

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**

A Bill

SENATE BILL 153

4 **By: Senators Bradford, Harriman, *Howell***

5

6

7

For An Act To Be Entitled

8 "THE DOMESTIC ABUSE ACT OF 1991"

9

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

11

12 SECTION 1. PURPOSE. The purpose of this act is to provide an adequate
13 mechanism whereby the State of Arkansas can protect the general health,
14 welfare and safety of its citizens by intervening when abuse of a member of a
15 household by another member of a household occurs or is threatened to occur,
16 thus preventing further violence. The General Assembly has assessed domestic
17 abuse in Arkansas and believes that the relief contemplated under this act is
18 injunctive, and therefore, equitable in nature. The General Assembly of the
19 State of Arkansas hereby finds that this act is necessary to secure important
20 governmental interests in the protection of victims of abuse and the
21 prevention of further abuse through the removal of offenders from the
22 household and other injunctive relief for which there is no adequate remedy in
23 current law. The General Assembly hereby finds that this act shall meet a
24 compelling societal need and is necessary to correct the acute and pervasive
25 problem of violence and abuse within households in this state. The equitable
26 nature of this remedy requires the legislature to place proceedings
27 contemplated by this act under the jurisdiction of the chancery courts.

28

29 SECTION 2. As used in this act:

30 (a) "Domestic abuse" means

31 (1) physical harm, bodily injury, assault, or the infliction of
32 fear of imminent physical harm, bodily injury or assault between family or
33 household members; or

34 (2) any sexual conduct between family or household members
35 whether minors or adults which constitutes a crime under the laws of this

1 State.

2 (b) "Family or household members" means spouses, former spouses,
3 parents and children, persons related by blood within the fourth degree of
4 consanguinity, persons who are presently or in the past have resided or
5 cohabitated together.

6

7 SECTION 3. (a) All petitions under this act shall be verified.

8 (b) The petition shall be filed in the county where the petitioner
9 resides, where the alleged incident of abuse occurred, or where the respondent
10 may be served.

11 (c) A petition for relief under this act shall be filed in the chancery
12 court.

13 (d) A petition may be filed by any family or household member or on
14 behalf of another family or household member who is a minor or who has been
15 adjudicated incompetent.

16 (e) A petition for relief shall allege the existence of domestic abuse
17 and shall be accompanied by an affidavit made under oath stating the specific
18 facts and circumstances of the domestic abuse and the specific relief sought.

19 (f) The petition may be filed regardless of whether there is any
20 pending litigation between the parties.

21 (g) The clerks of the court shall provide simplified forms and clerical
22 assistance to help petitioners with the writing and filing of a petition under
23 this act if the petitioner is not represented by counsel.

24 (h) The petition may be in substantially the following form:

25 Petition for Order of Protection
26 Case No. _____

27 _____ Petitioner's home address:
28 Petitioner

29 _____
30 _____

31 Social Security Number

32 _____ Petitioner's Work address:
33 vs.

34 _____

35 _____
36 _____ Respondent's home address:

1 Respondent

2 _____

3 _____

4 Social Security Number,

5 if known

Respondent's work address:

6 _____

7 _____

8

9 ___ I am the petitioner and ___ at least 18 year of age ___under 18 but
10 emancipated

11

12 ___ I am filing on behalf of myself.

13

14 ___ I am filing on behalf of a family or household member who is:

15

16 ___ a minor(s): (list) _____

17

18 ___ an adjudicated incompetent person: (list) _____

19

20 The respondent is ___ at least 18 years of age ___ under 18 but
21 emancipated.

22

23 The respondent and petitioner (or victim if filing on behalf of a minor or
24 incompetent person):(check all that apply)

25

26 ___ are spouses ___ are related by blood

27

28 ___ are parent and child ___ currently reside together or
29 cohabitate

30

31 ___ are former spouses ___ formerly resided together or
32 cohabitated

33

34 If order of protection of children is requested:

35

36 Children Date of Birth Address Relationship to

1 employment: _____

2 school: _____

3 other (identify) _____

4

5 awarding temporary custody of minor children as follows:

6 Child's name Person to receive custody

7 _____

8 _____

9 _____

10 _____

11 _____

12

13 ___ requiring the respondent to pay child support in the amount of

14 \$_____ per child per month

15

16 ___ requiring the respondent to pay spousal support in the amount of

17 \$_____ per month

18

19 ___ excluding the petitioner's address from notice to the respondent

20

21 ___ It is further requested that upon hearing the court issue a full order of

22 protection with the following provisions: (check all that apply)

23

24 ___ excluding the respondent from the shared residence or from the

25 residence of the petitioner or victim. Address of the residence:

26 _____

27

28 ___ excluding the respondent from the place of business, employment,

29 school or other location of the petitioner or victim. Address of:

30 place of business: _____

31 employment: _____

32 school: _____

33 other (identify) _____

34

35 ___ awarding temporary custody of minor children as follows:

36

1 the date on which the petition is filed or at the next court date, whichever is
2 later.

