

Senate Bill 86

By: Senator Stone of the 23rd

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 7 of Chapter 5 of Title 16 and Title 17 of the Official Code of Georgia
 2 Annotated, relating to stalking and criminal procedure, respectively, so as to provide greater
 3 protection to victims of family violence; to define "family violence order"; to change
 4 provisions relating to arrests with and without warrants involving family violence orders; to
 5 change provisions relating to bail for persons charged with violating family violence orders;
 6 to provide for related matters; to provide for an effective date; to repeal conflicting laws; and
 7 for other purposes.

8 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

9 **SECTION 1.**

10 Article 7 of Chapter 5 of Title 16 of the Official Code of Georgia Annotated, relating to
 11 stalking, is amended by revising Code Section 16-5-95, relating to the offense of violating
 12 a family violence order, as follows:

13 "16-5-95.

14 (a) As used in this Code section, the term:

15 (1) 'Family violence' shall have the same meaning as set forth in Code Section 19-13-1.

16 (2) 'Family violence order' means:

17 (A) Any temporary restraining order, temporary protective order, permanent
 18 restraining order, or permanent protective order issued pursuant to Article 1 of Chapter
 19 13 of Title 19;

20 (B) Any order of pretrial release issued as a result of an arrest for an act of family
 21 violence; or

22 (C) Any order for probation issued as a result of a conviction or plea of guilty, nolo
 23 contendere, or first offender to an act of family violence.

24 (b) A person commits the offense of violating a family violence order when ~~the~~ such
 25 person knowingly and in a nonviolent manner violates the terms of ~~a family violence~~
 26 ~~temporary restraining order, temporary protective order, permanent restraining order, or~~

27 ~~permanent protective~~ such order issued against that person pursuant to ~~Article 1 of Chapter~~
28 ~~13 of Title 19~~, which:

29 (1) Excludes, evicts, or excludes and evicts the person from a residence or household;

30 (2) Directs the person to stay away from a residence, workplace, or school;

31 (3) Restrains the person from approaching within a specified distance of another person;

32 or

33 (4) Restricts the person from having any contact, direct or indirect, by telephone, pager,
34 facsimile, e-mail, or any other means of communication with another person, except as
35 specified in the order.

36 ~~(b)~~(c) Any person convicted of a violation of subsection ~~(a)~~ (b) of this Code section shall
37 be guilty of a misdemeanor.

38 ~~(c)~~(d) Nothing contained in this Code section shall prohibit a prosecution for the offense
39 of stalking or aggravated stalking that arose out of the same course of conduct; provided,
40 however, that, for purposes of sentencing, a violation of this Code section shall be merged
41 with a violation of any provision of Code Section 16-5-90 or 16-5-91 that arose out of the
42 same course of conduct."

43 **SECTION 2.**

44 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
45 amended by revising subsection (a) of Code Section 17-4-20, relating to authorization of
46 arrests with and without warrants, as follows:

47 "(a) An arrest for a crime may be made by a law enforcement officer either under a warrant
48 or without a warrant if ~~the~~:

49 (1) The offense is committed in such officer's presence or within such officer's
50 immediate knowledge; if ~~the~~

51 (2) The offender is endeavoring to escape; if ~~the~~

52 (3) The officer has probable cause to believe that an act of family violence, as defined
53 in Code Section 19-13-1, has been committed; if ~~the~~

54 (4) The officer has probable cause to believe that the offender has violated a family
55 violence order, as defined in Code Section 16-5-95; provided, however, that such officer
56 shall not have any prior or current familial relationship with the alleged victim or the
57 offender;

58 (5) The officer has probable cause to believe that an offense involving physical abuse has
59 been committed against a vulnerable adult, who shall be for the purposes of this
60 subsection a person 18 years old or older who is unable to protect himself or herself from
61 physical or mental abuse because of a physical or mental impairment; or ~~for~~

62 (6) For other cause if there is likely to be failure of justice for want of a judicial officer
63 to issue a warrant."

64 **SECTION 3.**

65 Said title is further amended by revising subparagraph (b)(2)(B) of Code Section 17-6-1,
66 relating to where offenses are bailable, as follows:

67 "(B) When an arrest is made by a law enforcement officer without a warrant upon an
68 act of family violence or violation of a family violence order pursuant to Code Section
69 17-4-20, the person charged with the offense shall not be eligible for bail prior to the
70 arresting officer or some other law enforcement officer taking the arrested person
71 before a judicial officer pursuant to Code Section 17-4-21.

72 (C) When an arrest is made by a law enforcement officer without a warrant upon a
73 violation of a family violence order pursuant to Code Section 17-4-20, the person
74 arresting shall, without delay, comply with the provisions of Code Section 17-4-62.
75 Any person who is not brought before such judicial officer within 48 hours of arrest
76 shall be released and the charge for violating Code Section 16-5-95 shall be dismissed
77 and the record of the arrest restricted."

78 **SECTION 4.**

79 This Act shall become effective upon its approval by the Governor or upon its becoming law
80 without such approval.

81 **SECTION 5.**

82 All laws and parts of laws in conflict with this Act are repealed.