

State Laws

In considering these offenses, the university will, if required by law, refer to the laws of Rhode Island, North Carolina and/or Massachusetts. For state law definitions of sexual assault, dating violence, domestic violence and stalking, please refer to the campus-specific section.

Providence

Rhode Island

Johnson & Wales University encourages individuals to report any incidents which may be violations of state law to law enforcement authorities. Doing so does not preclude an individual from reporting the incident to the university. The following definitions and statutes are taken from the Rhode Island General Laws that may be relevant to misconduct described in this policy.

Rhode Island

Sexual Assault

R.I. General Laws § 11-37

§ 11-37-2

First degree sexual assault. – A person is guilty of first degree sexual assault if he or she engages in sexual penetration with another person, and if any of the following circumstances exist:

- (1) The accused, not being the spouse, knows or has reason to know that the victim is mentally incapacitated, mentally disabled or physically helpless.
- (2) The accused uses force or coercion.
- (3) The accused, through concealment or by the element of surprise, is able to overcome the victim.
- (4) The accused engages in the medical treatment or examination of the victim for the purpose of sexual arousal, gratification or stimulation.

§ 11-37-4

Second degree sexual assault. – A person is guilty of a second-degree sexual assault if he or she engages in sexual contact with another person and if any of the following circumstances exist:

- (1) The accused knows or has reason to know that the victim is mentally incapacitated, mentally disabled or physically helpless.
- (2) The accused uses force, element of surprise, or coercion.
- (3) The accused engages in the medical treatment or examination of the victim for the purpose of sexual arousal, gratification or stimulation.

§ 11-37-6

Third degree sexual assault. – A person is guilty of third degree sexual assault if he or she is over the age of eighteen (18) years and engaged in sexual penetration with another person over the age of fourteen (14) years and under the age of consent, sixteen (16) years of age.

Dating Violence and Domestic Violence

R.I. General Laws § 12-29

§ 12-29-2

Definitions.

(a) "Domestic violence" includes, but is not limited to, any of the following crimes when committed by one family or household member against another:

- (1) Simple assault (§ 11-5-3);
- (2) Felony assaults (§§ 11-5-1, 11-5-2, and 11-5-4);
- (3) Vandalism (§ 11-44-1);
- (4) Disorderly conduct (§ 11-45-1);
- (5) Trespass (§ 11-44-26);
- (6) Kidnapping (§ 11-26-1);
- (7) Child-snatching (§ 11-26-1.1);
- (8) Sexual assault (§§ 11-37-2, 11-37-4);
- (9) Homicide (§§ 11-23-1 and 11-23-3);
- (10) Violation of the provisions of a protective order entered pursuant to § 15-5-19, chapter 15 of title 15, or chapter 8.1 of title 8 where the respondent has knowledge of the order and the penalty for its violation or a violation of a no contact order issued pursuant to § 12-29-4;
- (11) Stalking (§§ 11-59-1 et seq.);
- (12) Refusal to relinquish or to damage or to obstruct a telephone (§ 11-35-14);
- (13) Burglary and Unlawful Entry (§ 11-8-1 et seq.);
- (14) Arson (§ 11-4-2 et seq.);
- (15) Cyberstalking and cyberharassment (§ 11-52-4.2); and
- (16) Domestic assault by strangulation § 11-5-2.3.

(b) "Family or household member" means spouses, former spouses, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past three (3) years, and persons who have a child in common regardless of whether they have been married or have lived together, or if persons who are or have been in a substantive dating or engagement relationship within the past one year which shall be determined by the court's consideration of the following factors:

- (1) the length of time of the relationship;
- (2) the type of the relationship;
- (3) the frequency of the interaction between the parties.

(c) "Protective order" means an order issued pursuant to § 15-5-19, chapter 15 of title 15, or chapter 8.1 of title 8.

(d) "Victim" means a family or household member who has been subjected to domestic violence

Strangulation

R.I. General Law § 11-5-2-3

§ 11-5-2.3 Domestic assault by strangulation. –

(a) Every person who shall make an assault or battery, or both, by strangulation, on a family or household member as defined in subsection 12-29-2(b), shall be punished by imprisonment for not more than ten (10) years.

(b) Where the provisions of "The Domestic Violence Prevention Act", chapter 29 of title 12, are applicable, the penalties for violation of this section shall also include the penalties as provided in § 12-29-5.

(c) "Strangulation" means knowingly and intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person, with the intent to cause that person harm.

