

235.19A STALKING (COURT ORDER IN EFFECT). FELONY. MISDEMEANOR.

*NOTE WELL: The first violation of this section is a misdemeanor. See N.C.P.I.-Crim. 235.19. A person who commits the offense of stalking after having been previously convicted of stalking is guilty of a felony. See N.C.P.I.-Crim. 235.19B.*

The defendant has been charged with stalking when there was a court order in effect prohibiting the defendant from stalking.

For you to find the defendant guilty of this offense, the State must prove three things beyond a reasonable doubt:

First, that the defendant willfully [on more than one occasion harassed<sup>1</sup>] [engaged in a course of conduct<sup>2</sup> directed at] the victim without legal purpose.

Second, that the defendant at that time knew or should have known that the [harassment] [course of conduct] would cause a reasonable person to:

- a. [fear for [that person's safety] [the safety of that person's [immediate family] [close personal associates]. One is placed in reasonable fear when a person of reasonable firmness, under the same or similar circumstances, would fear [death] [bodily injury].]
- b. [suffer substantial emotional distress by placing that person in fear of [death] [bodily injury] [continued harassment]].<sup>3</sup>

And Third, that there was a court order in effect which had been issued on (*name date*) [pursuant to North Carolina law] [by the courts of another state] [by the court of an Indian tribe] prohibiting the defendant from stalking.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date(s), the defendant willfully [on more than one occasion harassed] [engaged in a course of conduct directed at] the victim without legal purpose, that the defendant at that time knew or should have known that the [harassment] [course of conduct] would cause a reasonable person to:

- a. [fear for [that person's safety] [the safety of that person's [immediate family] [close personal associates]]].
- b. [suffer substantial emotional distress by placing that person in fear of [death] [bodily injury] [continued harassment]],

and that there was a court order in effect which had been issued on (*name date*) [pursuant to North Carolina law] [by the courts of another state] [by the court of an Indian tribe], prohibiting the defendant from stalking, it would be your duty to return a verdict of guilty of felonious stalking. If you do not so find or if you have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of felonious stalking, but will consider whether the defendant is guilty of misdemeanor stalking. Misdemeanor stalking differs from felonious stalking in that it is not necessary for there to be a court order in effect prohibiting the defendant from stalking.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant willfully [on more than one occasion harassed] [engaged in a course of conduct directed at] the victim without legal purpose, and that the defendant at that time knew or should have known that the [harassment] [course of conduct] would cause a reasonable person to:

- a. [fear for [that person’s safety] [the safety of that person’s [immediate family] [close personal associates]]],
- b. [suffer substantial emotional distress by placing that person in fear of [death] [bodily injury] [continued harassment]],

it would be your duty to return a verdict of guilty of misdemeanor stalking. If you do not so find or have a reasonable doubt as to one or both of these things, it would be your duty to return a verdict of not guilty.

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- 1. For a definition of “harasses or harassment” see N.C. Gen. Stat. § 14-277.3A(b)(2).
  - 2. For a definition of “course of conduct” see N.C. Gen. Stat. § 14-277.3A(b)(1).
  - 3. *State v. Ferebee*, 137 N.C. App. 710 (2000).