

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 813
Committee Substitute Favorable 4/19/99
Committee Substitute #2 Favorable 4/22/99
Senate Judiciary I Committee Substitute Adopted 6/27/00

Short Title: Prohibit Cyberstalking/Treat Dom. Viol.

(Public)

Sponsors:

Referred to:

April 1, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CYBERSTALKING A CRIMINAL OFFENSE, CLARIFY THE
3 CRIMINAL ACT OF INTRODUCING COMPUTER VIRUSES, AND TO PERMIT
4 DOMESTIC VIOLENCE ABUSER TREATMENT AS A SPECIAL CONDITION
5 OF PROBATION IN CERTAIN CRIMINAL CASES AND TO MAKE
6 CONFORMING CHANGES.

7 The General Assembly of North Carolina enacts:

8 Section 1. Article 35 of Chapter 14 is amended by adding a new section to
9 read:

10 "**§ 14-196.3. Cyberstalking.**

11 (a) The following definitions apply in this section:

12 (1) Electronic communication. – Any transfer of signs, signals, writing,
13 images, sounds, data, or intelligence of any nature, transmitted in whole
14 or in part by a wire, radio, computer, electromagnetic, photoelectric, or
15 photo-optical system.

16 (2) Electronic mail. – The transmission of information or communication
17 by the use of the Internet, a computer, a facsimile machine, a pager, a

1 cellular telephone, a video recorder, or other electronic means sent to a
2 person identified by a unique address or address number and received
3 by that person.

4 (b) It is unlawful for a person to:

5 (1) Use in electronic mail or electronic communication any words or
6 language threatening to inflict bodily harm to any person or to that
7 person's child, sibling, spouse, or dependent, or physical injury to the
8 property of any person, or for the purpose of extorting money or other
9 things of value from any person.

10 (2) Electronically mail or electronically communicate to another repeatedly,
11 whether or not conversation ensues, for the purpose of abusing,
12 annoying, threatening, terrifying, harassing, or embarrassing any person.

13 (3) Electronically mail or electronically communicate to another and to
14 knowingly make any false statement concerning death, injury, illness,
15 disfigurement, indecent conduct, or criminal conduct of the person
16 electronically mailed or of any member of the person's family or
17 household with the intent to abuse, annoy, threaten, terrify, harass, or
18 embarrass.

19 (4) Knowingly permit an electronic communication device under the
20 person's control to be used for any purpose prohibited by this section.

21 (c) Any offense under this section committed by the use of electronic mail or
22 electronic communication may be deemed to have been committed where the electronic
23 mail or electronic communication was originally sent, originally received in this State, or
24 first viewed by any person in this State.

25 (d) Any person violating the provisions of this section shall be guilty of a Class 2
26 misdemeanor.

27 (e) This section does not apply to any peaceable, nonviolent, or nonthreatening
28 activity intended to express political views or to provide lawful information to others.
29 This section shall not be construed to impair any constitutionally protected activity,
30 including speech, protest, or assembly."

31 Section 2. G.S. 14-196(a)(2) reads as rewritten:

32 "(2) To use in telephonic ~~or electronic mail~~ communications any words or
33 language threatening to inflict bodily harm to any person or to that
34 person's child, sibling, spouse, or dependent or physical injury to the
35 property of any person, or for the purpose of extorting money or other
36 things of value from any person;"

37 Section 3. G.S. 14-453 reads as rewritten:

38 "**§ 14-453. Definitions.**

39 As used in this Article, unless the context clearly requires otherwise, the following
40 terms have the meanings specified:

41 (1) 'Access' means to instruct, communicate with, cause input, cause output,
42 cause data processing, or otherwise make use of any resources of a
43 computer, computer system, or computer network.