Stalking

R.I. General Laws § 11-59

§ 11-59-2 Stalking prohibited. –

(a) Any person who: (1) harasses another person; or (2) willfully, maliciously and repeatedly follows another person with the intent to place that person in reasonable fear of bodily injury, is guilty of the crime of stalking.

(b) Stalking shall be deemed a felony punishable by imprisonment for not more than five (5) years, by a fine of not more than ten thousand dollars (\$10,000), or both.

Cyberstalking and Cyberharassment

R.I. General Laws 11-52-4.2

(a) Whoever transmits any communication by computer or other electronic device to any person or causes any person to be contacted for the sole purpose of harassing that person or his or her family is guilty of a misdemeanor, and shall be punished by a fine of not more than five hundred dollars (\$500), by imprisonment for not more than one year, or both. For the purpose of this section, "harassing" means any knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or bothers the person, and which serves no legitimate purpose. The course of conduct must be of a kind that would cause a reasonable person to suffer substantial emotional distress, or be in fear of bodily injury. "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

(b) A second or subsequent conviction under subsection (a) of this section shall be deemed a felony punishable by imprisonment for not more than two (2) years, by a fine of not more than six thousand dollars (\$6,000), or both.

Unauthorized Dissemination of Indecent Material

R.I. General Laws 11-64-3

(a) A person is guilty of unauthorized dissemination of a sexually explicit visual image of another person when the person intentionally, by any means, disseminates, publishes, or sells:

- (1) A visual image that depicts another identifiable person eighteen (18) years or older engaged in sexually explicit conduct or of the intimate areas of that person;
- (2) The visual image was made, captured, recorded, or obtained under circumstances in which a reasonable person would know or understand that the image was to remain private;

(3) The visual image was disseminated, published, or sold without the consent of the depicted person; and

(4) With knowledge or with reckless disregard for the likelihood that the depicted person will suffer harm, or with the intent to harass, intimidate, threaten, or coerce the depicted person.

(b) Subsection (a) shall not apply to:

(1) A visual image that involves voluntary exposure of intimate areas or of sexually explicit conduct in a public or commercial setting, or in a place where a person does not have a reasonable expectation of privacy;

(2) Dissemination made in the public interest, scientific activities, or educational activities;

(3) Dissemination made in the course of a lawful public proceeding;

(4) Dissemination made for purposes of law enforcement, criminal reporting, corrections, legal proceedings, the reporting of unlawful conduct, or for medical treatment; or

(5) Dissemination of an image that constitutes a matter of public concern, such as a matter related to a newsworthy event or related to a public figure.

(c) For the purposes of this section, "intimate areas" means the naked genitals, pubic area, buttocks, or any portion of the female breast below the top of the areola of a person that the person intended to protect from public view.

(d) A first violation of this section shall be a misdemeanor and, upon conviction, subject to imprisonment of not more than one year, a fine of not more than one thousand dollars (\$1,000), or both. A second or subsequent violation of this section shall be a felony and, upon conviction, subject to imprisonment for not more than three (3) years, a fine of not more than three thousand dollars (\$3,000), or both.

(e) Any person who intentionally threatens to disclose any visual image described in subsection (a) and makes the threat to obtain a benefit in return for not making the disclosure or in connection with the threatened disclosure, shall be guilty of a felony and, upon conviction, be subject to imprisonment for up to five (5) years, a fine of up to five thousand dollars (\$5,000), or both.

(f) Any person who demands payment of money, property, services, or anything else of value from a person in exchange for removing any visual image described in subsection (a) from public view shall be guilty of a felony and, upon conviction, be subject to imprisonment for up to five (5) years, a fine of up to five thousand dollars (\$5,000), or both.

(g) Those in violation of this section shall not be subject to sex offender registration requirements as set forth in chapter 37.1 of title 11 entitled "Sexual Offender Registration and Community Notification Act."

(h) A violation of this section is committed within this state if any conduct that is an element of the offense, or any harm to the depicted person resulting from the offense, occurs in this state.

(i) Nothing in this section shall be construed to impose liability on an interactive computer service, as defined in 47 U.S.C. § 230(f)(2), an information service, as defined in 47 U.S.C. § 153, or a telecommunications service, as defined in § 44-18-7.1, for content provided by another person.

Consent

Consent, in reference to sexual activity, is not defined by statute in Rhode Island. However, lack of consent due to force or incapacitation is an element of the crime of sexual assault.

