

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 346
Judiciary I Committee Substitute Adopted 4/25/01
House Committee Substitute Favorable 5/16/01

Short Title: Amend Stalking/Domestic Violence Laws.

(Public)

Sponsors:

Referred to:

March 6, 2001

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAW REGARDING THE CRIMINAL OFFENSE OF
STALKING AND CERTAIN DOMESTIC VIOLENCE LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-277.3 reads as rewritten:

"§ 14-277.3. Stalking.

(a) Offense. – A person commits the offense of stalking if the person willfully on more than one occasion follows or is in the presence of ~~of, or otherwise harasses,~~ another person without legal purpose and with the intent to ~~cause death or bodily injury or with the intent to cause emotional distress by placing that person in reasonable fear of death or bodily injury.~~ do any of the following:

(1) Place that person in reasonable fear either for the person's safety or the safety of the person's immediate family or close personal associates.

(2) Cause that person to suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment, and that in fact causes that person substantial emotional distress.

(b) Classification. – A violation of this section is a Class ~~A1~~ misdemeanor. A person who commits the offense of stalking when there is a court order in effect prohibiting similar behavior by that person is guilty of a Class A1 misdemeanor. A second or subsequent conviction for stalking occurring within five years of a prior conviction of the same defendant is punishable as a Class I felony. H felony. A person who commits the offense of stalking after having been previously convicted of a stalking offense is guilty of a Class F felony.

(c) Definition. – For the purposes of this section, the term 'harasses' or 'harassment' means knowing conduct, including written or printed communication or transmission, telephone or cellular or other wireless telephonic communication, facsimile transmission, pager messages or transmissions, answering machine or voice mail messages or transmissions, and electronic mail messages or other computerized or

1 electronic transmissions, directed at a specific person that annoys, torments, terrorizes,
2 or terrifies that person and that serves no legitimate purpose."

3 **SECTION 2.** G.S. 15A-534.1(a) reads as rewritten:

4 "(a) In all cases in which the defendant is charged with assault ~~on~~ ~~or~~ on,
5 communicating a threat to, or committing a felony provided in Articles 7A, 8, 10, or
6 15 of Chapter 14 of the General Statutes upon a spouse or former spouse or a person
7 with whom the defendant lives or has lived as if married, with domestic criminal
8 trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic
9 Violence, of the General Statutes, the judicial official who determines the conditions of
10 pretrial release shall be a judge, and the following provisions shall apply in addition to
11 the provisions of G.S. 15A-534:

12 (1) Upon a determination by the judge that the immediate release of the
13 defendant will pose a danger of injury to the alleged victim or to any
14 other person or is likely to result in intimidation of the alleged victim
15 and upon a determination that the execution of an appearance bond as
16 required by G.S. 15A-534 will not reasonably assure that such injury
17 or intimidation will not occur, a judge may retain the defendant in
18 custody for a reasonable period of time while determining the
19 conditions of pretrial release.

20 (2) A judge may impose the following conditions on pretrial release:

- 21 a. That the defendant stay away from the home, school, business
22 or place of employment of the alleged victim;
23 b. That the defendant refrain from assaulting, beating, molesting,
24 or wounding the alleged victim;
25 c. That the defendant refrain from removing, damaging or injuring
26 specifically identified property;
27 d. That the defendant may visit his or her child or children at times
28 and places provided by the terms of any existing order entered
29 by a judge.

30 The conditions set forth above may be imposed in addition to requiring
31 that the defendant execute a secured appearance bond.

32 (3) Should the defendant be mentally ill and dangerous to himself or
33 others or a substance abuser and dangerous to himself or others, the
34 provisions of Article 5 of Chapter 122C of the General Statutes shall
35 apply."

36 **SECTION 3.** G.S. 50B-1(a) reads as rewritten:

37 "(a) Domestic violence means the commission of one or more of the following
38 acts upon an aggrieved party or upon a minor child residing with or in the custody of the
39 aggrieved party by a person with whom the aggrieved party has or has had a personal
40 relationship, but does not include acts of self-defense:

- 41 (1) Attempting to cause bodily injury, or intentionally causing bodily
42 injury; or

- 1 (2) Placing the aggrieved party or a member of the aggrieved party's
2 family or household in fear of imminent serious bodily ~~injury~~; injury
3 or continued harassment, as defined in G.S. 14-277.3, that rises to such
4 a level as to inflict substantial emotional distress; or
5 (3) Committing any act defined in G.S. 14-27.2 through G.S. 14-27.7."

