable to being victimized in this manner.²⁸ In rare cases, parents facilitate their child’s online expression of sexual behavior, often for monetary compensation or drugs.²⁹ Laws in 24 states

specify that this behavior falls under the purview of cyberstalking and is subject to similar criminal prosecution (see Table 2). Only three states require sex offender registration because of conviction for this behavior (see Table 2). The purposes of explicit statutory language addressing this theme include deterrence, network surveillance for offenders, and public awareness of registered offenders.

Courts have encountered challenges balancing the consideration of a victim’s negative reaction to sexual solicitation with protecting free speech. For example, in *United States v. Alkhabaz*, the defendant created a blog where he posted stories detailing the rape and murder of a woman whose name was the same as his classmate.³⁰ The Sixth Circuit Court of Appeals determined that these postings did not constitute “communication containing a threat” that a reasonable person would believe was real.³⁰

Protective Orders

Certain states’ statutes suggest a protective order be filed when the risk of continued cyberstalking is high. The effectiveness of protective orders is highly dependent on whether the order is permanent or temporary,³¹ the unique circumstances, the individual against whom the order is filed, and the measured outcome.³² Depending on the state, laws may specify that sending inappropriate or any electronic messages to the victim constitutes a violation of the protective order. To our knowledge, there have not been any studies that have attempted to determine whether protective orders are effective at deterring continued online abuse between or against minors.

Jurisdiction

Twenty-three state statutes specify jurisdiction over a cyberstalker who was in another state when threatening messages were sent. When a state does not specify such jurisdiction, federal laws prohibiting

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Table 3 Age References in Anti-Stalking Laws by State

State	Statute	Language
Alaska	Alaska Stat. § 11.41.260	A person commits the crime of stalking in the first degree if . . . the victim is under 16 years of age.
Connecticut	Conn. Gen. Stat. § 53a-181c	[A] person is guilty of stalking in the first degree when such person commits stalking in the second degree and . . . the other person is under 16 years of age.
Delaware	11 Del. C. § 1312	Stalking is a class F felony if a person is guilty of stalking and one or more of the following exists: (1) The person is age 21 or older and the victim is under the age of 14 [. . .]; or (3) The victim is age 62 years of age or older [. . .].
Florida	Fla. Stat. § 784.048	A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks a child under 16 years of age commits the offense of aggravated stalking, a felony of the third degree.
Idaho	Idaho Code § 18–7905	A person commits the crime of stalking in the first degree if [. . .] the victim is under the age of sixteen (16) years.
Illinois	720 ILCS 135/1/2	Harassment through electronic communications is [. . .] transmitting an electronic communication or knowingly inducing a person to transmit an electronic communication for the purpose of harassing another person who is under 13 years of age, regardless of whether the person under 13 years of age consents to the harassment, if the defendant is at least 16 years of age at the time of the commission of the offense.
Louisiana	La. R.S. 14:40.2	Any person 13 years of age or older who commits the crime of stalking against a child 12 years of age or younger [. . .] shall be punished by imprisonment with or without hard labor for not less than one year and not more than three years and fined not less than fifteen hundred dollars and not more than five thousand dollars, or both.
Michigan	MCLS § 750.411h	[. . .] if the victim was less than 18 years of age at any time during the individual's course of conduct and the individual is 5 or more years older than the victim, by imprisonment for not more than 10 years or a fine of not more than \$15,000.00, or both [. . .].
Minnesota	Minn. Stat. § 609.749	A person who commits any [stalking] offense against a victim under the age of 18, if the actor is more than 36 months older than the victim, and the act is committed with sexual or aggressive intent, is guilty of a felony and may be sentenced to imprisonment for not more than 10 years or to payment of a fine of not more than \$20,000, or both.
Missouri	R.S.Mo. § 565.225	A person commits the offense of stalking in the first degree if [. . .] the other person is 17 years of age or younger and the person disturbing the other person is 21 years of age or older [. . .].
Nebraska	R.R.S. Neb. § 28–311.04	Any person convicted of [stalking] is guilty of a Class IV felony if [. . .] the victim is under 16 years of age.
New Mexico	N.M. Stat. Ann. § 30–3A-3.1	Aggravated stalking consists of stalking perpetrated by a person [. . .] when the victim is less than 16 years of age.
New York	NY CLS Penal § 120.55	A person is guilty of stalking in the second degree when he or she [. . .] being 21 years of age or older, repeatedly follows a person under the age of 14 or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place such person who is under the age of 14 in reasonable fear of physical injury, serious physical injury or death.
Ohio	ORC Ann. § 2903.211	Menacing by stalking is a felony of the fourth degree if [. . .] the victim of the offense is a minor.
Rhode Island	R.I. Gen. Laws § 15–15-1	“Sexual exploitation” means the occurrence of any of the following acts by any person who knowingly or willfully encourages, aids, or coerces any child under the age of eighteen (18) years.
South Dakota	S.D. Codified Laws § 22–19A-7	Any person who willfully, maliciously, and repeatedly follows or harasses a child 12 years of age or younger or who makes a credible threat to a child 12 years of age or younger with the intent to place that child in reasonable fear of death or great bodily injury or with the intent to cause the child to reasonably fear for the child's safety is guilty of the crime of felony stalking.
Tennessee	Tenn. Code Ann. § 39–17-315	A person commits aggravated stalking [if] the victim of the offense was less than eighteen (18) years of age at any time during the person's course of conduct, and the person is five (5) or more years older than the victim.
Vermont	13 V.S.A. § 1063	A person commits the crime of aggravated stalking if [. . .] the person being stalked is under the age of 16 years.
Wisconsin	Wis. Stat. § 940.32	Whoever [commits stalking] is guilty of a Class H felony if [. . .] the victim is under the age of 18 years at the time of the violation.

