

Stalking, Harassment, & Related Offenses: Georgia

Current as of June 2023

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GEORGIA

Summary

What constitutes a "course of conduct" / pattern of behavior?	Course of conduct is not explicitly defined by statute but is interpreted by case law. See <i>Austin v. State</i> , 782 S.E.2d 308 (Ga. Ct. App. 2016) (The term "course of conduct" in the stalking statute dictates that a pattern of behavior must be shown, but such a pattern may include the prior history between the parties); <i>Benton v. State</i> , 256 Ga. App. 620, 568 S.E.2d 770 (Ga. Ct. App. 2002) (Evidence of prior difficulties between defendant and daughter was admissible to establish abusive course of conduct).
What types of threats are required (credible, explicit, implicit, bodily injury?)	Threat is not required. "This Code section shall not be construed to require that an overt threat of death or bodily injury has been made." Ga. Code § 16-5-90; See also <i>Johnson v. State</i> , 449 S.E.2d 94 (Ga. 1994) (Misdemeanor and aggravated stalking statutes were not unconstitutional, even though statutes did not specifically require that proscribed conduct constitute "overt threat.").
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	Offender must intend to intimidate to harass the victim. Ga. Code § 16-5-90 (a)(1).
Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?	Yes, if conducted towards immediate family members. Ga. Code § 16-5-90 (a)(1).
What type of victim fear is required? (for safety, of bodily injury, etc.)?	Emotional distress caused by fear for the person's safety or the safety of a member of his or her immediate family. Ga. Code § 16-5-90 (a)(1).
Does fear include emotional distress?	Yes. Ga. Code § 16-5-90 (a)(1).

<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Reasonable person standard. Ga. Code § 16-5-90 (a)(1).</p>
<p>If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)</p>	<p>What constitutes a reasonable fear is case specific.</p> <p><i>Murphy v. O'Keefe</i>, 822 S.E.2d 839 (Ga. Ct. App. 2019) (Evidence was insufficient to establish customer's actions constituted a pattern of harassing and intimidating behavior that placed waitress in reasonable fear for her safety, as required to obtain a stalking protective order against customer; witness testified that customer's actions made her “uncomfortable,” not that she feared for her safety, waitress never told customer to stay away from her, and even though police were called there was no evidence that police ordered customer to stay away from waitress.)</p> <p><i>Jenkins v. Jenkins</i>, 822 S.E.2d 404 (Ga. Ct. App. 2018) (Sufficient evidence established that father stalked his daughter, that he posed a danger to her, and that she was in reasonable fear for her or her family's safety, and thus 12-month protective order against father was appropriate, where daughter had seen father engage in domestic violence, including against her son, and father communicated with threatening text messages).</p>
<p>Must the victim tell the defendant to stop in order to constitute stalking?</p>	<p>No, but if stalking is based on “contacts,” then the contacts must be “without the consent of the other person.” Ga. Code § 16-5-90 (a)(1).</p> <p>The victim does not need to tell the defendant to stop in order for the contact to be non-consensual. <i>See Holmes v. State</i>, 661 S.E.2d 603 (2008) (upholding conviction for aggravated stalking based on nonconsensual contact and violating protection order where the defendant continued to contact the victim even though the victim had 2 protection orders</p>

	<p>and a no-contact order in place against the defendant).</p> <p>However, telling the defendant to stop can be proof that the contact was non-consensual. See <i>Placanica v. State</i>, 693 S.E.2d 571 (Ga. Ct. App. 2010) (Evidence was sufficient to establish that defendant contacted victim without her consent, thus supporting conviction for stalking; evidence showed that, after victim “screamed” at defendant to “leave her alone,” defendant persisted in making unwanted contact with victim by showing up at her gym, sending her “tons of text messages,” and seeking her out on the internet using a false name, among other things).</p>
<p>Is stalking by proxy included? (i.e., getting a third person to stalk the victim)</p>	<p>Yes, via case law. <i>Oliver v. State</i>, 753 S.E.2d 468 (Ga. Ct. App. 2014) (In determining whether the evidence in a prosecution for aggravated stalking shows a pattern of harassing and intimidating behavior, the jury can consider any number of factors, including, but not limited to, the prior history between the parties, the defendant's surreptitious conduct, as well as her overtly confrontational acts, and any attempts by the defendant to contact, communicate with, or control the victim indirectly, as through third parties).</p>
<p>Is technology-facilitated stalking covered by regular stalking statutes and accompanying case law, or is it covered under a separate offense?</p>	<p>Technology-facilitated stalking is covered under the regular statute under the definition of “contact” which includes “any communication including without being limited to communication in person, by telephone, by mail, by broadcast, by computer, by computer network, or by any other electronic device; and the place or places that contact by telephone, mail, broadcast, computer, computer network, or any other electronic device is deemed to occur shall be the place or places where such communication is received.” Ga. Code § 16-5-90 (a)(1).</p>

