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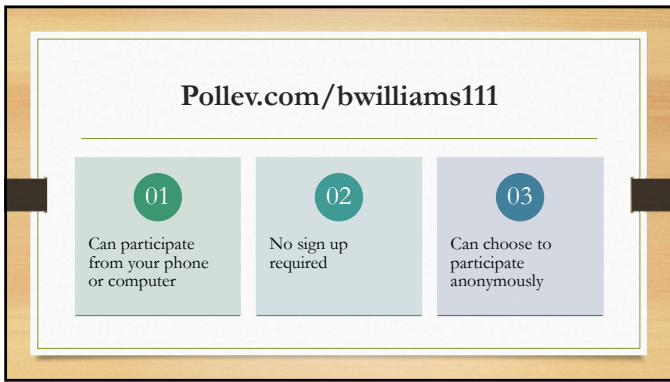
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# AISBI

No. "Serious bodily injury" requires a substantial risk of death or serious permanent disfigurement or coma or permanent/protracted extreme pain or permanent/protracted loss/impairment of function or prolonged hospitalization. G.S. 14-32.4(a).

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## What about...?

After sustaining a bullet wound, John refused help from a passerby at the scene, carried a book bag containing currency and marijuana fifty feet to his car, drove home, and stored the book bag in a cabinet. John then waited almost a half hour, without seeking treatment, before asking a friend for a ride to the hospital. After starting for the hospital, John changed his mind and returned to the crime scene instead, where he gave a statement to police before asking a paramedic at the scene for treatment of the bullet wound. When John finally arrived at the hospital, the staff took x-rays of the wound, squirted water on it, gave him pain pills, and released him after about two hours. John has no on-going difficulties from the wound.

Serious injury? Serious bodily injury? Something else?

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**Sid and Sally go on a date to the zoo. They disagree about whether to see the elephants or the lions first, and Sid punches Sally, causing a bloody nose and bruising. An elementary school class sees the whole thing. Assault in the presence of a minor?**

Yes

No

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### Assault in the Presence of a Minor

No. The minor must reside with, be under the supervision of, and have a "personal relationship with" the perpetrator or the victim. G.S. 14-33(d).

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### Other elements

- Perpetrator and victim must have a personal relationship
- Assault must involve a deadly weapon or a serious injury
- Child must be "in a position to see or hear" the assault

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**Jerome and Kristi are having an argument when he begins to assault her. He punches and kicks her in the bathroom, bedroom, and living room. In the kitchen, he grabs a knife and menaces her with it. In the hallway, he cuts her hand with it. What charge(s)?**

AWDWISI  
 AWDWISI, AWDW, and AOF  
 AWDWISI and AOF  
 AWDWISI, AWDW, and three counts of AOF  
 Other

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## Unit of Prosecution

Probably AWDWISI and AOF.

*State v. Shaw*, 245 N.C. App. 329 (2016) (unpublished) (concluding that “the evidence introduced at trial was more than sufficient to establish that two distinct and separate assaults occurred”; the victim “was wounded in different ways, by different means, and in different areas of the apartment”; this established “a distinct interruption in the original assault followed by a second assault”).

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**Al tells Bob that if Cindy shows up at the big football game on Friday night, Al will beat Cindy to a pulp. Bob relays this to Cindy, who is afraid and stays away from the game. Did Al commit communicating threats?**

Yes

No, because Al didn't make the threat to Cindy

No, because Al's threat was conditional

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## Communicating Threats

- Yes.
- Threats made through a third party count, at least if they are reasonably likely to be communicated to the victim. *State v. Thompson*, 157 N.C. App. 638 (2003) (defendant told an acquaintance that he was going to “buy two guns and . . . blow away [the victims]”; this was sufficient to support a conviction as the statute “prohibits both direct and indirect threats communicated to the victim”).
- Conditional threats count if the defendant has no right to impose the condition.

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**You have determined that there is PC that Dan stalked Angie. Dan has a previous conviction for stalking Zoey in 2006. Should you charge Dan with felony stalking based on his prior conviction?**

Yes

No, because it did not involve the same victim

No, because it was incurred under a different statute

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**Stalking**

Yes. Felony repeat stalking requires only that the defendant have “been previously convicted of a stalking offense.” The statute number and the identity of the victim are not pertinent.

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**What about...?**

- Cyberstalking?
- Out of state stalking convictions?

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**Dawn obtains a DVPO ordering James to stay away from her residence. She moves into a DV shelter. One morning, James parks at the shelter, goes to the front door, and pulls on it. It is locked. He leaves without speaking to anyone.**

**DVPO violation?**

No

Yes, a misdemeanor

Yes, a felony

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## DVPO Violations

Yes, a felony.

When a person subject to a DVPO “enters property operated as a safe house or haven for victims of domestic violence” in violation of the order, it is a felony. A person enters the “property” by going to the door even if the person does not get inside. State v. Williams, 247 N.C. App. 239 (2016).

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### What about...?

- What if James had burst through the door and murdered Dawn in cold blood? Any issue with charging the felony DVPO violation there?
- Would that prohibit the felony DVPO violation if James killed Dawn b/c murder = Class A greater offense based on same conduct?

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**Zack and Bernice have a heated argument and Bernice fears for her safety. She pulls out her phone to call her sister to come and get her, but Zack grabs it from her hand. Did Zack interfere with an emergency communication?**

Yes

No

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Interfering with Emergency Communications

Yes, probably. The statute applies to communications to law enforcement, emergency personnel, "or other individuals," relating to a situation in which a person reasonably fears imminent bodily injury.

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Intentional interference

- Forcefully removing a communications instrument from the possession of another
- Hiding a communications instrument from another
- Making a communications instrument unavailable to another
- Disconnecting a communications instrument
- Removing a communications instrument from its connection to communications lines or wavelengths
- Damaging or otherwise interfering with communications equipment or connections between a communications instrument and communications lines or wavelengths
- Disabling a theft-prevention alarm system
- Providing false information to cancel an earlier call or otherwise falsely indicating that emergency assistance is no longer needed when it is
- Any other type of interference that makes it difficult or impossible to make an emergency communication or that conveys a false impression that emergency assistance is unnecessary when it is needed.

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**After Kim breaks up with Felix, Felix kicks in her door, finds her in her bedroom, and keeps her there while he beats and sexually assaults her. Should you charge kidnapping?**

Yes, first degree

Yes, second degree

No

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**Kidnapping**

No. Although Felix did confine and restrain Kim for the purpose of committing a felony, the confinement and restraint was no more than that inherent in the assault and the sexual assault, so kidnapping is not a proper charge.

If it were kidnapping, what degree would it be?

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**Lou is charged with AISBI on Tina. Lou is in jail. He writes Tina: "Baby, I love you, but if you testify against me, I'll have to kill you." Tina has not been subpoenaed to testify. Intimidating/interfering with a witness?**

Yes

No

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Intimidating/  
Interfering  
with a  
Witness

Yes. Although G.S. 14-226 requires that the victim be “summoned or acting as a witness,” it is sufficient if the person is a “prospective witness.” Whether a subpoena has been issued or not is irrelevant. State v. Jones, 237 N.C. App. 526 (2014).

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What about...?

What about a person who sees an act of DV take place? If the perpetrator threatens the person in an attempt to deter the person from reporting the incident, is that witness intimidation?

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Is it possible to have a completed assault without physical contact/touching?

Yes

No

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Assault  
Without  
Touching

Yes. State v. Eller, 150 N.C. App. 439 (2002) (unpublished) (holding that the trial judge correctly instructed the jury that “it does not require physical contact to constitute an assault”).

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Questions?



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