

Stalking Questions

When did the harassment first start?
Obtain dates, locations and descriptions of each incident.

Has the victim made any previous police reports against this suspect?

Was anyone else present when these incidents occurred? ID the witnesses.

Does the victim have any physical evidence such as phone messages, letters, photos, e-mail, text messages, journals, property damage, etc?

Does the victim have a restraining order?
When was it obtained and why?

Is there a threat that is verbal, written, electronic communication or implied?
What does it mean to the victim?

Does the victim believe the suspect will carry out the threat? If so, why? Establish a basis for the victim's fears.

What has the victim done to show the effects of being stalked; i.e. moved, changed phone numbers, seen a Doctor, changed work or school schedule, warned friends or co-workers, stopped visiting places, purchased a gun, pepper spray, called police, etc.

List the events in a chronological order by date.

Criminal Threat Questions

What is the relationship between parties? Any recent changes in the relationship?

What did the suspect say?

What does this mean to you?

What has happened in the past when the suspect said those things to you?

Has the suspect threatened you or hurt you in the past? Friends or family? Pets?

Does the suspect have weapons?

Has the suspect ever threatened you with a weapon?

Has the suspect threatened or attempted suicide?

Tell me how you feel about what is going on?

How long ago was the threat made? How do you feel now about that threat? *Note the amount of time between the threat and now.*

Who have you talked with about the threats made before we arrived?

When was the last time the suspect hurt you?

How is your life different as a result of these events? Note the victim's demeanor. Is the victim seeking shelter, moving, hiding, having someone stay with them, obtaining a RO, etc?

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Stalking & Criminal Threats

A Quick Reference Guide



PC 646.9(a) - Stalking

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.

PC 422 - Criminal Threats

Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the intent that the statement is to be taken as a threat...and thereby causes that person reasonably to be in sustained fear for their own safety of that of their immediate family.

PC 646.9 Stalking - Elements

- 1) Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person
- 2) That person following or harassing made a credible threat;
- 3) The person who made the threat did so with the specific intent to place the other person in reasonable fear for his or her safety or the safety of the immediate family of such person.

Harassed defined - PC 646.9(e) - a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments or terrorizes the person and serves no legitimate purpose. This distress can be shown by the victim's actions such as seeking a RO, changing daily routine, adding security measures or hiding. Requires at least two acts.

Repeatedly - Means more than one occasion.

Credible threat defined - PC 646.9(g)

May be verbal; written; electronic communications; or it may be implied by a pattern of conduct made with the intent to place the person in reasonable fear. Stalking can be a crime of conduct, not necessarily words. A threat can be conveyed through a 3rd party but the victim must be aware of the threat.

Credible Threat Test:

- 1) Would a reasonable person fear for his or her safety or the safety of their immediate family?
- 2) Does the victim believe the suspect would carry out the threat; or is capable of it?

Safety or safety of immediate family

The credible threat must be against the safety of the victim or the victim's immediate family. There does not need to be a threat of death or great bodily injury as under PC 422; only a threat of harm is required.

Immediate family defined - PC 646.9(k)

Any spouse, parent, child, any person related by consanguinity or affinity with the second degree (grandparent, grandchildren, siblings, in laws or step relations), or any other person who regularly resides in the household, or who within the last 6 months regularly resided in the household.

Specific Intent - PC 646.9(g)

The suspect intended to place the victim in fear. The intent to actually carry out the threat is not required. One can stalk from jail.

PC 646.9(a) - Stalking

PC 646.9(b) - Stalking with a TRO, injunction or any court order in effect.

The sentencing court may issue a Restraining Order valid for up to 10 years.

PC 422 Criminal Threats — Elements

1) A person willfully threatened to commit a crime which if committed would result in death or great bodily injury to another person.

One threat is sufficient; however, the threat must be one of death or GBI.

2) The person who made the threat did so with the specific intent that the statement be taken as a threat.

The law does not require that the suspect had the intent to carry out the threat, only that the suspect intended the statement to be taken as a threat.

3) The threatening statement on its face, and under the circumstances in which it was made was so unequivocal, unconditional, immediate and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and

Case law has held that there does not have to be a showing that the suspect had the immediate ability to carry out the threat. The California Supreme Court has ruled that conditional threats can be true threats.

4) The threatening statement caused the other person reasonably to be in sustained fear for his or her own safety or his or her immediate family's safety.

Sustained fear has been held to be a period of time that extends beyond what is momentary.

5) Threat is verbal, written, or electronic.