interstate stalking are the only means of prosecution. For example, in *United States v. Matusiewicz*, most of the defendant's electronic communications to harass family members in Delaware emanated from Texas. This case resulted in the first convictions of cyberstalking leading to death.³³ The provisions of the federal stalking statute¹⁸ have simplified the prosecution of interstate cyberstalking cases. Furthermore, the October 2013 amendment to this federal law provided that the victim and perpetrator need not be in separate jurisdictions for the law to apply.¹⁸

Threats to Immediate Family

Federal law¹⁸ and two thirds of the states' cyberstalking statutes³⁴ criminalize online threats to a victim's family members. Some statutes specify the meaning of "family member," and others leave this undefined. A threat directed at a family member, however, may or may not substantiate a case. In *United States v. Moreland*,³⁵ an Oklahoma federal district court held that Charles Moreland's electronically transmitted threats directed at the victim's brother would not be considered in his adjudication. The court reasoned that the victim had forwarded Mr. Moreland's threatening messages to her brother and therefore, Mr. Moreland, "by his own conduct, [had not] caused the immediate family members emotional distress" (Ref. 35, p 1232).

Cyberstalking and Stalking Laws

Distinguishing between electronically mediated and traditional, offline harassment behaviors has been the goal of emerging research and legislation.³⁶ Current research suggests ambiguity with regard to differences in motivation, degree of victimization, and demographic characteristics of the typical perpetrator³⁷ and victim.³⁸ Some states have enacted statutes specific to cyberstalking, and others have used or amended existing harassment statutes to cover Internet-based crime.³⁹ Forty U.S. jurisdictions have augmented existing stalking statutes to include electronically facilitated stalking, and 12 expressly apply different law to such behavior.

Role of the Forensic Psychiatrist

A forensic psychiatrist may be retained in cyberstalking cases to help prosecutors, criminal defense attorneys, or attorneys on either side of a civil case. Before evaluating a victim or perpetrator, the forensic psychiatrist should be aware of the language used

in the applied statute, whether a general stalking statute will be applied to cyberstalking behavior, and if a cyberstalking-specific statute exists. It is also important to know that many states' stalking statutes are labeled "anti-harassment" laws but use language that refers to stalking behavior according to widely accepted definitions (Table 1). Most importantly, the forensic psychiatrist needs to be cognizant of amendments and upgrades to anti-cybercrime law as new technologies, behaviors, and changes in legal thinking emerge.³⁹

Evaluation of the Victim

Cyberstalking is one of the few crimes that include the victim's state of mind as an element of proof.⁴⁰ All states' criminal cyberstalking statutes require that the victim experienced alarm, fear, or emotional distress because of the perpetrator's behavior.³⁴ Many states employ the reasonable person standard to determine whether illegal stalking has occurred. The reasonable person test requires that a reasonable person would agree that such a reaction was warranted.³⁴ For this reason, mental health expert witnesses may or may not be required to testify to prove that a crime was committed. Prosecutors sometimes need help proving that cyberstalking has occurred, that the victim experienced the quality and extent of emotional distress specified by the relevant statute, and that the victim's reaction was reasonable.⁴⁰ For example, a victim who exhibits an atypical reaction or an adaptive response to long-term abuse may not present with symptoms that are adequately probative for a factfinder's determination.^{40,41} The emotional distress and reasonable person standards may invalidate a victim's experience of stalking in the absence of an overt psychological reaction. In these cases, a prosecutor may summon a forensic psychiatrist to facilitate a jury or judge's understanding of the nature and effects of cyberstalking.⁴²