- 1 (1a) 'Authorization' means having the consent or permission of the owner, or
2 of the person licensed or authorized by the owner to grant consent or
3 permission to access a computer, computer system, or computer
4 network in a manner not exceeding the consent or permission.
- 5 (1b) 'Commercial electronic mail' means messages sent and received
6 electronically consisting of commercial advertising material, the
7 principal purpose of which is to promote the for-profit sale or lease of
8 goods or services to the recipient.
- 9 (2) 'Computer' means an internally programmed, automatic device that
10 performs data processing or telephone switching.
- 11 (3) 'Computer network' means the interconnection of communication
12 systems with a computer through remote terminals, or a complex
13 consisting of two or more interconnected computers or telephone
14 switching equipment.
- 15 (4) 'Computer program' means an ordered set of data that are coded
16 instructions or statements that when executed by a computer cause the
17 computer to process data.
- 18 (4a) 'Computer services' means computer time or services, including data
19 processing services, Internet services, electronic mail services,
20 electronic message services, or information or data stored in connection
21 with any of these services.
- 22 (5) 'Computer software' means a set of computer programs, procedures and
23 associated documentation concerned with the operation of a computer,
24 computer system, or computer network.
- 25 (6) 'Computer system' means at least one computer together with a set of
26 related, connected, or unconnected peripheral devices.
- 27 (6a) 'Data' means a representation of information, facts, knowledge,
28 concepts, or instructions prepared in a formalized or other manner and
29 intended for use in a computer, computer system, or computer network.
30 Data may be embodied in any form ~~including, but not limited to, including~~
31 computer printouts, magnetic storage media, optical storage media, and
32 punch cards, or may be stored internally in the memory of a computer.
- 33 (6b) 'Electronic mail' means the same as the term is defined in G.S. 14-
34 196.3(a)(2).
- 35 ~~(6b)~~ (6c) 'Electronic mail service provider' means any person who (i) is
36 an intermediary in sending or receiving electronic mail and (ii)
37 provides to end users of electronic mail services the ability to send or
38 receive electronic mail.
- 39 (7) 'Financial instrument' includes any check, draft, money order, certificate
40 of deposit, letter of credit, bill of exchange, credit card or marketable
41 security, or any electronic data processing representation thereof.
- 42 (8) 'Property' includes financial instruments, information, including
43 electronically processed or produced data, and computer software and

1 computer programs in either machine or human readable form, and any
2 other tangible or intangible item of value.

3 (8a) 'Resource' includes peripheral devices, computer software, computer
4 programs, and data, and means to be a part of a computer, computer
5 system, or computer network.

6 (9) 'Services' includes computer time, data processing and storage
7 functions.

8 (10) 'Unsolicited' means not addressed to a recipient with whom the initiator
9 has an existing business or personal relationship and not sent at the
10 request of, or with the express consent of, the recipient."

11 Section 4. G.S. 14-454 reads as rewritten:

12 **"§ 14-454. Accessing computers.**

13 (a) It is unlawful to willfully, directly or indirectly, access or cause to be accessed
14 any computer, computer program, computer system, computer network, or any part
15 thereof, for the purpose of:

16 (1) Devising or executing any scheme or artifice to defraud, unless the
17 object of the scheme or artifice is to obtain educational testing material,
18 a false educational testing score, or a false academic or vocational
19 grade, or

20 (2) Obtaining property or services other than educational testing material, a
21 false educational testing score, or a false academic or vocational grade
22 for a person, by means of false or fraudulent pretenses, representations
23 or promises.

24 A violation of this subsection is a Class G felony if the fraudulent scheme or artifice
25 results in damage of more than one thousand dollars (\$1,000), or if the property or
26 services obtained are worth more than one thousand dollars (\$1,000). Any other violation
27 of this subsection is a Class 1 misdemeanor.

28 (b) Any person who willfully and without authorization, directly or indirectly,
29 accesses or causes to be accessed any computer, computer program, computer system, or
30 computer network for any purpose other than those set forth in subsection (a) above, is
31 guilty of a Class 1 misdemeanor.

32 (c) For the purpose of this section, the ~~term "accessing or causing phrase~~ 'access or
33 cause to be accessed' includes introducing, directly or indirectly, a computer program
34 (including a self-replicating or a self-propagating computer program) into a computer,
35 computer program, computer system, or computer network."

36 Section 5. G.S. 14-455 reads as rewritten:

37 **"§ 14-455. Damaging computers, computer programs, computer systems, computer**
38 **networks, and resources.**

39 (a) It is unlawful to willfully and without authorization alter, damage, or destroy a
40 computer, computer program, computer system, computer network, or any part thereof. A
41 violation of this subsection is a Class G felony if the damage caused by the alteration,
42 damage, or destruction is more than one thousand dollars (\$1,000). Any other violation of
43 this subsection is a Class 1 misdemeanor.

1 (b) This section applies to alteration, damage, or destruction effectuated by
2 introducing, directly or indirectly, a computer program (including a self-replicating or a
3 self-propagating computer program) into a computer, computer program, computer
4 system, or computer network."

