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CRIMES AND OFFENSES

Crimes Against the Person: Prohibit Stalking of an Intended Victim

CODE SECTIONS: O.C.G.A. §§ 16-5-90 to -93 (new), 17-6-1, 19-13-1 (amended), 42-8-35.3 (new)

BILL NUMBER: SB 13

ACT NUMBER: 560

SUMMARY: The Act provides for the crimes of stalking and aggravated stalking by defining important terms and providing penalties. Victims are entitled to notice of the offender's release if the victim provides specified information to officials to facilitate that notice. Constitutionally protected behavior and legitimate business activities are excluded. Persons charged with stalking or aggravated stalking are entitled to pretrial release, but a released offender may have several conditions, outlined in the Act, attached to the release order. The Act amends the definition of family violence to include stalking and aggravated stalking.

EFFECTIVE DATE: April 27, 1993

History

Georgia laws protect people from assault, battery, criminal trespass on property, and even terroristic threats.¹ There were times when these crimes could be avoided because the victims knew they were being targeted by a particular person. However, no law existed to protect potential victims from being stalked by the offender. An unfortunate example occurred during the 1993 legislative session when a DeKalb County woman was abducted at gunpoint during her lunch break at work, raped, and stabbed repeatedly.² Her assailant was a former boyfriend who witnesses said had threatened and followed her in the past year.³ An Anti-Stalking Task Force summarized public concern about the need to protect victims before such drastic action

1. Prohibitions on these activities are found in O.C.G.A. title 16.

2. Kathy Scruggs, *Stalking Bill Touches on Woman's Case*, ATLANTA J. & CONST., Feb. 11, 1993, at F2.

3. *Id.*

occurred.⁴ This was the first session to pass a bill on the subject of stalking.⁵

SB 13

The Act defines stalking as following, surveilling, or contacting another person without consent for the purpose of harassment and intimidation.⁶ This conduct can occur on either public or private property; the residence of the defendant is specifically excluded.⁷ The conduct must be done knowingly and willfully, and create a reasonable fear of death or bodily harm to the intended victim or an immediate family member, which results in the victim's emotional distress.⁸ No overt threat of death or bodily injury need be made.⁹ The definition of family violence is amended to include stalking.¹⁰

The first conviction under this Act is a misdemeanor.¹¹ Any subsequent conviction under this Act is a felony and carries a mandatory prison sentence.¹²

Aggravated stalking occurs when the conduct described above occurs subsequent to a judicial order issued to prohibit stalking, such as a temporary restraining order or a condition of parole or probation.¹³ Aggravated stalking is a felony crime with a mandatory prison sentence and fine.¹⁴

Persons engaged in activities protected by the United States Constitution are specifically excluded by the Act.¹⁵ The Act also excludes persons who engage in the proscribed conduct in the course of a legitimate business activity or profession.¹⁶

The Act provides for the victim to receive notice of the offender's release from custody, as well as for notice of any bail hearing.¹⁷ The law enforcement agency, prosecutor, or court initially involved with the victim has the responsibility to advise the victim of this right, and of the victim's responsibility, which is to provide the court and the custodian of the offender with a telephone number (but not a pocket

4. Telephone Interview with Sen. Mary Margaret Oliver, Senate District No. 42 (Apr. 9, 1993) [hereinafter Oliver Interview]. Sen. Oliver sponsored SB 13. *Id.*

5. Telephone Interview with Sen. Terrell Starr, Senate District No. 44 (Apr. 9, 1993) [hereinafter Starr Interview].

6. O.C.G.A. § 16-5-90(a) (Supp. 1993).

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.* § 19-13-1 (Supp. 1993).

11. *Id.* § 16-5-90(b) (Supp. 1993).

12. *Id.* § 16-5-90(c) (Supp. 1993).

13. *Id.* § 16-5-91(a) (Supp. 1993).

14. *Id.* § 16-5-91(b) (Supp. 1993).

15. *Id.* § 16-5-92 (Supp. 1993).

16. *Id.*

17. *Id.* § 16-5-93(a) (Supp. 1993).

pager or electronic communication device number).¹⁸ The Act specifies the minimum efforts the court or custodian must make in attempting to notify the victim.¹⁹ A custodian who fails to provide the required notice is immune from damages but is subject to disciplinary measures.²⁰

Even though an offender is entitled to bail, a judge can designate certain conditions to prevent the continuance of stalking, including denial of bail.²¹

Offenders placed on probation for stalking may receive conditions to their probation such as the prohibition of future stalking acts, mandatory mental health evaluation and counseling, and restriction from particular places while the victim is at those places.²²

A number of different bills on stalking were introduced into the Georgia General Assembly this year.²³ SB 13 passed the Senate floor after several amendments to the original bill. The term "harassing" was given a definition which was later changed.²⁴ Another change on the Senate floor was the addition of a subsection which excluded activities protected by the Constitution.²⁵ The Senate also deleted a section outlining specific steps to be taken by correctional institutions and the State Board of Pardons and Paroles upon the release of an offender.²⁶ The bill added a section giving law enforcement officials who failed to provide notice to victims immunity from damages as long as they made a good faith effort to comply with the requirements.²⁷

SB 13 then was sent on to the House Committee on the Judiciary, where the House bills on stalking were still in committee.²⁸ The bill was assigned to a subcommittee, which combined features from all the various stalking bills.²⁹ After passing the House Committee, SB 13

18. *Id.* § 16-5-93(b) (Supp. 1993).