The forensic psychiatrist needs to consider a victim's age, mental health diagnoses, and developmental maturity when determining the reasonableness of the victim's reaction. When the forensic psychiatrist is asked to evaluate cyberstalking involving the family members of the main victim, it is important to be aware of the language used in the relevant cyberstalking law because it may require that the family member experienced distress or that the perpetrator intended to send the messages (general intent) or to

cause emotional distress in specific family members (specific intent).

The forensic psychiatrist may also be asked to form an opinion about the effects of cyberstalking on the victim's level of functioning, symptoms, prognosis and need for treatment. In the 13 states with civil stalking statutes (i.e., Arkansas, California, Kentucky, Michigan, Nebraska, Oregon, Rhode Island, South Dakota, Tennessee, Texas, Virginia, Washington, and Wyoming),⁴³ the forensic psychiatrist may be asked to perform an assessment of damages for which the cyberstalker may be liable. In jurisdictions where protective orders are issued based on online harassment, the forensic psychiatrist may consider when and by whom such an order was requested to help determine who was most affected and when emotional distress began.

Evaluation of the Perpetrator

A forensic psychiatrist may be asked to evaluate a cyberstalker to answer questions about *mens rea*, whether mental illness contributed to the commission of the offense, and future risk of violence and recidivism. A pretrial or postconviction risk assessment for future violence or re-offense may be ordered to determine whether involuntary commitment or a protective order is necessary.⁴⁴ In some cases, a prosecutor may request a court order for pretrial supervision and restriction of either online or offline behavior to protect the victim.⁴⁰ These assessments can be particularly challenging for forensic mental health experts.

Little is known about specific cyberstalking characteristics and case factors that predict future violence and risk of recidivism. Evaluators who choose to employ research on future violence risk in traditional stalking to estimate risk associated with cyberstalking should be explicit about the limitations of that risk assessment. The evaluator should highlight factors unique to the cyberstalking index offense that may greatly influence future risk of physical violence, such as how and why a victim was selected and the geographic distance between involved parties. With traditional stalking, a prior relationship, particularly one that involved sexual intimacy,⁴⁵ is predictive of future violence.⁴⁶ Research suggests that after a protective order has been filed to prevent ongoing intimate partner violence, women with children were more likely than women without children to be further victimized by stalking that led to violence.⁴⁷ The

more important factors found to predict risk of future violence after traditional stalking were prior criminal record, overt threats, substance use, and stalker characteristics.⁴⁶ Other factors correlated with violence following traditional stalking behavior include history of mental illness, history of violence, history of intimate partner violence, vandalism, pet abuse, and escalating stalking behavior.⁴⁸

When evaluating a perpetrator for future risk of violence, the forensic psychiatrist needs to remain abreast of known differences and research limitations on the similarities and differences between traditional and online stalking. The evaluator should investigate the circumstances of a perpetrator's protective order violations, as they may provide evidence of problems with impulse control, impaired understanding of the order's significance, delusions, severity of mental health impairments, and risk of recidivism without treatment.

When evaluating a perpetrator for treatment recommendations and amenability, the evaluator should attempt to appreciate whether the stalking behavior qualitatively fits into the constellation of a known psychiatric disorder. Examples of such diagnoses include psychotic disorders,⁴⁹ obsessive-compulsive disorder,⁵⁰ paraphilias,⁵¹ developmental disorders including autism spectrum disorder,⁵² impulse control disorders, substance use disorders,⁵³ and personality disorders.⁴⁹ When cyberstalking occurs across state lines, the forensic psychiatrist needs to be familiar with the motives associated with remote online harassment,⁵⁴ how they relate to diagnosis,⁵⁵ and implications for treatment.