Massachusetts

The following definitions and statutes are taken from the Massachusetts State Laws that may be relevant to misconduct described in this policy.

Sexual Assault

Indecent Assault and Battery: MGL c.265, s.13h

Section 13H. Whoever commits an indecent assault and battery on a person who has attained age fourteen shall be punished by imprisonment in the state prison for not more than five years, or by imprisonment for not more than two and one-half years in a jail or house of correction.

Whoever commits an indecent assault and battery on an elder or person with a disability, as defined in section 13K, shall be punished by imprisonment in the state prison for not more than 10 years, or by imprisonment in the house of correction for not more than 21/2 years, and whoever commits a second or subsequent such offense shall be punished by imprisonment in the state

prison for not more than 20 years. A prosecution commenced under this paragraph shall not be placed on file nor continued without a finding.

Rape: MGL c.265, s.22

Section 22.

(a) Whoever has sexual intercourse or unnatural sexual intercourse with a person, and compels such person to submit by force and against his will, or compels such person to submit by threat of bodily injury and if either such sexual intercourse or unnatural sexual intercourse results in or is committed with acts resulting in serious bodily injury, or is committed by a joint enterprise, or is committed during the commission or attempted commission of an offense defined in section fifteen A, fifteen B, seventeen, nineteen or twenty-six of this chapter, section fourteen, fifteen, sixteen, seventeen or eighteen of chapter two hundred and sixty-six or section ten of chapter two hundred and sixty-nine shall be punished by imprisonment in the state prison for life or for any term of years.

No person serving a sentence for a second or subsequent such offense shall be eligible for furlough, temporary release, or education, training or employment programs established outside a correctional facility until such person shall have served two-thirds of such minimum sentence or if such person has two or more sentences to be served otherwise than concurrently, two-thirds of the aggregate of the minimum terms of such several sentences.

(b) Whoever has sexual intercourse or unnatural sexual intercourse with a person and compels such person to submit by force and against his will, or compels such person to submit by threat of bodily injury, shall be punished by imprisonment in the state prison for not more than twenty years; and whoever commits a second or subsequent such offense shall be punished by imprisonment in the state prison for life or for any term or years.

Whoever commits any offense described in this section while being armed with a firearm, rifle, shotgun, machine-gun or assault weapon, shall be punished by imprisonment in the state prison for not less than ten years. Whoever commits a second or subsequent such offense shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 15 years.

No person serving a sentence for a second or subsequent such offense shall be eligible for furlough, temporary release, or education, training or employment programs established outside a correctional facility until such person shall have served two-thirds of such minimum sentence or if such person has two or more sentences to be served otherwise than concurrently, two-thirds of the aggregate of the minimum terms of such several sentences.

For the purposes of prosecution, the offense described in subsection (b) shall be a lesser included offense to that described in subsection (a).

Dating Violence and Domestic Violence

Massachusetts law does not define the crimes of "dating violence" or "domestic violence". However, state law defines the crime of "abuse" in G.L. c. 209A § 1 as: "the occurrence of one or more of the following acts between family or household members:

- (a) attempting to cause or causing physical harm;
- (b) placing another in fear of imminent serious physical harm;
- (c) causing another to engage involuntarily in sexual relations by force, threat or duress."

"Family or household members" is defined as: "persons who

- (a) are or were married to one another;
- (b) are or were residing together in the same household;
- (c) are or were related by blood or marriage;
- (d) having a child in common regardless of whether they have ever married or lived together; or
- (e) are or have been in a substantive dating or engagement relationship, which shall be adjudged by district, probate or Boston municipal courts consideration of the following factors:

- (1) the length of time of the relationship;
- (2) the type of relationship;
- (3) the frequency of interaction between the parties; and
- (4) if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship."

Stalking

Stalking is defined under G.L. c. 265, § 43 (a) as follows:

"Whoever (1) willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which seriously alarms or annoys that person and would cause a reasonable

person to suffer substantial emotional distress, and (2) makes a threat with the intent to place the person in imminent fear of death or bodily injury, shall be guilty of the crime of stalking . . . The conduct, acts or threats described in this subsection shall include, but not be limited to, conduct, acts or threats conducted by mail or by use of a telephonic or telecommunication device or electronic communication device including, but not limited to, any device that transfers signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system, including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications.”

Consent

Consent in reference to sexual activity, is not defined by statute in Massachusetts. The lack of consent is an element of the crimes indecent assault and battery and rape.

