

Civil No-Contact Orders for the Protection of People Who are Victims of Stalking or Nonconsensual Sexual Conduct

This Act authorizes courts to issue protective orders, similar to domestic violence orders, in situations where someone has been a victim of stalking or nonconsensual sexual conduct committed by a person with whom the victim is not in a domestic relationship. Upon a finding that the victim has suffered unlawful conduct, the court is authorized to issue temporary or permanent orders restraining the conduct of the perpetrator. “Unlawful conduct” is defined to include nonconsensual sexual conduct and stalking. “Nonconsensual sexual conduct” is defined as any intentional or knowing touching, fondling or sexual penetration by a person, directly or through clothing, of the sexual organs of another for the purpose of sexual gratification or arousal where consent is not freely given. A “victim” is defined as a person against whom unlawful conduct is committed other than in a situation where an action could be brought under the domestic violence laws.

Under this Act, the victim, or a person acting on the behalf of an incompetent victim, may bring an action. The Act allows an action under this law to be brought without paying filing fees to the clerk of court or service fees to the sheriff. If the court finds that the victim suffered unlawful conduct, the court may order the perpetrator not to visit, assault, molest or otherwise interfere with the victim, and order the perpetrator to cease stalking, harassing, abusing, injuring, or contacting the victim by telephone, written communication or electronic means. The court may also order the perpetrator to stay away from the victim including prohibitions against entering the victim’s residence, school, place of employment or other specified places at times when the victim is present. Temporary orders may be granted for up to 10 days and may be issued ex parte and after normal business hours under certain circumstances. Permanent orders may be granted for up to one year. All orders may be renewed. Violations of an order are punished as contempt of court.

Submitted as:
North Carolina
Session Law 2004-194
Status: Enacted into law in 2004.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as “An Act to Establish Civil No-Contact
2 Orders for the Protection of People Who are Victims of Unlawful Conduct.”

3
4 Section 2. [*Definitions.*]

5 (a) As used in this Act:

6 (1) Abuse. - To physically or mentally harm, harass, intimidate, or interfere with
7 the personal liberty of another.

8 (2) Civil no-contact order. - An order granted under this Act which includes a
9 remedy authorized by section 6 of this Act.

10 (3) Nonconsensual. - A lack of freely given consent.

11 (4) Sexual conduct. - Any intentional or knowing touching, fondling, or sexual
12 penetration by a person, either directly or through clothing, of the sexual organs, anus, or breast
13 of another, whether an adult or a minor, for the purpose of sexual gratification or arousal. For
14 purposes of this subdivision, the term shall include the transfer or transmission of semen.

15 (5) Sexual penetration. - The penetration, however slight, by any object into the
16 genital or anal opening of another person's body. Evidence of emission of semen is not required
17 to prove sexual penetration.

18 (6) Stalking. - Following on more than one occasion or otherwise harassing, as
19 defined in [insert citation], another person without legal purpose with the intent to do any of the
20 following:

21 I. Place the person in reasonable fear either for the person's safety or the
22 safety of the person's immediate family or close personal associates.

23 II. Cause that person to suffer substantial emotional distress by placing
24 that person in fear of death, bodily injury, or continued harassment and that in fact causes that
25 person substantial emotional distress.

26 (7) Unlawful conduct. - The commission of one or more of the following acts
27 upon a person, but does not include acts of self-defense or defense of others:

28 I. Nonconsensual sexual conduct, including single incidences of
29 nonconsensual sexual conduct.

30 II. Stalking.

31 (8) Victim. - A person against whom an act of unlawful conduct has been
32 committed by another person not involved in a personal relationship with the person as defined
33 in [insert citation].

34
35 Section 3. [*Commencement of Action; Filing Fees not Permitted; Assistance.*]

36 (a) An action is commenced under this Act by filing a verified complaint for a civil no-
37 contact order in [district court] or by filing a motion in any existing civil action, by any of the
38 following:

39 (1) A person who is a victim of unlawful conduct that occurs in this State.

40 (2) A competent adult who resides in this State on behalf of a minor child or an
41 incompetent adult who is a victim of unlawful conduct that occurs in this State.

42 (b) No court costs shall be assessed for the filing or service of the complaint, or the
43 service of any orders.

44 (c) An action commenced under this Act may be filed in any county permitted under
45 [insert citation] or where the unlawful conduct took place.

