



LEGISLATIVE ALERT

The following legislation is effective on December 1, 2008 and applies to offenses committed on or after that date

** Please inform and educate the judicial community in your district **

DV Orders / Repeat Violators	HB 44/SL 2008-93
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Purpose: To strengthen the enforcement of domestic violence protective orders by reducing the number of prior convictions required from 3 to 2 to charge an offender with a Class H felony for a violation.

Every prior conviction for violation of a domestic violence protective order will count in determining the total number of prior convictions.

- Convictions for offenses committed before the effective date will count.
- Multiple convictions entered on the same day of court will count separately.
- It does not matter if the prior convictions are for violating the same DVPO or different DVPOs.
- Prior convictions do NOT have to be against the same victim.

It is important that each violation of a DVPO be charged as a separate offense even if the offender committed multiple offenses during the same "incident."

It is important that law enforcement officers, magistrates, and the District Attorney's office have access to the offender's criminal record so that the felony level violation can be charged whenever appropriate.

- This should be determined at the time a warrant is issued.
- If a misdemeanor warrant is issued, and it is determined later that the felony charge applies, the District Attorney's office can issue a felony indictment, as long as the offender has not already pled guilty to the misdemeanor.

<http://www.ncleg.net/Sessions/2007/Bills/House/HTML/H44v5.html>

Purpose: To clarify and expand the criminal offense of stalking so that the criminal justice system can hold offenders accountable for a wide range of acts, communications, and conduct.

"The General Assembly recognizes the dangerous nature of stalking, as well as the strong connections between stalking and domestic violence and between stalking and sexual assault."

A defendant is guilty of stalking if he/she:

- 1) Willfully on more than one occasion **harasses** another person without legal purpose;
- OR** 2) Willfully engages in a **course of conduct** directed at a specific person without legal purpose;
- AND** 3) Defendant knows or should know that the harassment or the course of conduct would cause a **reasonable person** to do any of the following:
 - a) Fear for the person's safety or the safety of the person's immediate family or close personal associates;
 - OR** b) Suffer **substantial emotional distress** by placing that person in fear of death, bodily injury, or continued harassment.

Definitions:

1. **Harasses or harassment:** Knowing conduct, including written or printed communication or transmission, telephone, cellular, or other wireless telephonic communication, facsimile transmission, pager messages or transmission, answering machine or voice mail messages or transmissions and electronic mail messages or other computerized or electronic transmissions directed at a specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose.
2. **Course of conduct:** Two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, is in the presence of, or follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
3. **Reasonable person:** A reasonable person in the victim's circumstances.
4. **Substantial emotional distress:** Significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

Punishment:

- 1st offense—Class A1 misdemeanor
 - Defendant must be placed on supervised probation if sentenced to community punishment in addition to any other punishment imposed.
- 2nd offense—Class F felony
- If a court order is in effect prohibiting this type of conduct by the defendant against the victim—Class H felony

It is important that law enforcement officers, magistrates, and the District Attorney's office have access to the offender's criminal record and any protective orders in effect between the parties so that the appropriate level offense can be charged.

Jurisdiction:

If any part of the offense occurred within North Carolina, including the defendant's course of conduct or the effect on the victim, then the defendant may be prosecuted in NC.

<http://www.ncleg.net/Sessions/2007/Bills/House/HTML/H887v5.html>



*If you have any questions, please contact
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Prepared by the North Carolina Coalition Against Domestic Violence