Charlotte

Johnson & Wales University encourages individuals to report any incidents which may be violations of State Law to law enforcement authorities. Doing so does not preclude an individual from reporting the incident to the university. The following definitions and statutes are taken from the North Carolina General Laws that may be relevant to misconduct described in this policy.

Sexual Assault

Article 7B - Rape and Other Sex Offenses.

§ 14-27.20. Definitions.

The following definitions apply in this Article:

- (1) Repealed by Session Laws 2018-47, s. 4(a), effective December 1, 2018.
- (1a) Against the will of the other person. – Either of the following: a. Without consent of the other person. b. After consent is revoked by the other person, in a manner that would cause a reasonable person to believe consent is revoked.
- (2) Mentally incapacitated. – A victim who due to any act is rendered substantially incapable of either appraising the nature of his or her conduct, or resisting the act of vaginal intercourse or a sexual act.
- (2a) Person who has a mental disability. – A victim who has an intellectual disability or a mental disorder that temporarily or permanently renders the victim substantially incapable of appraising the nature of his or her conduct, or of resisting the act of vaginal intercourse or a sexual act, or of communicating unwillingness to submit to the act of vaginal intercourse or a sexual act.
- (3) Physically helpless. – Any of the following: a. A victim who is unconscious. b. A victim who is physically unable to resist an act of vaginal intercourse or a sexual act or communicate unwillingness to submit to an act of vaginal intercourse or a sexual act.
- (4) Sexual act. – Cunnilingus, fellatio, anilingus, or anal intercourse, but does not include vaginal intercourse. Sexual act also means the penetration, however slight, by any object into the genital or anal opening of another person's body. It is an affirmative defense that the penetration was for accepted medical purposes.
- (5) Sexual contact. – Any of the following: a. Touching the sexual organ, anus, breast, groin, or buttocks of any person. b. A person touching another person with their own sexual organ, anus, breast, groin, or buttocks. c. A person ejaculating, emitting, or placing semen, urine, or feces upon any part of another person.
- (6) Touching. – As used in subdivision (5) of this section, means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim. (1979, c. 682, s. 1; 2002-159, s. 2(a); 2003-252, s. 1; 2006-247, s. 12(a); 2015-181, s. 2; 2018-47, s. 4(a); 2019-245, ss. 5(a), 6(c).)

§ 14-27.21. First-degree forcible rape.

(a) A person is guilty of first-degree forcible rape if the person engages in vaginal intercourse with another person by force and against the will of the other person, and does any of the following:

- (1) Uses, threatens to use, or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon.
- (2) Inflicts serious personal injury upon the victim or another person.
- (3) The person commits the offense aided and abetted by one or more other persons.

(b) Any person who commits an offense defined in this section is guilty of a Class B1 felony.

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes. (1979, c. 682, s. 1; 1979, 2nd Sess., c. 1316, s. 4; 1981, c. 63; c. 106, ss. 1, 2; c. 179, s. 14; 1983, c. 175, ss. 4, 10; c. 720, s. 4; 1994, Ex. Sess., c. 22, s. 2; 2004-128, s. 7; 2015-181, ss. 3(a), (b); 2017-30, s. 1.)

§ 14-27.22. Second-degree forcible rape.

(a) A person is guilty of second-degree forcible rape if the person engages in vaginal intercourse with another person:

- (1) By force and against the will of the other person; or
- (2) Who has a mental disability or who is mentally incapacitated or physically helpless, and the person performing the act knows or should reasonably know the other person has a mental disability or is mentally incapacitated or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class C felony.

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child conceived during the commission of the rape, nor does the person have any rights related to the child under Chapter 48 of the General Statutes or Subchapter I of Chapter 7B of the General Statutes. (1979, c. 682, s. 1; 1979, 2nd Sess., c. 1316, s. 5; 1981, cc. 63, 179; 1993, c. 539, s. 1130; 1994, Ex. Sess., c. 24, s. 14(c); 2002-159, s. 2(b); 2004-128, s. 8; 2015-181, ss. 4(a), (b); 2018-47, s. 4(b).)

§ 14-27.23. Statutory rape of a child by an adult.

(a) A person is guilty of statutory rape of a child by an adult if the person is at least 18 years of age and engages in vaginal intercourse with a victim who is a child under the age of 13 years.