5 Section 6. G.S. 14- 456 reads as rewritten:

6 "**§ 14-456. Denial of computer services to an authorized user.**

7 (a) Any person who willfully and without authorization denies or causes the denial
8 of computer, computer program, computer system, or computer network services to an
9 authorized user of the computer, computer program, computer system, or computer
10 network services is guilty of a Class 1 misdemeanor.

11 (b) This section also applies to denial of services effectuated by introducing,
12 directly or indirectly, a computer program (including a self-replicating or a self-
13 propagating computer program) into a computer, computer program, computer system, or
14 computer network."

15 Section 7. G.S. 14-458(a) reads as rewritten:

16 "(a) ~~It-Except as otherwise made unlawful by this Article~~, it shall be unlawful for
17 any person to use a computer or computer network without authority and with the intent
18 to do any of the following:

- 19 (1) Temporarily or permanently remove, halt, or otherwise disable any
20 computer data, computer programs, or computer software from a
21 computer or computer network.
- 22 (2) Cause a computer to malfunction, regardless of how long the
23 malfunction persists.
- 24 (3) Alter or erase any computer data, computer programs, or computer
25 software.
- 26 (4) Cause physical injury to the property of another.
- 27 (5) Make or cause to be made an unauthorized copy, in any form, including,
28 but not limited to, any printed or electronic form of computer data,
29 computer programs, or computer software residing in, communicated
30 by, or produced by a computer or computer network.
- 31 (6) Falsely identify with the intent to deceive or defraud the recipient or
32 forge commercial electronic mail transmission information or other
33 routing information in any manner in connection with the transmission
34 of unsolicited bulk commercial electronic mail through or into the
35 computer network of an electronic mail service provider or its
36 subscribers.

37 For purposes of this subsection, a person is "without authority"when (i) the person
38 has no right or permission of the owner to use a computer, or the person uses a computer
39 in a manner exceeding the right or permission, or (ii) the person uses a computer or
40 computer network, or the computer services of an electronic mail service provider to
41 transmit unsolicited bulk commercial electronic mail in contravention of the authority
42 granted by or in violation of the policies set by the electronic mail service provider."

43 Section 8. G.S. 15A-1343(b1) reads as rewritten:

1 "(b1) Special Conditions. – In addition to the regular conditions of probation
2 specified in subsection (b), the court may, as a condition of probation, require that during
3 the probation the defendant comply with one or more of the following special conditions:

- 4 (1) Undergo available medical or psychiatric treatment and remain in a
5 specified institution if required for that purpose.
- 6 (2) Attend or reside in a facility providing rehabilitation, counseling,
7 treatment, social skills, or employment training, instruction, recreation,
8 or residence for persons on probation.
- 9 (2a) Submit to a period of residential treatment in the Intensive Motivational
10 Program of Alternative Correctional Treatment (IMPACT), pursuant to
11 G.S. 15A-1343.1, for a minimum of 90 days or a maximum of 120 days
12 and abide by all rules and regulations of that program. This condition
13 may also include a period of supervision through the Post-Boot Camp
14 Probation Program.
- 15 (2b) Participate in and successfully complete a Drug Treatment Court
16 Program pursuant to Article 62 of Chapter 7A of the General Statutes.
- 17 (3) Submit to imprisonment required for special probation under G.S. 15A-
18 1351(a) or G.S. 15A-1344(e).
- 19 (3a) Repealed by Session Laws 1997-57, s. 3.
- 20 (3b) Submit to supervision by officers assigned to the Intensive Supervision
21 Program established pursuant to G.S. 143B-262(c), and abide by the
22 rules adopted for that Program. Unless otherwise ordered by the court,
23 intensive supervision also requires multiple contacts by a probation
24 officer per week, a specific period each day during which the offender
25 must be at his or her residence, and that the offender remain gainfully
26 and suitably employed or faithfully pursue a course of study or of
27 vocational training that will equip the offender for suitable employment.
- 28 (3c) Remain at his or her residence unless the court or the probation officer
29 authorizes the offender to leave for the purpose of employment,
30 counseling, a course of study, or vocational training. The offender shall
31 be required to wear a device which permits the supervising agency to
32 monitor the offender's compliance with the condition electronically.
- 33 (4) Surrender his or her driver's license to the clerk of superior court, and
34 not operate a motor vehicle for a period specified by the court.
- 35 (5) Compensate the Department of Environment and Natural Resources or
36 the North Carolina Wildlife Resources Commission, as the case may be,
37 for the replacement costs of any marine and estuarine resources or any
38 wildlife resources which were taken, injured, removed, harmfully
39 altered, damaged or destroyed as a result of a criminal offense of which
40 the defendant was convicted. If any investigation is required by officers
41 or agents of the Department of Environment and Natural Resources or
42 the Wildlife Resources Commission in determining the extent of the
43 destruction of resources involved, the court may include compensation

1 of the agency for investigative costs as a condition of probation. This
2 subdivision does not apply in any case governed by G.S. 143-
3 215.3(a)(7).

