

Ask the Lawyer: How Does the Military Define Stalking?

By Mathew B. TullyQ. At what point would a service member's attempts to keep tabs on an ex-spouse qualify as stalking?

A.

Stalking is one of the newest articles under the Uniform Code of Military Justice, created in 2006, so I can understand why there is confusion over what actions would trigger the offense. Conduct would constitute stalking if the service member "wrongfully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear death or bodily harm, including sexual assault, to himself or herself or a member of his or her immediate family." To be a stalker, the service member must or should know that the conduct would instill this fear in a specific person. The inducement of fear in the person is the final element of this offense. The Manual for Courts-Martial provides some guidance on what is meant by the "course of conduct" that results in a stalking offense. Repetition is important here. A stalker could repeatedly make himself or herself visible or physically close to a specific person, or a stalker may repeatedly make verbal, written or implied threats. Fear is a major factor when it comes to stalking charges. A 2013 Army Court of Criminal Appeals case, *U.S. v. Danewood L. Kirkpatrick*, illustrated this point. The case involved an Army private who was convicted at general court-martial of willfully disobeying a superior commissioned officer, violating a lawful order, stalking, and housebreaking. The private had been in an on-and-off romantic relationship with another service member who later accused him of raping her. He was later acquitted of rape and aggravated sexual contact charges. The subsequent stalking charge stemmed from an incident when the private entered the female service member's home without her consent. Although the woman claimed she was scared of the private at certain times during his visit, she insisted he spend the night in her bed. The court found the private's conduct did not qualify as stalking because there was no repetition. The charge was based mainly on the single visit to the woman's home. Although he subsequently sent her text messages, none of them qualified as a threat under the UCMJ. Additionally, the court said due to the "tumultuous nature of the off-and-on relationship," it was unclear whether the private knew or should have known his conduct would instill fear. And the court doubted that his conduct induced fear in her, given that she asked him to spend the night, that she later allowed him to care for her child, and that she never notified the police or her superiors about his visit. Service members charged with stalking should contact a military law attorney. Depending on the circumstances, a lawyer could show the service member had no way of knowing his or her contact would frighten a specific person.