

Stalking Protective Order

NOTE:

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 as authorized to assist victims in filling out and filing such petitions and pleadings. OCGA 16-5-93, OCGA 16-5-94(e)

Forms are available at www.gscca.org. Click on FILE and then Family Violence Forms.

A Petition for a Stalking Protective Order is a request by a person, who is not a minor, to the court for a restraining order against another person alleged of stalking the petitioner. A person, who is not a minor, may seek relief by filing a petition on behalf of a minor. Forms for the petition and pleadings may be provided by the clerk of superior court. If deemed necessary to protect the petitioner, the court may order temporary relief in an Ex Parte Order, a copy of which must be immediately furnished to the petitioner.

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Definitions and Effects

Petition for a Stalking Temporary Protective Order

A Petition for a Stalking Temporary Protective Order for is a request to the court provide a restraining order to a person(s) for protection from another person for stalking. The original Petition should be submitted to the superior court judge for a hearing within ten to thirty days. If, by local rule, the clerk does not assign judges, the clerk may aid the petitioner in scheduling an immediate hearing with the judge. (In some counties in which a judge is not present, it may be necessary for the petitioner to travel to another county in the circuit to come before the judge.) OCGA 19-13-3(b), OCGA 19-13-3(c), OCGA 16-5-94(e) After a Petition for Stalking Temporary Protective Order is filed, if the court establishes that stalking has occurred:

- The Court may issue an Ex Parte Order to protect the petitioner. OCGA 16-5-94(e) OCGA 19-13-3(b)
- The Court may issue a Rule Nisi for hearing within ten days, if possible, but no later than thirty days from the date of filing. OCGA 16-5-94(e), OCGA 19-13-3(c)

Stalking

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. OCGA 16-5-90(a)

- The term "contact" shall mean any communication in person, by telephone, by mail, by broadcast, by computer, by computer network, or by any other electronic device.
- The term "place or places" shall include any public or private property occupied by the victim other than the residence of the defendant.
- 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.

A person commits the offense of Stalking when such person, in violation of a bond to keep the peace posted pursuant to OCGA 17-6-110, standing order issued under OCGA 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. OCGA 16-5-90(a)

- As provided in OCGA 16-5-90(c), a person who commits the offense of stalking is guilty of a misdemeanor. OCGA 16-5-90(b)
- 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. OCGA 16-5-90(c)
- 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. OCGA 16-5-90(d)

Ex Parte Order

An Ex Parte Order is an Order granted at the instance and for the benefit of a party, without notice to any person adversely interested, to protect the petitioner or a minor of the household from stalking. The Order may be granted 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. If issued, a copy must immediately be furnished to the petitioner. Issue and sign a Summons to the defendant and forward it with Sheriff's Entry of Service and copies of the Petition, Order, and Rule Nisi Order to the sheriff's department for service on the defendant. **The clerk shall immediately furnish the petitioner with a file-stamped copy of the Petition, Order, and Rule Nisi Order and send a file-stamped copy of the Ex Parte Order to the sheriff to be retained as long as it remains in effect. OCGA 19-13-3(b), OCGA 19-13-4(b). The clerk shall scan, index, and electronically transmit Order to the Georgia Protective Order Registry by the end of the next business day after filing the Order. OCGA 19-13-53(b)**

Protective Order or Consent Agreement

The court may grant a Protective Order or approve a Consent Agreement to bring about a cessation of conduct constituting stalking. Order or agreements may: OCGA 16-5-94(d)

- Direct a party to refrain from such conduct;
- Order a party to refrain from harassing or interfering with the other;
- Award costs and attorney's fees to either party;
- Order either or all parties to receive appropriate psychiatric or psychological services as a further measure to prevent the recurrence of stalking

Temporary Protective Order

A Temporary Protective Order is a document signed by a Superior Court Judge ordering a person who has committed stalking to stay away from his/her victim. The Order is effective throughout the state and must be enforced by every superior court, sheriff, and law enforcement officer. A Temporary Protective Order may remain in effect up to one year, unless the court, after a hearing, converts the Temporary Order to an order effective no more than three years or to a permanent Order. **The clerk shall immediately furnish the petitioner with a file-stamped copy of the Temporary Protective Order and send a file-stamped copy of the Temporary Protective Order to the sheriff to be retained as long as the it remains in effect. OCGA 19-13-4, OCGA 16-5-94(e)** The clerk shall scan, index, and electronically transmit the Temporary Protective Order to the Georgia Protective Order Registry by the end of the next business day after filing the Order. OCGA 19-13-53(b)

Temporary Protective Order Standardized Form

Standardized Forms shall be used for the issuance of any protective order. Temporary Protective Order forms are promulgated by the Uniform Superior Court Rules and are subject to the approval of the Georgia Crime Information Center and the Georgia Superior Court Clerks' Cooperative Authority. They must contain, at a minimum, all information required for entry into the protective order registry and the National Crime Information Center Protection Order File. The forms may be obtained from the Administrative Office of the Courts, and are also available at the Georgia Superior Court Clerks' Cooperative Authority website, www.gsccca.org (<https://www.gsccca.org>). **NOTE:** A court may modify the standardized form to comply with the court's application of the law and facts to an individual case. OCGA 19-13-53(a)

Costs

If the Petition is filed separately and not in combination with a divorce action, no civil action filing fee or sheriff's service fee is charged for the filing and serving of a Family Violence Petition. If the Petition is filed as part of the divorce, the civil action filing fee for the divorce is the only charge. OCGA 15-6-77(e)(4) and OCGA 15-16-21(h).

Should either the Petitioner or Respondent in a Temporary Protective Order action require the services of a foreign language interpreter or sign language interpreter, reasonable fees for such interpreters shall be paid from Local Victim Assistance Program funds. OCGA 15-6-77(e)(4)

Venue

Resident Respondent

The superior court of the county where the respondent resides has jurisdiction over all proceedings. OCGA 16-5-94(b), OCGA 19-13-2(a).

Nonresident Respondent

For proceedings involving a nonresident respondent, the superior court where the petitioner resides or the superior court where an act involving family violence allegedly occurred has jurisdiction, where the act involving family violence meets the elements for personal jurisdiction provided for in OCGA 9-10-91(2)-(3). OCGA 19-13-2(b)

Comments

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