	Other statutes criminalize similar conduct such as harassing communications and unlawful eavesdropping/surveillance. Ga. Code Ann. §§ 16-11-39, 16-11-62.
Do the stalking laws have a resident requirement? (i.e., must the victim or defendant reside in the jurisdiction in order for this to constitute a criminal offense?)	There is no residency requirement. A person can be charged with stalking if the “crime is committed either wholly or partly within the state.” Ga. Code § 17-2-1 (b)(1).
Any unique provisions, elements, or requirements?	Yes. The victim may be stalked in the victim’s home or anywhere “other than the residence of the defendant.” Ga. Code § 16-5-90 (a)(1). However, place where stalking can occur excludes the defendant's residence from the definition of “place or places” <i>only</i> when it is occupied by the victim. <i>Bruno v. Light</i> , 811 S.E.2d 500, 503 (Ga. Ct. App. 2018).
Gradation of crimes (list out statues in order of declining gradation and say what type of felony it is - felony, "wobbler" / felony under special circumstances, misdemeanor)	Stalking is a misdemeanor under Ga. Code § 16-5-90 (b) and a felony under Ga. Code § 16-5-90 (c). Aggravated stalking is felony. Ga. Code § 16-5-91 (b).
What aggravating circumstances elevate the gradation of a stalking offense?	Stalking becomes a felony upon the second or subsequent conviction for stalking. Ga. Code § 16-5-90 (c). Stalking becomes aggravated stalking if the offender violates a court order, bond, probation, parole, or pretrial release. Ga. Code § 16-5-91(a).

Statutes

GA. CODE ANN. § 16-5-90 (WEST 2023). STALKING

- (a) (1) A person commits the offense of stalking when he or she follows, places under surveillance, or contacts another person at or about a place or places without the consent of the other person for the purpose of harassing and intimidating the other person. For the purpose of this article, the terms “computer” and “computer network” shall have the same meanings as set

out in Code Section 16-9-92; the term “contact” shall mean any communication including without being limited to communication in person, by telephone, by mail, by broadcast, by computer, by computer network, or by any other electronic device; and the place or places that contact by telephone, mail, broadcast, computer, computer network, or any other electronic device is deemed to occur shall be the place or places where such communication is received. For the purpose of this article, the term “place or places” shall include any public or private property occupied by the victim other than the residence of the defendant. For the purposes of this article, the term “harassing and intimidating” means a knowing and willful course of conduct directed at a specific person which causes emotional distress by placing such person in reasonable fear for such person's safety or the safety of a member of his or her immediate family, by establishing a pattern of harassing and intimidating behavior, and which serves no legitimate purpose. This Code section shall not be construed to require that an overt threat of death or bodily injury has been made.

(2) A person commits the offense of stalking when such person, in violation of a bond to keep the peace posted pursuant to Code Section 17-6-110, standing order issued under Code Section 19-1-1, temporary restraining order, temporary protective order, permanent restraining order, permanent protective order, preliminary injunction, or permanent injunction or condition of pretrial release, condition of probation, or condition of parole in effect prohibiting the harassment or intimidation of another person, broadcasts or publishes, including electronic publication, the picture, name, address, or phone number of a person for whose benefit the bond, order, or condition was made and without such person's consent in such a manner that causes other persons to harass or intimidate such person and the person making the broadcast or publication knew or had reason to believe that such broadcast or publication would cause such person to be harassed or intimidated by others.

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

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

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

GA. CODE ANN. § 16-5-91 (WEST 2023). AGGRAVATED STALKING

- (a) A person commits the offense of aggravated stalking when such person, in violation of a bond to keep the peace posted pursuant to Code Section 17-6-110, temporary restraining order, temporary protective order, permanent restraining order, permanent protective order, preliminary injunction, good behavior bond, or permanent injunction or condition of pretrial release, condition of probation, or condition of parole in effect prohibiting the behavior described in this subsection, follows, places under surveillance, or contacts another person at or about a place or places without the consent of the other person for the purpose of harassing and intimidating the other person.
- (b) Any person convicted of a violation of subsection (a) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than ten years and by a fine of not more than \$10,000.00. The provisions of subsection (d) of Code Section 16-5-90 apply to sentencing for conviction of aggravated stalking.