(b) A person convicted of violating this section is guilty of a Class B1 felony and shall be sentenced pursuant to Article 81B of Chapter 15A of the General Statutes, except that in no case shall the person receive an active punishment of less than 300 months, and except as provided in subsection (c) of this section. Following the termination of active punishment, the person shall be enrolled in satellite-based monitoring for life pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes.

(c) Notwithstanding the provisions of Article 81B of Chapter 15A of the General Statutes, the court may sentence the defendant to active punishment for a term of months greater than that authorized pursuant to G.S. 15A-1340.17, up to and including life imprisonment without parole, if the court finds that the nature of the offense and the harm inflicted are of such brutality, duration, severity, degree, or scope beyond that normally committed in such crimes, or considered in basic aggravation of these crimes, so as to require a sentence to active punishment in excess of that authorized pursuant to G.S. 15A-1340.17. If the court sentences the defendant pursuant to this subsection, it shall make findings of fact supporting its decision, to include matters it considered as egregious aggravation. Egregious aggravation can include further consideration of existing aggravating factors where the conduct of the defendant falls outside the heartland of cases even the aggravating factors were designed to cover. Egregious aggravation may also be considered based on the extraordinarily young age of the victim, or the depraved torture or mutilation of the victim, or extraordinary physical pain inflicted on the victim.

(d) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes.

(e) The offense under G.S. 14-27.24 is a lesser included offense of the offense in this section. (2008-117, s. 1; 2015-181, s. 5(a), 5(b).)

§ 14-27.24. First-degree statutory rape.

(a) A person is guilty of first-degree statutory rape if the person engages in vaginal intercourse with a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim.

(b) Any person who commits an offense defined in this section is guilty of a Class B1 felony.

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes. (1979, c. 682, s. 1; 1979, 2nd Sess., c. 1316, s. 4; 1981, c. 63; c. 106, ss. 1, 2; c. 179, s. 14; 1983, c. 175, ss. 4, 10; c. 720, s. 4; 1994, Ex. Sess., c. 22, s. 2; 2004-128, s. 7; 2015-181, s. 6.)

§ 14-27.25. Statutory rape of person who is 15 years of age or younger.

(a) A defendant is guilty of a Class B1 felony if the defendant engages in vaginal intercourse with another person who is 15 years of age or younger and the defendant is at least 12 years old and at least six years older than the person, except when the defendant is lawfully married to the person.

(b) Unless the conduct is covered under some other provision of law providing greater punishment, a defendant is guilty of a Class C felony if the defendant engages in vaginal intercourse with another person who is 15 years of age or younger and the defendant is at least 12 years old and more than four but less than six years older than the person, except when the defendant is lawfully married to the person. (1995, c. 281, s. 1; 2015-62, s. 1(a); 2015-181, s. 7(a), (b).)

§ 14-27.26. First-degree forcible sexual offense.

(a) A person is guilty of a first degree forcible sexual offense if the person engages in a sexual act with another person by force and against the will of the other person, and does any of the following:

(1) Uses, threatens to use, or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon.

(2) Inflicts serious personal injury upon the victim or another person.

(3) The person commits the offense aided and abetted by one or more other persons.

(b) Any person who commits an offense defined in this section is guilty of a Class B1 felony. (1979, c. 682, s. 1; 1979, 2nd Sess., c. 1316, s. 6; 1981, c. 63; c. 106, ss. 3, 4; c. 179, s. 14; 1983, c. 175, ss. 5, 10; c. 720, s. 4; 1994, Ex. Sess., c. 22, s. 3; 2015-181, ss. 8(a), (b); 2017-30, s. 2.)

§ 14-27.27. Second-degree forcible sexual offense.

(a) A person is guilty of second degree forcible sexual offense if the person engages in a sexual act with another person:

- (1) By force and against the will of the other person; or
- (2) Who has a mental disability or who is mentally incapacitated or physically helpless, and the person performing the act knows or should reasonably know that the other person has a mental disability or is mentally incapacitated or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class C felony. (1979, c. 682, s. 1; 1979, 2nd Sess., c. 1316, s. 7; 1981, c. 63; c. 179, s. 14; 1993, c. 539, s. 1131; 1994, Ex. Sess., c. 24, s. 14(c); 2002-159, s. 2(c); 2015-181, ss. 9(a), (b); 2018-47, s. 4(c).)

§ 14-27.33. Sexual battery.

