

House Bill 339

By: Representatives Atwood of the 179th, Stephens of the 164th, Welch of the 110th, Peake of the 141st, Hitchens of the 161st, and others

A BILL TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"16-5-95.

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

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

(2) 'Family violence order' means:

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

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

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

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

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

- (1) Excludes, evicts, or excludes and evicts the person from a residence or household;
- (2) Directs the person to stay away from a residence, workplace, or school;
- (3) Restrains the person from approaching within a specified distance of another person;
- or
- (4) Restricts the person from having any contact, direct or indirect, by telephone, pager, facsimile, e-mail, or any other means of communication with another person, except as specified in the order.

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

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

SECTION 2.

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

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

- (1) The offense is committed in such officer's presence or within such officer's immediate knowledge; if the
- (2) The offender is endeavoring to escape; if the
- (3) The officer has probable cause to believe that an act of family violence, as defined in Code Section 19-13-1, has been committed; if the
- (4) The officer has probable cause to believe that the offender has violated a family violence order, as defined in Code Section 16-5-95;
- (5) The officer has probable cause to believe that an offense involving physical abuse has been committed against a vulnerable adult, who shall be for the purposes of this subsection a person 18 years old or older who is unable to protect himself or herself from physical or mental abuse because of a physical or mental impairment; or for
- (6) For other cause if there is likely to be failure of justice for want of a judicial officer to issue a warrant."

SECTION 3.

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

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

SECTION 4.

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

SECTION 5.

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