GA. CODE ANN. § 16-5-92 (WEST 2023). EXCEPTIONS

The provisions of Code Sections 16-5-90 and 16-5-91 shall not apply to persons engaged in activities protected by the Constitution of the United States or of this state or to persons or employees of such persons lawfully engaged in bona fide business activity or lawfully engaged in the practice of a profession.

GA. CODE ANN. § 16-5-94 (WEST 2023). RESTRAINING ORDERS, PROTECTIVE ORDERS, AND APPROVAL OF CONSENT ORDERS TO PREVENT RECURRENCE OF STALKING

- (a) A person who is not a minor who alleges stalking by another person may seek a restraining order by filing a petition alleging conduct constituting stalking as defined in Code Section 16-5-90. A person who is not a minor may also seek relief on behalf of a minor by filing such a petition.
- (b) Jurisdiction for such a petition shall be the same as for family violence petitions as set out in Code Section 19-13-2.
- (c) (1) Upon the filing of a verified petition in which the petitioner alleges with specific facts that probable cause exists to establish that stalking by the respondent has occurred in the past and may occur in the future, the court may order such temporary relief ex parte as it deems necessary to protect the petitioner or a minor of the household from stalking.
- (2) If the court issues an ex parte order, a copy of the order shall be immediately furnished to the petitioner, and the clerk shall forthwith issue a summons and deliver it for service to the respondent within 24 hours of the court's issuance of such order.
- (A) *Note: underlined section has been enacted but not codified.

- (d) The court may grant a protective order or approve a consent agreement to bring about a cessation of conduct constituting stalking. Orders or agreements may:
- (1) Direct a party to refrain from such conduct;
 - (2) Order a party to refrain from harassing or interfering with the other;
 - (3) Award costs and attorney's fees to either party; and
 - (4) Order either or all parties to receive appropriate psychiatric or psychological services as a further measure to prevent the recurrence of stalking.
- (e) The provisions of subsections (c), (d), and (e) of Code Section 19-13-3, subsections (b), (c), and (d) of Code Section 19-13-4, and Code Section 19-13-5, relating to family violence petitions, shall apply to petitions filed pursuant to this Code section, except that the clerk of court may provide forms for petitions and pleadings to persons alleging conduct constituting stalking and to any other person designated by the superior court pursuant to this Code section as authorized to advise persons alleging conduct constituting stalking on filling out and filing such petitions and pleadings.

GA. CODE ANN. § 16-5-93 (WEST 2023). VICTIMS ENTITLED TO NOTICE OF RELEASE FROM CUSTODY OF PERSON ARRESTED FOR AND CHARGED WITH STALKING OR AGGRAVATED STALKING

- (a) The victim of stalking or aggravated stalking shall be entitled to notice of the release from custody of the person arrested for and charged with the offense of stalking or aggravated stalking and to notice of any hearing on the issue of bail for such person. No such notice shall be required unless the victim provides a landline telephone number other than a pocket pager or electronic communication device number to which such notice can be directed.
- (b) The law enforcement agency, prosecutor, or court directly involved with the victim at the outset of a criminal prosecution for the offense of stalking or aggravated stalking shall advise the victim of his or her right to notice and of the requirement of the victim's providing a landline telephone number other than a pocket pager or electronic communication device number to which the notice of custodial release or bail hearing can be directed. Such victim shall transmit the telephone number described in this subsection to the court and custodian of the person charged with stalking or aggravated stalking.
- (c) Upon receipt of the telephone number, the custodian of the person charged with stalking or aggravated stalking shall take reasonable and necessary steps under the circumstances to notify the victim of the person's release from custody. Such notice shall, at a minimum, include:

- (1) Prior to the person's release, placing a telephone call to the number provided by the victim and giving notice to the victim or any person answering the telephone who appears to be sui juris or by leaving an appropriate message on a telephone answering machine; and
 - (2) Following the person's release, if the custodian is unable to notify the victim by the method provided in paragraph (1) of this subsection, telephoning the number provided by the victim no less than two times in no less than 15 minute intervals within one hour of custodial release and giving notice to the victim or to any person answering the telephone who appears to be sui juris or by leaving an appropriate message on a telephone answering machine.
- (d) Upon receipt of the telephone number, the court conducting a hearing on the issue of bail shall take reasonable and necessary steps under the circumstances to notify the victim of any scheduled hearing on the issue of bail. Such notice shall, at a minimum, include placing a telephone call to the number provided by the victim prior to any scheduled hearing on the issue of bail.
 - (e) Notwithstanding any other provision of this Code section, a scheduled bail hearing or the release of the person charged with stalking or aggravated stalking shall not be delayed solely for the purpose of effectuating notice pursuant to this Code section for a period of more than 30 minutes.
 - (f) Upon the person's release or escape from custody after conviction and service of all or a portion of a sentence, notification to the victim shall be provided by the State Board of Pardons and Paroles as set forth in Code Sections 42-9-46 and 42-9-47.
 - (g) This Code section shall not apply to a custodian who is transferring a person charged with stalking or aggravated stalking to another custodian in this state.
 - (h) As used in this Code section, the term "custodian" means a warden, sheriff, jailer, deputy sheriff, police officer, officer or employee of the Department of Juvenile Justice, or any other law enforcement officer having actual custody of an inmate.
 - (i) A custodian or his or her employing agency shall not be liable in damages for a failure to provide the notice required by this Code section, but the custodian shall be subject to appropriate disciplinary action including termination for such failure.

