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CRIMES AND OFFENSES Crimes Against the Person: Provide Two Additional Means by Which Aggravated Stalking Statute May Be Violated

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CRIMES AND OFFENSES

Crimes Against the Person: Provide Two Additional Means by Which Aggravated Stalking Statute May Be Violated

CODE SECTION: O.C.G.A. § 16-5-91 (amended)
BILL NUMBER: HB 415
ACT NUMBER: 412
GEORGIA LAWS: 1995 Ga. Laws 911
SUMMARY: The Act adds two new circumstances which constitute aggravated stalking. The definition of aggravated stalking now includes stalking while in violation of a peace bond or a temporary protective order.
EFFECTIVE DATE: April 19, 1995¹

History

Of all the women murdered in the United States, almost one-third are murdered by a significant other.² Of these, as many as ninety percent of the victims were stalked before their death.³ In response to these statistics, the 1993 Georgia General Assembly created the crimes of stalking and aggravated stalking.⁴

The Code provides that “stalking” occurs when one “follows, places under surveillance, or contacts another person at or about a place or places without the consent of the other person for the purpose of harassing and intimidating the other person.”⁵ “Aggravated stalking” was originally defined as stalking while “in

1. This Act became effective upon approval by the Governor.

2. Melinda Beck, *Can New Laws Deter Spurned Lovers and Fans from “Stalking”—or Worse?*, NEWSWEEK, July 13, 1992, at 60.

3. *Id.* In 1990, Rep. Anne Mueller had a personal experience with stalking. Her daughter was being followed by her ex-husband. Rep. Mueller and her daughter went to the authorities to take action against him. They were advised to take out a peace bond. That peace bond was violated thirty-two times within approximately two weeks. Telephone Interview with Rep. Anne Mueller, House District No. 152 (Apr. 10, 1995) [hereinafter Mueller Interview]. Rep. Mueller sponsored HB 415. *Id.*

4. 1993 Ga. Laws 1534 (codified at O.C.G.A. §§ 16-5-90 to -93 (Supp. 1995)).

5. *Id.* (codified at O.C.G.A. § 16-5-90 (Supp. 1995)).

violation of a temporary restraining order, preliminary injunction, or permanent injunction or condition of pretrial release, condition of probation, or condition of parole in effect prohibiting the behavior described in this subsection.”⁶

Thus, aggravated stalking did not include stalking in violation of a peace bond⁷ or a temporary protective order.⁸ Even though the purpose of a peace bond is similar to the purpose of an injunction or restraining order, the Georgia Court of Appeals ruled that peace bonds are not analogous to restraining orders because proceedings relating to “peace bond[s] are neither criminal nor civil.”⁹ Consequently, a person stalking while in violation of a peace bond would not be in violation of the aggravated stalking statute.¹⁰ Representative Mueller sponsored HB 415 to fill these gaps.¹¹

HB 415

The Act broadens the definition of aggravated stalking by adding stalking in violation of a peace bond or temporary protective order.¹²

The bill, as introduced, included only the “peace bond” language.¹³ The House Special Judiciary Committee offered the additional “temporary protective order” language.¹⁴ The terms “temporary restraining order” and “temporary protective order,” though similar, may have distinctly different meanings depending on the jurisdiction.¹⁵ Due to the large number of

6. *Id.* (formerly found at O.C.G.A. § 16-5-91 (Supp. 1994)).

7. *See id.*; *see also* Foster v. Withrow, 39 S.E.2d 466, 468-69 (Ga. 1946). A peace bond is typically used to keep an estranged husband or boyfriend from harming the applicant. *Foster*, 39 S.E.2d at 468-69. The process of obtaining a peace bond is a quasi-criminal proceeding, falling somewhere between civil and criminal. *Id.*

8. 1993 Ga. Laws 1534 (formerly found at O.C.G.A. § 16-5-91 (Supp. 1994)).

9. *Foster*, 39 S.E.2d at 468.

10. *See* 1993 Ga. Laws 1534 (formerly found at O.C.G.A. § 16-5-91 (Supp. 1994)).

11. Mueller Interview, *supra* note 3.

12. O.C.G.A. § 16-5-91(a) (Supp. 1995).

13. HB 415, as introduced, 1995 Ga. Gen. Assem.; Telephone Interview with Rep. Curtis S. Jenkins, House District No. 110 (Apr. 28, 1995).

14. HB 415 (HCS), 1995 Ga. Gen. Assem.

15. Telephone Interview with Rep. Doug Teper, House District No. 61

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counties in the state and the diversity of their courts, the Committee believed that there was a need for both terms to be included in the statute.¹⁶

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(July 13, 1995).

16. *Id.*