Categorizing stalker types with respect to their behavior may lead to better violence risk assessments and intervention for this population.⁵⁶ It is difficult to discern one generally accepted classification method, however, because stalking behavior is complex and individual cases are distinct.⁵⁷ Proposed adult stalker categories have included obsessive, erotomanic, delusional,⁵⁸ predatory, disorganized, intimacy-seeking, rejected, retaliating, and bullies.⁵⁹

A forensic psychiatrist may be asked to evaluate the perpetrator's state of mind to determine if it was consistent with the commission of a general or specific intent crime. The intent behind cyberstalking is an element of all states' relevant statutes,³⁴ and is one of the harder elements to prove.⁴⁰ According to general intent statutes, a crime has been committed simply if cyberstalkers intended to text, email, or com-

municate electronically. Proving a specific intent crime was committed requires demonstration of the perpetrator's intent to induce consequences of fear, alarm, or emotional distress in a given victim. In either case, the forensic psychiatrist must provide an opinion about the offender's state of mind at the time of the act.

Experts can be helpful in assessing whether transmitted messages were consistent with cyberstalking as opposed to transient, self-limited behavior.⁶⁰ When the behavior is clearly consistent with stalking, the evaluator may be asked to determine whether mental illness, at the time of the act, may form a basis for legal insanity.⁴⁴ In addition to the usual interview, record review, and collateral contacts, it is important for the forensic psychiatrist to review records beyond what is normally provided, such as texts, emails, letters, videotaped police interviews, and the offender's correspondence with people other than the victim.⁴⁴

Reviewing a cyberstalker's electronic messages during the course of cyberstalking may help inform determinations of state of mind or legal insanity. The insanity defense has been successfully mounted in cases of traditional stalking.⁶¹ In 2010, for example, Steve Richard Burky was granted an insanity acquittal and given a 10-year protective order for stalking Jennifer Garner, her husband (Ben Affleck), and their two daughters for eight years.⁶² To our knowledge, there have not been any cases of cyberstalking that have successfully used the insanity defense.

There are only 10 U.S. jurisdictions with stalking statutes that specify the court's ability to order mental health evaluation and treatment for the offender (see Table 2). These evaluations may either be ordered before a formal conviction or after a guilty verdict. In either case, the forensic psychiatrist may be asked to provide an opinion about whether the offender has a mental illness, if treatment would aid rehabilitation, and if the offender is amenable to such treatment. It is important to opine within the scope of expertise and evidence presented rather than comment on other aspects of the case, such as the likelihood that the victim experienced extortion, identity theft, blackmailing, or other occurrences associated with cyberstalking.

Evaluating Youth Victims and Perpetrators

There are special considerations when evaluating youth with immaturity or with diagnoses such as

neurodevelopmental disorders or autism spectrum disorders. The developmental perspective is crucial to questions about state of mind, treatment amenability, and future violence risk. Although stalking behaviors are common in adolescence, they are infrequently associated with malicious intent and may instead reflect inexperience with forming and ending relationships in developmentally immature youth.⁶³ Persons with autism spectrum disorders may be at higher risk of engaging in lengthier stalking pursuits, inappropriate courting, and fixating on strangers, colleagues, and ex-partners.⁵² The forensic psychiatrist should be familiar with useful interventions to mitigate stalking behavior in persons with autism, such as direct teaching of social and romantic skills.⁶⁴

In addition to neurodevelopmental considerations, forensic psychiatrists need to consider the child's home environment; for example, whether a child has had adequate supervision or was coerced during the commission of the crime. The forensic psychiatrist needs to take parental involvement into account when rendering an opinion about amenability to treatment for juvenile cyberstalking offenders. Similarly, awareness of child abuse reporting laws in the relevant jurisdiction is important. If reasonable suspicion of parent, guardian, or third party enablement of the crime arises in the course of an evaluation, a mandated report may be required.⁶⁵ Criminal responsibility may apply to a knowing third-party participant who understands the intent of the stalking behavior.³⁴ Compared with adults, juveniles more frequently recruit accomplices in the course of stalking behavior.⁶⁶ In the evaluation of a third party involved in cyberstalking, collateral information may be important in determining whether the person was a knowing participant.

Conclusion and Future Directions

The legal landscape governing online stalking has created several roles for the forensic psychiatrist. It is important that the forensic psychiatrist be knowledgeable of trends in Internet use by children, current and future research on cyberstalking characteristics, and cyberstalking laws in their jurisdiction. The forensic psychiatrist may be presented with the opportunity to apply knowledge of human psychosocial developmental and mental illness to effect fair rulings in criminal and civil cyberstalking disputes.

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