46 (d) If the victim states that disclosure of the victim's address would place the victim or
47 any member of the victim's family or household at risk for further unlawful conduct, the victim's
48 address may be omitted from all documents filed with the court. If the victim has not disclosed
49 an address under this subsection, the victim shall designate an alternative address to receive
50 notice of any motions or pleadings from the opposing party.

51
52 Section 4. [*Process for Action for No-Contact Order.*]

53 (a) Any action for a civil no-contact order requires that a separate summons be issued and
54 served. The summons issued pursuant to this Act shall require the respondent to answer within
55 [10 days] of the date of service. Attachments to the summons shall include the complaint for the
56 civil no-contact order, and any temporary civil no-contact order that has been issued and the
57 notice of hearing on the temporary civil no-contact order.

58 (b) Service of the summons and attachments shall be by the sheriff by personal delivery in
59 accordance with [insert citation], and if the respondent cannot with due diligence be served by

60 the sheriff by personal delivery, the respondent may be served by publication by the complainant
61 in accordance with [insert citation].

62 (c) The court may enter a civil no-contact order by default for the remedy sought in the
63 complaint if the respondent has been served in accordance with this section and fails to answer as
64 directed, or fails to appear on any subsequent appearance or hearing date agreed to by the parties
65 or set by the court.

66
67 Section 5. [*Hearsay Exception.*] In proceedings for an order or prosecutions for violation
68 of an order under this Act, the prior sexual activity or the reputation of the victim is inadmissible
69 except when it would be admissible in a criminal prosecution under [insert citation].
70

71 Section 6. [*Civil No-Contact Order; Remedy.*]

72 (a) Upon a finding that the victim has suffered unlawful conduct committed by the
73 respondent, the court may issue temporary or permanent civil no-contact orders as authorized in
74 this Act. In determining whether or not to issue a civil no-contact order, the court shall not
75 require physical injury to the victim.

76 (b) The court may grant one or more of the following forms of relief in its orders under
77 this Act:

78 (1) Order the respondent not to visit, assault, molest, or otherwise interfere with
79 the victim.

80 (2) Order the respondent to cease stalking the victim, including at the victim's
81 workplace.

82 (3) Order the respondent to cease harassment of the victim.

83 (4) Order the respondent not to abuse or injure the victim.

84 (5) Order the respondent not to contact the victim by telephone, written
85 communication, or electronic means.

86 (6) Order the respondent to refrain from entering or remaining present at the
87 victim's residence, school, place of employment, or other specified places at times when the
88 victim is present.

89 (7) Order other relief deemed necessary and appropriate by the court.

90 (c) A civil no-contact order shall include the following notice, printed in conspicuous
91 type: "A knowing violation of a civil no-contact order shall be punishable as contempt of court
92 which may result in a fine or imprisonment."
93

94 Section 7. [*Temporary Civil No-Contact Order; Court Holidays and Evenings.*]

95 (a) A temporary civil no-contact order may be granted ex parte, without evidence of
96 service of process or notice, only if both of the following are shown:

97 (1) It clearly appears from specific facts shown by a verified complaint or
98 affidavit that immediate injury, loss, or damage will result to the victim before the respondent
99 can be heard in opposition.

100 (2) Either one of the following:

101 I. The complainant certifies to the court in writing the efforts, if any, that
102 have been made to give the notice and the reasons supporting the claim that notice should not be
103 required.

104 II. The complainant certified to the court that there is good cause to grant
105 the remedy because the harm that the remedy is intended to prevent would likely occur if the
106 respondent were given any prior notice of the complainant's efforts to obtain judicial relief.

107 (b) Every temporary civil no-contact order granted without notice shall:

108 (1) Be endorsed with the date and hour of issuance.

- 109 (2) Be filed immediately in the clerk's office and entered of record.
110 (3) Define the injury, state why it is irreparable and why the order was granted
111 without notice.
112 (4) Expire by its terms within such time after entry, not to exceed [10 days].
113 (5) Give notice of the date of hearing on the temporary order as provided in
114 section 9 (a) of this Act.

115 (c) If the respondent appears in court for a hearing on a temporary order, the respondent
116 may elect to file a general appearance and testify. Any resulting order may be a temporary order,
117 governed by this section. Notwithstanding the requirements of this section, if all requirements of
118 [insert citation] have been met, the court may issue a permanent order.