19. *Id.* § 16-5-93(c) (Supp. 1993).

20. *Id.* § 16-5-93(i) (Supp. 1993).

21. *Id.* § 17-6-1(b)(3) (Supp. 1993).

22. *Id.* § 42-8-35.3 (Supp. 1993).

23. SB 13, as introduced, 1993 Ga. Gen. Assem.; HB 37, as introduced, 1993 Ga. Gen. Assem.; HB 133, as introduced, 1993 Ga. Gen. Assem.; HB 401 as introduced, 1993 Ga. Gen. Assem.

24. As introduced, "harassing" was defined as a knowing and willful course of conduct which would cause a reasonable person to suffer emotional distress and which served no legitimate purpose. SB 13 (SFS/SFA), 1993 Ga. Gen. Assem.

25. *Id.*

26. The Department of Corrections and the State Board of Pardons and Paroles already have specific procedures in place for the notification of victims prior to the release of an offender. Oliver Interview, *supra* note 4.

27. SB 13 (SFS/SFA), 1993 Ga. Gen. Assem.

28. Telephone Interview with Rep. Cathy Cox, House District No. 160 (Apr. 12, 1993) [hereinafter Cox Interview]. Rep. Cox sponsored a stalking bill in the House. *Id.*

29. SB 13 was chosen as the bill to go forward, since it was the furthest along. *Id.*

had a number of new provisions. The bill provided for conditions if bail was granted, amended the definition of family violence to include stalking, and deleted the immunity from liability added on the Senate floor.³⁰ This version also added to the definition of stalking by clarifying that no overt threat need have been made by the offender.³¹ Excluded occupations that had been specifically listed were deleted, as the exclusion was generalized to legitimate businesses and professions.³² Aggravated stalking was redefined.³³ The House Committee also modified the notice provisions of the bill. The bail hearer is required to attempt to notify the victim of a bail hearing if the victim provides a telephone number as required.³⁴ The House Committee amended the State-wide Probation Act to allow judicial imposition of conditions as needed.³⁵

The House sub-committee attempted to combine all the best features from all the bills introduced into one bill. *Id.*

30. SB 13 (HCS), 1993 Ga. Gen. Assem.

31. Often stalkers were smart enough to tailor their conduct so as to avoid incurring charges of terroristic threats. Cox Interview, *supra* note 28. Definitions of stalking were compared to victims' stories shared in public hearings in order to achieve the best definition. *Id.* Laws from other states were compared; anti-stalking laws from North Carolina, Florida, and California were studied in particular. *Id.* Reasonable fear was added to provide a constitutional threshold between behavior that is annoying and behavior that is criminal. *Id.* The words "course of conduct" were substituted for specific numbers of incidents required in order to allow judges to tailor the penalty according to the situation; it might be that one instance is severe enough to warrant criminal sanctions. *Id.*

32. People who are employed in an excluded occupation might have been excluded when in fact their behavior crossed the line and constituted stalking. Cox Interview, *supra* note 28. Also, a list of excluded occupations is subject to the interpretation that an occupation not listed was not excluded; the more general definition gives judges more leeway. *Id.*

33. The original definition included acts such as physical harm or confinement of the victim. *See* SB 13, as introduced, 1993 Ga. Gen. Assem. Such acts are in fact violations of other existing laws. *See generally* O.C.G.A. title 16. The new definition included further acts of stalking in violation of a judicial order prohibiting stalking. SB 13 (HCS), 1993 Ga. Gen. Assem. Offenders who disregard a judicial order prohibiting stalking were viewed as in need of more severe sanctions. Cox Interview, *supra* note 28.

34. Victims were particularly concerned about notice of a bail hearing. Cox Interview, *supra* note 28. Testimony at public hearings from psychiatrists and psychologists noted that stalking conduct is rarely impulsive; it is usually an ongoing, pre-planned obsession on the part of the offender. *Id.* Stalking is a means of psychological control over a victim; an arrest sharply turns the table of control away from the offender. *Id.* It is particularly important that the bail hearer know what the victim has been through and have a basis for the imposition of conditions. *Id.*

35. O.C.G.A. § 42-8-35.2 (Supp. 1993). This section allows a judge to: prohibit further stalking acts; require an offender to undergo a mental health evaluation and mandatory counseling; and restrict the offender from any place where the victim is present. SB 13 (HCS), 1993 Ga. Gen. Assem.

With those changes, the bill passed the House Committee, but the bill was amended on the House floor. The amendment added the immunity from damages (but not from disciplinary action) granted to law enforcement personnel who failed to attempt to notify the victim according to the outlined steps.³⁶ Once amended, the bill passed the House and returned to the Senate for concurrence.

The Senate floor provided the final version, after amending the notice provisions again.³⁷ The final version requires attempted notification of the victim both prior to and following the offender's release and prior to a bail hearing.³⁸ This version was returned to the House, which passed the bill.

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36. SB 13 (HFA), 1993 Ga. Gen. Assem. Law enforcement personnel expressed concerns about the growing body of case law obligating them to protect the public. Oliver Interview, *supra* note 4. They also expressed concerns about staff and time resources required to fulfill the victim notification. *Id.*

37. SB 13 (SFA), 1993 Ga. Gen. Assem.

38. *Id.*