GA. CODE ANN. § 16-5-95 (WEST 2023). VIOLATION OF FAMILY VIOLENCE ORDER

- (a) As used in this Code section, the term:
 - (1) "Civil family violence order" means any temporary protective order or permanent protective order issued pursuant to Article 1 of Chapter 13 of Title 19.

(2) “Criminal family violence order” means:

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

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

(b) A person commits the offense of violating a civil family violence order or criminal family violence order when such person knowingly and in a nonviolent manner violates the terms of such order issued against that person, 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 such order.

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

(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.

GA. CODE ANN. § 16-11-39.1 (WEST 2023). HARASSING COMMUNICATIONS

(a) A person commits the offense of harassing communications if such person:

- (1) Contacts another person repeatedly via telecommunication, e-mail, text messaging, or any other form of electronic communication for the purpose of harassing, molesting, threatening, or intimidating such person or the family of such person;
- (2) Threatens bodily harm via telecommunication, e-mail, text messaging, or any other form of electronic communication;
- (3) Telephones another person and intentionally fails to hang up or disengage the connection; or

- (4) Knowingly permits any device used for telecommunication, e-mail, text messaging, or any other form of electronic communication under such person's control to be used for any purpose prohibited by this subsection.
- (b) Any person who commits the offense of harassing communications shall be guilty of a misdemeanor.
- (c) The offense of harassing communications shall be considered to have been committed in the county where:
 - (1) The defendant was located when he or she placed the telephone call or transmitted, sent, or posted an electronic communication; or
 - (2) The telephone call or electronic communication was received.
- (d) Any violation of this Code section shall constitute a separate offense and shall not merge with any other crimes set forth in this title.
- (e) This Code section shall not apply to constitutionally protected speech.

GA. CODE ANN. § 16-11-62 (WEST 2023). UNLAWFUL EAVESDROPPING OR SURVEILLANCE

It shall be unlawful for:

- (1) Any person in a clandestine manner intentionally to overhear, transmit, or record or attempt to overhear, transmit, or record the private conversation of another which shall originate in any private place;
- (2) Any person, through the use of any device, without the consent of all persons observed, to observe, photograph, or record the activities of another which occur in any private place and out of public view; provided, however, that it shall not be unlawful:
 - (A) To use any device to observe, photograph, or record the activities of persons incarcerated in any jail, correctional institution, or other facility in which persons who are charged with or who have been convicted of the commission of a crime are incarcerated, provided that such equipment shall not be used while the prisoner is discussing his or her case with his or her attorney;
 - (B) For an owner or occupier of real property to use for security purposes, crime prevention, or crime detection any device to observe, photograph, or record the activities of persons who are on the property or an approach thereto in areas where there is no reasonable expectation of privacy;