(a) A person is guilty of sexual battery if the person, for the purpose of sexual arousal, sexual gratification, or sexual abuse, engages in sexual contact with another person:

- (1) By force and against the will of the other person; or
- (2) Who has a mental disability or who is mentally incapacitated or physically helpless, and the person performing the act knows or should reasonably know that the other person has a mental disability or is mentally incapacitated or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class A1 misdemeanor. (2003-252, s. 2; 2015-181, s. 15; 2018-47, s. 4(d).)

Dating Violence

North Carolina state law does not provide a definition for dating violence.

Domestic Violence

Chapter 50 B

§ 50B-1. Domestic violence; definition.

(a) Domestic violence means the commission of one or more of the following acts upon an aggrieved party or upon a minor child residing with or in the

custody of the aggrieved party by a person with whom the aggrieved party has or has had a personal relationship, but does not include acts of self-defense:

- (1) Attempting to cause bodily injury, or intentionally causing bodily injury; or
- (2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury or continued harassment, as defined in G.S. 14-277.3A, that rises to such a level as to inflict substantial emotional distress; or
- (3) Committing any act defined in G.S. 14-27.21 through G.S. 14-27.33.

(b) For purposes of this section, the term "personal relationship" means a relationship wherein the parties involved:

- (1) Are current or former spouses;
- (2) Are persons of opposite sex who live together or have lived together;
- (3) Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16;
- (4) Have a child in common;
- (5) Are current or former household members;
- (6) Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship. For purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.

(c) As used in this Chapter, the term "protective order" includes any order entered pursuant to this Chapter upon hearing by the court or consent of the parties. (1979, c. 561, s. 1; 1985, c. 113, s. 1; 1987, c. 828; 1987 (Reg. Sess., 1988), c. 893, ss. 1, 3; 1995 (Reg. Sess., 1996), c. 591, s. 1; 1997-471, s. 1; 2001-518, s. 3; 2003-107, s. 1; 2009-58, s. 5; 2015-181, s. 36.)

Stalking

§ 14-277.3A. Stalking.

(a) Legislative Intent. — The General Assembly finds that stalking is a serious problem in this State and nationwide. Stalking involves severe intrusions on the victim's personal privacy and autonomy. It is a crime that causes a long-lasting impact on the victim's quality of life and creates risks to the security and safety of the victim and others, even in the absence of express threats of physical harm. Stalking conduct often becomes increasingly violent over time.

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. Therefore, the General Assembly enacts this law to encourage effective intervention by the criminal justice system before stalking escalates into behavior that has serious or lethal consequences. The General Assembly intends to enact a stalking statute that permits the criminal justice system to hold stalkers accountable for a wide range of acts, communications, and conduct. The General Assembly recognizes that stalking includes, but is not limited to, a pattern of following, observing, or monitoring the victim, or committing violent or intimidating acts against the victim, regardless of the means.

(b) Definitions. — The following definitions apply in this section:

- (1) 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.
- (2) Harasses or harassment. — Knowing conduct, including written or printed communication or transmission, telephone, cellular, or other wireless telephonic communication, facsimile transmission, pager messages or transmissions, 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.
- (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.

(c) Offense. — A defendant is guilty of stalking if the defendant willfully on more than one occasion harasses another person without legal purpose or willfully engages in a course of conduct directed at a specific person without legal purpose and the defendant knows or should know that the harassment or the course of conduct would cause a reasonable person to do any of the following:

- (1) Fear for the person's safety or the safety of the person's immediate family or close personal associates.
- (2) Suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment.

(d) Classification. — A violation of this section is a Class A1 misdemeanor. A defendant convicted of a Class A1 misdemeanor under this section, who is sentenced to a community punishment, shall be placed on supervised probation in addition to any other punishment imposed by the court. A defendant who commits the offense of stalking after having been previously convicted of a stalking offense is guilty of a Class F felony. A defendant who commits the offense of stalking when there is a court order in effect prohibiting the conduct described under this section by the defendant against the victim is guilty of a Class H felony.

(e) Jurisdiction. — Pursuant to G.S. 15A-134, 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 this State. (2008-167, s. 2.)

Consent

North Carolina Criminal Law prohibits engaging in sexual activity by force and against the will of the other person or acts that are against people who are mentally incapacitated or physically helpless. Against a person's will can be: without consent entirely; or after consent is given and then later revoked by the other person, in a manner that would cause a reasonable person to believe consent is revoked. N.C.G.S. 14-27.20(1a).