

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  
Fourth Edition Engrossed 12/6/01

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~~ felony. ~~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

1 mail messages or transmissions, and electronic mail messages or other computerized or  
2 electronic transmissions, directed at a specific person that torments, terrorizes, or  
3 terrifies that person and that serves no legitimate purpose."

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

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

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

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

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

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

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

37 **SECTION 2A.** G.S. 15A-830(a)(7) reads as rewritten:

38 "(7) Victim. – A person against whom there is probable cause to believe  
39 one of the following crimes was committed:

- 40 a. A Class A, B1, B2, C, D, or E felony.  
41 b. A Class F felony if it is a violation of one of the following: G.S.  
42 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3); 14-  
43 32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; 14-43.2; 14-43.3;

1 14-190.17; 14-190.19; 14-202.1; 14-277.3;14-288.9; or 20-  
2 138.5.

3 c. A Class G felony if it is a violation of one of the following:  
4 G.S. 14-32.3(b); 14-51; 14-58; 14-87.1; or 20-141.4.

5 d. A Class H felony if it is a violation of one of the following:  
6 G.S. 14-32.3(a); 14-32.3(c); ~~or 14-33.2~~14-33.2, or 14-277.3.

7 e. A Class I felony if it is a violation of one of the following: G.S.  
8 ~~14-277.3~~;14-32.3(b); 14-34.6(b); or 14-190.17A.

9 f. An attempt of any of the felonies listed in this subdivision if the  
10 attempted felony is punishable as a felony.

11 g. Any of the following misdemeanor offenses when the offense is  
12 committed between persons who have a personal relationship as  
13 defined in G.S. 50B-1(b): G.S. 14-33(c)(1); 14-33(c)(2); 14-  
14 33(a); 14-34; 14-134.3; or 14-277.3."

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

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

20 (1) Attempting to cause bodily injury, or intentionally causing bodily  
21 injury; or

22 (2) Placing the aggrieved party or a member of the aggrieved party's  
23 family or household in fear of imminent serious bodily ~~injury~~; injury  
24 or continued harassment, as defined in G.S. 14-277.3, that rises to such  
25 a level as to inflict substantial emotional distress; or

26 (3) Committing any act defined in G.S. 14-27.2 through G.S. 14-27.7."

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

28 "(c1) Ex Parte Orders by Authorized Magistrate. – The chief district court judge  
29 may authorize a magistrate or magistrates to hear any motions for emergency relief ex  
30 parte. Prior to the hearing, if the magistrate determines that at the time the party is  
31 seeking emergency relief ex parte the district court is not in session and a district court  
32 judge is not and will not be available to hear the motion for a period of four or more  
33 hours, the motion may be heard by the magistrate. If it clearly appears to the magistrate  
34 from specific facts shown that there is a danger of acts of domestic violence against the  
35 aggrieved party or a minor child, the magistrate may enter such orders as it deems  
36 necessary to protect the aggrieved party or minor children from such acts, except that a  
37 temporary order for custody ex parte and prior to service of process and notice shall not  
38 be entered unless the magistrate finds that the child is exposed to a substantial risk of  
39 bodily injury or sexual abuse. An ex parte order entered under this subsection shall  
40 expire and the magistrate shall schedule an ex parte hearing before a district court judge  
41 ~~within 72 hours of the filing for relief under this subsection, or by the end of the next~~  
42 ~~day on which the district court is in session in the county in which the action was filed,~~  
43 ~~whichever occurs first.~~filed. A party who has paid court costs due for seeking an order

1 from the magistrate under this subsection shall not be liable for court costs for a hearing  
2 before the district court judge scheduled and heard pursuant to an order entered by the  
3 magistrate under this subsection. Ex parte orders entered by the district court judge  
4 pursuant to this subsection shall be entered and scheduled in accordance with subsection  
5 (c) of this section."

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

7 "**§ 50B-4.1. Violation of valid protective order a misdemeanor. order.**

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

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

17 (c) When a law enforcement officer makes an arrest under this section without a  
18 warrant, and the party arrested contests that the out-of-state order or the order issued by  
19 an Indian court remains in full force and effect, the party arrested shall be promptly  
20 provided with a copy of the information applicable to the party which appears on the  
21 National Crime Information Center registry by the sheriff of the county in which the  
22 arrest occurs.

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

30 (e) An indictment or information that charges a person with committing  
31 felonious conduct as described in subsection (d) of this section shall also allege that the  
32 person knowingly violated a valid protective order as described in subsection (a) of this  
33 section in the course of the conduct constituting the underlying felony. In order for a  
34 person to be punished as described in subsection (d) of this section, a finding shall be  
35 made that the person knowingly violated the protective order in the course of conduct  
36 constituting the underlying felony.

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

41 **SECTION 6.** This act becomes effective March 1, 2002, and applies to  
42 offenses committed on or after that date.