- (C) To use for security purposes, crime prevention, or crime detection any device to observe, photograph, or record the activities of persons who are within the curtilage of the residence of the person using such device. A photograph, videotape, or record made in accordance with this subparagraph, or a copy thereof, may be disclosed by such resident to the district attorney or a law enforcement officer and shall be admissible in a judicial proceeding, without the consent of any person observed, photographed, or recorded; or
- (D) For a law enforcement officer or his or her agent to use a device in the lawful performance of his or her official duties to observe, photograph, videotape, or record the activities of persons that occur in the presence of such officer or his or her agent;
- (3) Any person to go on or about the premises of another or any private place, except as otherwise provided by law, for the purpose of invading the privacy of others by eavesdropping upon their conversations or secretly observing their activities;
- (4) Any person intentionally and secretly to intercept by the use of any device, instrument, or apparatus the contents of a message sent by telephone, telegraph, letter, or by any other means of private communication;
- (5) Any person to divulge to any unauthorized person or authority the content or substance of any private message intercepted lawfully in the manner provided for in Code Section 16-11-65;
- (6) Any person to sell, give, or distribute, without legal authority, to any person or entity any photograph, videotape, or record, or copies thereof, of the activities of another which occur in any private place and out of public view without the consent of all persons observed;
- (7) Any person, through the use of any device, without the consent of all patients observed, to knowingly photograph or record the activities of patients which occur in a facility that is operated by a county board of health created pursuant to Code Section 31-3-1, except that such acts shall not be unlawful as provided in subparagraphs (2)(A) through (2)(D) of this Code section;
- (8) Any person to intentionally and in a clandestine manner place, or direct someone else to place, a global positioning system monitoring device, or any other electronic monitoring device, on a motor vehicle owned or leased by another person without the consent of such person when such person has a protective order pursuant to Code Section 17-17-16, 19-13-4, or 19-13A-4, or a protective order from another jurisdiction, against the person who places, or directs another to place, the global positioning system monitoring device or other electronic device. Nothing in this paragraph shall be construed to limit electronic monitoring as provided in Code Sections 31-7-12, 31-7-12.1, and 31-6-2; or
- (9) Any person to commit any other acts of a nature similar to those set out in paragraphs (1) through (8) of this Code section which invade the privacy of another.

Relevant Case Law

***Krepps v. State*, 687 S.E.2d 608 (Ga. Ct. App. 2009)**

Defendant was convicted of stalking and appealed, arguing that there was insufficient evidence to support his conviction due to a lack of proof that his conduct would cause a reasonable fear. The defendant repeatedly called the victim and would play music on the calls. When the victim called the number back, the defendant stated “he wanted to be his friend.” The defendant had previously been convicted of harassing the victim and violating probation by contacting the victim. The Court of Appeals affirmed the conviction and held that, while the defendant did not directly threaten the victim, the repeated phone calls caused the victim to become concerned for the victim and the victim’s family’s safety. “A defendant need not engage in unequivocally hostile conduct or make explicit threats in order to be convicted of stalking. Even behavior that is not overtly threatening can provide the requisite degree of intimidation and harassment if it is ongoing, repetitious, and engaged in despite the communicated wishes of the victim.”

***State v. Burke*, 695 S.E.2d 649 (Ga. 2010)**

Defendant was convicted of aggravated stalking by violating a protection order and appealed. Specifically, the defendant allegedly violated the protection order by mailing the victim a poem from jail. The Supreme Court of Georgia reversed the conviction and reiterated that the “harassing and intimidating” conduct must be established by “a pattern of harassing and intimidating behavior.” In this case, it was held that defendant's single violation of mailing a poem to the victim did not establish a “pattern” and therefore was insufficient to prove aggravated stalking .

***Jones v. State*, 713 S.E.2d 895 (Ga. Ct. App. 2011)**

Defendant was convicted of aggravated stalking and other offenses and appealed arguing, *inter alia*, ineffective assistance of counsel for failure to move for a directed verdict. The court analyzed what is considered “surveillance” under the stalking statute and stated that, although the stalking statute does not to define the term “surveillance,” the term was readily understood by people of ordinary intelligence as meaning a close watch kept over someone or something. Therefore, the indictment put the defendant on notice that driving to, parking at, and sitting outside the victim’s residence constituted “surveillance.” Evidence presented at trial established that the defendant repeatedly called and texted the victim, stole her property, hit the victim, threatened the victim, and went to the victim’s residence. Since there was no fatal variance between the indictment and the trial evidence, the Court of Appeals found that defense counsel’s failure to move for a directed verdict on this ground was not deficient.

***Oliver v. State*, 753 S.E.2d 468 (Ga. Ct. App. 2014)**

Defendant was convicted of aggravated stalking and appealed arguing there was insufficient evidence to support her conviction. The victim, the defendant’s mother, obtained a protection order against the defendant due to escalating violence. After the order was issued, the defendant called the victim and advised she was coming over to her home and that she was going to commit suicide. The victim advised the defendant to not come to the house and when the defendant arrived, the victim would not allow the defendant inside her home. The Court of Appeals noted that a single violation of a protective order, by itself, does not amount to aggravated stalking but rather a pattern

of harassing and intimidating behavior is necessary for aggravated stalking. While the “pattern” all occurred on one day, the Court of Appeals found there was sufficient evidence to support the conviction when the defendant repeatedly violated the protective order by (1) calling Goss, (2) appearing at her home, (3) knocking on her door, (4) yelling and screaming at the victim, (5) demanding that the victim allow her inside the residence, and (6) refusing to leave the property despite numerous requests by the victim.