

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 238*
Judiciary II Committee Substitute Adopted 4/15/15
Third Edition Engrossed 4/16/15
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Short Title: Stalking by GPS/Criminal Offense.

(Public)

Sponsors:

Referred to:

March 11, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON COMMITS THE OFFENSE OF CYBERSTALKING IF THE PERSON KNOWINGLY INSTALLS OR PLACES A TRACKING DEVICE WITHOUT CONSENT AND USES THE DEVICE TO TRACK THE LOCATION OF AN INDIVIDUAL AND TO AMEND THE RULES OF EVIDENCE TO ALLOW A CERTIFICATION BY THE CUSTODIAN OF A BUSINESS RECORD TO SHOW THE AUTHENTICITY OF THE RECORD IN LIEU OF OFFERING THE CUSTODIAN'S IN-PERSON TESTIMONY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-196.3 reads as rewritten:

"§ 14-196.3. Cyberstalking.

(a) The following definitions apply in this section:

- (1) Electronic communication. – Any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.
- (2) Electronic mail. – The transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.
- (3) Electronic tracking device. – An electronic or mechanical device that permits a person to remotely determine or track the position and movement of another person.
- (4) Fleet vehicle. – Any of the following: (i) one or more motor vehicles owned by a single entity and operated by employees or agents of the entity for business or government purposes, (ii) motor vehicles held for lease or rental to the general public, or (iii) motor vehicles held for sale, or used as demonstrators, test vehicles, or loaner vehicles, by motor vehicle dealers.

(b) It is unlawful for a person to:

- (1) Use in electronic mail or electronic communication any words or language threatening to inflict bodily harm to any person or to that person's child, sibling, spouse, or dependent, or physical injury to the property of any



- 1 person, or for the purpose of extorting money or other things of value from
2 any person.
- 3 (2) Electronically mail or electronically communicate to another repeatedly,
4 whether or not conversation ensues, for the purpose of abusing, annoying,
5 threatening, terrifying, harassing, or embarrassing any person.
- 6 (3) Electronically mail or electronically communicate to another and to
7 knowingly make any false statement concerning death, injury, illness,
8 disfigurement, indecent conduct, or criminal conduct of the person
9 electronically mailed or of any member of the person's family or household
10 with the intent to abuse, annoy, threaten, terrify, harass, or embarrass.
- 11 (4) Knowingly permit an electronic communication device under the person's
12 control to be used for any purpose prohibited by this section.
- 13 (5) Knowingly install or place an electronic tracking device without consent, or
14 to cause an electronic tracking device to be installed without consent, and
15 use the device to track the location of any person. The provisions of this
16 subdivision do not apply to the installation, placement, or use of an
17 electronic tracking device by any of the following:
- 18 a. A law enforcement officer, judicial officer, probation or parole
19 officer, or employee of the Division of Corrections, Department of
20 Public Safety, when any such person is engaged in the lawful
21 performance of official duties and in accordance with State or federal
22 law.
- 23 b. The owner or lessee of any vehicle on which the owner or lessee
24 installs, places, or uses an electronic tracking device, unless the
25 owner or lessee is subject to (i) a domestic violence protective order
26 under Chapter 50B of the General Statutes or (ii) any court order that
27 orders the owner or lessee not to assault, threaten, harass, follow, or
28 contact a driver or occupant of the vehicle.
- 29 c. A legal guardian for a disabled adult, as defined in
30 G.S. 108A-101(d), or a legally authorized individual or organization
31 designated to provide protective services to a disabled adult pursuant
32 to G.S. 108A-105(c), when the electronic tracking device is installed,
33 placed, or used to track the location of the disabled adult for which
34 the person is a legal guardian or the individual or organization is
35 designated to provide protective services.
- 36 d. The owner of fleet vehicles, when tracking such vehicles.
- 37 e. A creditor or other secured party under a retail installment agreement
38 involving the sale of a motor vehicle or the lessor under a retail lease
39 of a motor vehicle, and any assignee or successor in interest to that
40 creditor, secured party, or lessor, when tracking a motor vehicle
41 identified as security under the retail installment sales agreement or
42 leased pursuant to a retail lease agreement, including the installation,
43 placement, or use of an electronic tracking device to locate and
44 remotely disable the motor vehicle, with the express written consent
45 of the purchaser, borrower, or lessee of the motor vehicle.
- 46 f. The installation, placement, or use of an electronic tracking device
47 authorized by an order of a State or federal court.
- 48 g. A motor vehicle manufacturer, its subsidiary, or its affiliate that
49 installs or uses an electronic tracking device in conjunction with
50 providing a vehicle subscription telematics service, provided that the
51 customer subscribes or consents to that service.

1 (c) Any offense under this section committed by the use of electronic mail or electronic
2 communication may be deemed to have been committed where the electronic mail or electronic
3 communication was originally sent, originally received in this State, or first viewed by any
4 person in this State.

5 (d) Any person violating the provisions of this section shall be guilty of a Class 2
6 misdemeanor.

7 (e) This section does not apply to any peaceable, nonviolent, or nonthreatening activity
8 intended to express political views or to provide lawful information to others. This section shall
9 not be construed to impair any constitutionally protected activity, including speech, protest, or
10 assembly."

11 **SECTION 2.** Rule 803(6) of the Rules of Evidence, Chapter 8C of the General
12 Statutes, reads as rewritten:

13 **"Rule 803. Hearsay exceptions; availability of declarant immaterial.**

14 The following are not excluded by the hearsay rule, even though the declarant is available
15 as a witness:

16 ...

- 17 (6) Records of Regularly Conducted Activity. – A memorandum, report, record,
18 or data compilation, in any form, of acts, events, conditions, opinions, or
19 diagnoses, made at or near the time by, or from information transmitted by, a
20 person with knowledge, if (i) kept in the course of a regularly conducted
21 business activity, ~~activity~~ and if ~~(ii)~~ it was the regular practice of that
22 business activity to make the memorandum, report, record, or data
23 compilation, all as shown by the testimony of the custodian or other
24 qualified ~~witness,~~ witness, or by affidavit or by document under seal under
25 Rule 902 of the Rules of Evidence made by the custodian or witness, unless
26 the source of information or the method or circumstances of preparation
27 indicate lack of trustworthiness. Authentication of evidence by affidavit shall
28 be confined to the records of non-parties and the proponent of that evidence
29 shall give advance notice to all other parties of intent to offer the evidence
30 with authentication by affidavit. The term "business" as used in this
31 paragraph includes business, institution, association, profession, occupation,
32 and calling of every kind, whether or not conducted for profit."

33 **SECTION 3.** Section 1 of this act becomes effective December 1, 2015, and
34 applies to offenses committed on or after that date. Section 2 of this act becomes effective
35 October 1, 2015. The remainder of this act is effective when it becomes law.