6 **SECTION 4.** G.S. 50B-2(c1) reads as rewritten:

7 "(c1) Ex Parte Orders by Authorized Magistrate. – The chief district court judge
8 may authorize a magistrate or magistrates to hear any motions for emergency relief ex
9 parte. Prior to the hearing, if the magistrate determines that at the time the party is
10 seeking emergency relief ex parte the district court is not in session and a district court
11 judge is not and will not be available to hear the motion for a period of four or more
12 hours, the motion may be heard by the magistrate. If it clearly appears to the magistrate
13 from specific facts shown that there is a danger of acts of domestic violence against the
14 aggrieved party or a minor child, the magistrate may enter such orders as it deems
15 necessary to protect the aggrieved party or minor children from such acts, except that a
16 temporary order for custody ex parte and prior to service of process and notice shall not
17 be entered unless the magistrate finds that the child is exposed to a substantial risk of
18 bodily injury or sexual abuse. An ex parte order entered under this subsection shall
19 expire and the magistrate shall schedule an ex parte hearing before a district court judge
20 ~~within 72 hours of the filing for relief under this subsection, or~~ by the end of the next
21 day on which the district court is in session in the county in which the action was ~~filed,~~
22 ~~whichever occurs first.~~ filed. ~~A party who has paid court costs due for seeking an order~~
23 ~~from the magistrate under this subsection shall not be liable for court costs for a hearing~~
24 ~~before the district court judge scheduled and heard pursuant to an order entered by the~~
25 ~~magistrate under this subsection.~~ Ex parte orders entered by the district court judge
26 pursuant to this subsection shall be entered and scheduled in accordance with subsection
27 (c) of this section."

28 **SECTION 5.** G.S. 50B-4.1 reads as rewritten:

29 "**§ 50B-4.1. Violation of valid protective order a misdemeanor. order.**

30 (a) ~~A~~ Except as otherwise provided by law, a person who knowingly violates a
31 valid protective order entered pursuant to this Chapter or who knowingly violates a
32 valid protective order entered by the courts of another state or the courts of an Indian
33 tribe shall be guilty of a Class A1 misdemeanor.

34 (b) A law enforcement officer shall arrest and take a person into custody without
35 a warrant or other process if the officer has probable cause to believe that the person
36 knowingly has violated a valid protective order excluding the person from the residence
37 or household occupied by a victim of domestic violence or directing the person to
38 refrain from doing any or all of the acts specified in G.S. 50B-3(a)(9).

39 (c) When a law enforcement officer makes an arrest under this section without a
40 warrant, and the party arrested contests that the out-of-state order or the order issued by
41 an Indian court remains in full force and effect, the party arrested shall be promptly
42 provided with a copy of the information applicable to the party which appears on the

1 National Crime Information Center registry by the sheriff of the county in which the
2 arrest occurs.

3 (d) Unless covered under some other provision of law providing greater
4 punishment, a person who commits a felony at a time when the person knows the
5 behavior is prohibited by a valid protective order as provided in subsection (a) of this
6 section shall be guilty of a felony one class higher than the principal felony described in
7 the charging document. This subsection shall not apply to a person who is charged with
8 or convicted of a Class A or B1 felony or to a person charged under subsection (f) of
9 this section.

10 (e) An indictment or information that charges a person with committing
11 felonious conduct as described in subsection (d) of this section shall also allege that the
12 person knowingly violated a valid protective order as described in subsection (a) of this
13 section in the course of the conduct constituting the underlying felony. In order for a
14 person to be punished as described in subsection (d) of this section, a finding shall be
15 made that the person knowingly violated the protective order in the course of conduct
16 constituting the underlying felony.

17 (f) Unless covered under some other provision of law providing greater
18 punishment, any person who knowingly violates a valid protective order as provided in
19 subsection (a) of this section, after having been previously convicted of three offenses
20 under this Chapter, shall be guilty of a Class H felony."

21 **SECTION 6.** This act becomes effective December 1, 2001, and applies to
22 offenses committed on or after that date.