

The Senate Committee on Judiciary offered the following substitute to SB 316:

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Article 7 of Chapter 5 of Title 16 of the Official Code of Georgia Annotated,
2 relating to stalking, so as to provide that a person 18 years old or older who commits the
3 offense of stalking against a minor shall be guilty of a high and aggravated misdemeanor; to
4 provide for penalties; to amend Subpart 2 of Part 2 of Article 16 of Chapter 2 of Title 20 of
5 the Official Code of Georgia Annotated, relating to public school disciplinary tribunals, so
6 as to require local boards of education to provide notice to students and parents of students
7 that some acts of bullying and cyberbullying can constitute criminal violations, punishable
8 by fines, imprisonment, or both; to provide for an effective date; to repeal conflicting laws;
9 and for other purposes.

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

11 **PART I**
12 **SECTION 1-1.**

13 Article 7 of Chapter 5 of Title 16 of the Official Code of Georgia Annotated, relating to
14 stalking, is amended by revising Code Section 16-5-90, relating to stalking and psychological
15 evaluation, as follows:

16 "16-5-90.

17 (a)(1) A person commits the offense of stalking when he or she follows, places under
18 surveillance, or contacts another person at or about a place or places without the consent
19 of the other person for the purpose of harassing and intimidating the other person. For the
20 purpose of this article, the terms 'computer' and 'computer network' shall have the same
21 meanings as set out in Code Section 16-9-92; the term 'contact' shall mean any
22 communication including without being limited to communication in person, by
23 telephone, by mail, by broadcast, by computer, by computer network, or by any other
24 electronic device; and the place or places that contact by telephone, mail, broadcast,
25 computer, computer network, or any other electronic device is deemed to occur shall be
26 the place or places where such communication is received. For the purpose of this article,
27 the term 'place or places' shall include any public or private property occupied by the
28 victim other than the residence of the defendant. For the purposes of this article, the term
29 'harassing and intimidating' means a knowing and willful course of conduct directed at
30 a specific person which causes emotional distress by placing such person in reasonable
31 fear for such person's safety or the safety of a member of his or her immediate family, by
32 establishing a pattern of harassing and intimidating behavior, and which serves no
33 legitimate purpose. This Code section shall not be construed to require that an overt threat
34 of death or bodily injury has been made.

35 (2) A person commits the offense of stalking when such person, in violation of a bond
36 to keep the peace posted pursuant to Code Section 17-6-110, standing order issued under
37 Code Section 19-1-1, temporary restraining order, temporary protective order, permanent
38 restraining order, permanent protective order, preliminary injunction, or permanent
39 injunction or condition of pretrial release, condition of probation, or condition of parole
40 in effect prohibiting the harassment or intimidation of another person, broadcasts or
41 publishes, including electronic publication, the picture, name, address, or phone number
42 of a person for whose benefit the bond, order, or condition was made and without such

43 person's consent in such a manner that causes other persons to harass or intimidate such
44 person and the person making the broadcast or publication knew or had reason to believe
45 that such broadcast or publication would cause such person to be harassed or intimidated
46 by others.

47 (b) Except as provided in ~~subsection~~ subsections (c) and (d) of this Code section, a person
48 who commits the offense of stalking is guilty of a misdemeanor.

49 (c) A person 18 years old or older who commits the offense of stalking against a minor is
50 guilty of a high and aggravated misdemeanor and shall be fined not less than \$1,000.00 nor
51 more than \$5,000.00 or shall be imprisoned for not more than 12 months, or both fined and
52 imprisoned.

53 (d) Upon the second conviction, and all subsequent convictions, for stalking, the defendant
54 shall be guilty of a felony and shall be punished by imprisonment for not less than one year
55 nor more than ten years.

56 ~~(d)~~(e) Before sentencing a defendant for any conviction of stalking under this Code section
57 or aggravated stalking under Code Section 16-5-91, the sentencing judge may require
58 psychological evaluation of the offender and shall consider the entire criminal record of the
59 offender. At the time of sentencing, the judge is authorized to issue a permanent restraining
60 order against the offender to protect the person stalked and the members of such person's
61 immediate family, and the judge is authorized to require psychological treatment of the
62 offender as a part of the sentence, or as a condition for suspension or stay of sentence, or
63 for probation."

64 **SECTION 1-2.**

65 Said article is further amended in Code Section 16-5-91, relating to aggravated stalking, by
66 revising subsection (b) as follows:

67 "(b) Any person convicted of a violation of subsection (a) of this Code section shall be
68 guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not

69 less than one nor more than ten years and by a fine of not more than \$10,000.00. The
70 provisions of subsection ~~(d)~~(e) of Code Section 16-5-90 apply to sentencing for conviction
71 of aggravated stalking."

72

PART II

73

SECTION 2-1.

74 Subpart 2 of Part 2 of Article 16 of Chapter 2 of Title 20 of the Official Code of Georgia
75 Annotated, relating to public school disciplinary tribunals, is amended in Code Section
76 20-2-751.4, relating to policies prohibiting bullying, assignment to alternative school, and
77 notice, by revising subsection (b) as follows:

78 "(b) No later than ~~August 1, 2011~~ October 1, 2022:

79 (1) Each local board of education shall adopt a policy that prohibits bullying of a student
80 by another student and shall require such prohibition to be included in the student code
81 of conduct for schools in that school system;

82 (2) Each local board policy shall require that, upon a finding by the disciplinary hearing
83 officer, panel, or tribunal of school officials provided for in this subpart that a student in
84 grades six through 12 has committed the offense of bullying for the third time in a school
85 year, such student shall be assigned to an alternative school;

86 (3) Each local board of education shall establish and publish in its local board policy a
87 method to notify the parent, guardian, or other person who has control or charge of a
88 student upon a finding by a school administrator that such student has committed an
89 offense of bullying or is a victim of bullying; ~~and~~

90 (4) Each local board of education shall ensure that students and parents of students are
91 notified of the prohibition against bullying, and the penalties for violating the prohibition,
92 by posting such information at each school and by including such information in student
93 and parent handbooks; and

94 (5) Each local board of education shall ensure that students and parents of students are
95 notified that some acts of bullying or cyberbullying may constitute stalking in violation
96 of Code Section 16-5-90, which can result in either a misdemeanor or felony criminal
97 conviction and can be punishable by a fine, imprisonment, or both a fine and
98 imprisonment."

99 **PART III**

100 **SECTION 3-1.**

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

103 **PART IV.**

104 **SECTION 4-1.**

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