119 (d) When the court is not in session, the complainant may file for a temporary order
120 before any judge or magistrate designated to grant relief under this Act. If the judge or magistrate
121 finds that there is an immediate and present danger of harm to the victim and that the
122 requirements of subsection (a) of this section have been met, the judge or magistrate may issue a
123 temporary civil no-contact order. The [chief district court judge] may designate for each [county]
124 at least one judge or magistrate to be reasonably available to issue temporary civil no-contact
125 orders when the court is not in session.
126

127 Section 8. [*Permanent Civil No-Contact Order.*] Upon a finding that the victim has
128 suffered unlawful conduct committed by the respondent, a permanent civil no-contact order may
129 issue if the court additionally finds that process was properly served on the respondent, the
130 respondent has answered the complaint and notice of hearing was given, or the respondent is in
131 default. No permanent civil no-contact order shall be issued without notice to the respondent.
132

133 Section 9. [*Duration; Extension of Orders.*]

134 (a) A temporary civil no-contact order shall be effective for not more than [10 days] as
135 the court fixes, unless within the time so fixed the temporary civil no-contact order, for good
136 cause shown, is extended for a like period or a longer period if the respondent consents. The
137 reasons for the extension shall be stated in the temporary order. In case a temporary civil no-
138 contact order is granted without notice and a motion for a permanent civil no-contact order is
139 made, it shall be set down for hearing at the earliest possible time and takes precedence over all
140 matters except older matters of the same character. When the motion for a permanent civil no-
141 contact order comes on for hearing, the complainant may proceed with a motion for a permanent
142 civil no-contact order, and, if the complainant fails to do so, the judge shall dissolve the
143 temporary civil no-contact order. On [two days'] notice to the complainant or on such shorter
144 notice to that party as the judge may prescribe, the respondent may appear and move its
145 dissolution or modification. In that event the judge shall proceed to hear and determine such
146 motion as expeditiously as the ends of justice require.

147 (b) A permanent civil no-contact order shall be effective for a fixed period of time not to
148 exceed [one year].

149 (c) Any order may be extended one or more times, as required, provided that the
150 requirements of section 7 or section 8 of this Act, as appropriate, are satisfied. The court may
151 renew an order, including an order that previously has been renewed, upon a motion by the
152 complainant filed before the expiration of the current order. The court may renew the order for
153 good cause. The commission of an act of unlawful conduct by the respondent after entry of the
154 current order is not required for an order to be renewed. If the motion for extension is
155 uncontested and the complainant seeks no modification of the order, the order may be extended
156 if the complainant's motion or affidavit states that there has been no material change in relevant

157 circumstances since entry of the order and states the reason for the requested extension.
158 Extensions may be granted only in open court and not under the provisions of [insert citation].

159 (d) Any civil no-contact order expiring on a day the court is not open for business shall
160 expire at the close of the next court business day.

161

162 Section 10. [*Notice of Orders.*]

163 (a) The clerk of court shall deliver on the same day that a civil no-contact order is issued,
164 a certified copy of that order to the sheriff.

165 (b) Unless the respondent was present in court when the order was issued, the sheriff
166 shall serve the order on the respondent and file proof of service in the manner provided for
167 service of process in civil proceedings. If the summons has not yet been served upon the
168 respondent, it shall be served with the order.

169 (c) A copy of the order shall be issued promptly to and retained by the police department
170 of the municipality of the victim's residence. If the victim's residence is not located in a
171 municipality or in a municipality with no police department, copies shall be issued promptly to
172 and retained by the sheriff and the county police department, if any, of the county in which the
173 victim's residence is located.

174 (d) Any order extending, modifying, or revoking any civil no-contact order shall be
175 promptly delivered to the sheriff by the clerk and served by the sheriff in accordance with the
176 provisions of this section.

177

178 Section 11. [*Violation.*] A knowing violation of an order entered pursuant to this Act is
179 punishable as contempt of court.

180

181 Section 12. [*Remedies not Exclusive.*] The remedies provided by this Act are not
182 exclusive but are additional to other remedies provided under law.

183

184 Section 13. [*Severability.*] [Insert severability clause.]

185

186 Section 14. [*Repealer.*] [Insert repealer clause.]

187

188 Section 15. [*Effective Date.*] [Insert effective date.]