4 (6) Perform community or reparation service and pay any fee required by
5 law or ordered by the court for participation in the community or
6 reparation service program.

7 (7) Submit at reasonable times to warrantless searches by a probation
8 officer of his or her person and of his or her vehicle and premises while
9 ~~he~~ the probationer is present, for purposes specified by the court and
10 reasonably related to his or her probation supervision, but the
11 probationer may not be required to submit to any other search that
12 would otherwise be unlawful. Whenever the warrantless search consists
13 of testing for the presence of illegal drugs, the probationer may also be
14 required to reimburse the Department of Correction for the actual cost
15 of drug screening and drug testing, if the results are positive.

16 (8) Not use, possess, or control any illegal drug or controlled substance
17 unless it has been prescribed for him or her by a licensed physician and
18 is in the original container with the prescription number affixed on it;
19 not knowingly associate with any known or previously convicted users,
20 possessors or sellers of any such illegal drugs or controlled substances;
21 and not knowingly be present at or frequent any place where such illegal
22 drugs or controlled substances are sold, kept, or used.

23 (8a) Purchase the least expensive annual statewide license or combination of
24 licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-
25 270.5, 113-271, 113-272, and 113-272.2 that would be required to
26 engage lawfully in the specific activity or activities in which the
27 defendant was engaged and which constitute the basis of the offense or
28 offenses of which he was convicted.

29 (9) If the offense is one in which there is evidence of physical, mental or
30 sexual abuse of a minor, the court should encourage the minor and the
31 minor's parents or custodians to participate in rehabilitative treatment
32 and may order the defendant to pay the cost of such treatment.

33 (9a) Attend and complete an abuser treatment program if (i) the court finds
34 the defendant is responsible for acts of domestic violence and (ii) the
35 program is approved by the Department of Administration.

36 (10) Satisfy any other conditions determined by the court to be reasonably
37 related to his rehabilitation."

38 Section 9. G.S. 50B-3(a) reads as rewritten:

39 "(a) The court, including magistrates as authorized under G.S. 50B-2(c1),
40 may grant any protective order or approve any consent agreement to bring about a
41 cessation of acts of domestic violence. The orders or agreements may:

42 (1) Direct a party to refrain from such acts;

- 1 (2) Grant to a party possession of the residence or household of the parties
- 2 and exclude the other party from the residence or household;
- 3 (3) Require a party to provide a spouse and his or her children suitable
- 4 alternate housing;
- 5 (4) Award temporary custody of minor children and establish temporary
- 6 visitation rights;
- 7 (5) Order the eviction of a party from the residence or household and
- 8 assistance to the victim in returning to it;
- 9 (6) Order either party to make payments for the support of a minor child as
- 10 required by law;
- 11 (7) Order either party to make payments for the support of a spouse as
- 12 required by law;
- 13 (8) Provide for possession of personal property of the parties;
- 14 (9) Order a party to refrain from doing any or all of the following:
- 15 a. Threatening, abusing, or following the other party,
- 16 b. Harassing the other party, including by telephone, visiting the
- 17 home or workplace, or other means, or
- 18 c. Otherwise interfering with the other party;
- 19 (10) Award costs and attorney's fees to either party;
- 20 (11) Prohibit a party from purchasing a firearm for a time fixed in the order;
- 21 (12) Order any party the court finds is responsible for acts of domestic
- 22 violence to attend and complete an abuser treatment program if the
- 23 program is ~~available within a reasonable distance of that party's residence~~
- 24 ~~and is approved by the Department of Administration; and~~
- 25 (13) Include any additional prohibitions or requirements the court deems
- 26 necessary to protect any party or any minor child."

27 Section 10. This act becomes effective December 1, 2000, and applies to
28 offenses committed on or after that date.