3 (b) Service shall be made upon the respondent at least five (5) days
4 prior to the date of the hearing. If service cannot be made on the respondent,
5 the court may set a new date for the hearing.

6 (c) Nothing in this section shall preclude the court from setting an
7 earlier hearing.

8

9 SECTION 5. (a) At the hearing on the petition, the court may provide the
10 following relief:

11 (1) Exclude the abusing party from the dwelling which the parties
12 share or from the residence of the petitioner or victim.

13 (2) Exclude the abusing party from the place of business or
14 employment, school or other location of the petitioner or victim.

15 (3) Award temporary custody or establish temporary visitation
16 rights with regard to minor children of the parties.

17 (4) Order temporary support for minor children or a spouse, with
18 such support to be enforced in the manner prescribed by law for other child
19 support and alimony awards.

20 (5) Allow the prevailing party a reasonable attorney's fee as part
21 of the costs.

22 (6) Order such other relief as the court deems necessary or
23 appropriate for the protection of a family or household member.

24 (b) Any relief granted by the court for protection under the provisions
25 of this act shall be for a fixed period of time not less than ninety (90) days
26 nor more than one (1) year in duration, and may be renewed at a subsequent
27 hearing upon proof and a finding by the court that the threat of domestic abuse
28 still exists.

29

30 SECTION 6. (a) When any petition under this act alleges an immediate and
31 present danger of domestic abuse and the court finds sufficient evidence to
32 support the petition, the court shall grant a temporary order of protection
33 pending a full hearing.

34 (b) An ex-parte temporary order of protection may include any or all of
35 the orders provided for in Section 3 of this Act.

36 (c) A temporary order of protection shall be effective for a fixed period

1 not to exceed fourteen (14) days.

2 (d) When a temporary order is issued as authorized in this Section, a
3 hearing shall be set for no later than ten (10) days from the issuance of the
4 temporary order.

5 (e) Upon the issuance of an ex-parte temporary order, a copy of the order
6 together with a copy of the petition (excluding, pursuant to court order, the
7 address of the petitioner) and notice of the date and place set for the full
8 hearing shall be served in accordance with applicable rules of service under
9 the Arkansas Rules of Civil Procedure.

10

11 SECTION 7. When an order is issued under this act, upon request of the
12 petitioner the court may order a law enforcement officer with jurisdiction to
13 accompany the petitioner and assist in placing the petitioner in possession of
14 the dwelling or residence or to otherwise assist in execution or service of the
15 order of protection.

16

17 SECTION 8. A person's right to file a petition, or obtain relief
18 hereunder shall not be affected by his or her leaving the residence or
19 household to avoid abuse.

20

21 SECTION 9. (a) The court, clerks of the court, and law enforcement
22 agencies shall not require any initial filing fees or service costs.

23 (b) Established filing fees may be assessed at the full hearing.

24

25 SECTION 10. (a) Any order of protection issued by the court pursuant to
26 petition filed as authorized herein may be modified upon application of either
27 party, notice to all parties, and a hearing thereon.

28 (b) Any order of protection granted pursuant to this act shall be
29 enforceable by any law enforcement agency with proper jurisdiction.

30 (c) Any order of protection shall include a notice to the respondent or
31 party restrained that a violation of the order is a class A misdemeanor
32 carrying a maximum penalty of one year imprisonment in the county jail or a
33 fine of up to one thousand dollars (\$1,000), or both.

34 (d) Jurisdiction for the criminal offense of violating the terms of an
35 order of protection shall be with the circuit court or other courts having
36 jurisdiction over criminal matters.

1 (e) When a petitioner or any law enforcement officer files an affidavit
2 with a court which has issued an order of protection under the provisions of
3 this act alleging that the respondent or person restrained has violated the
4 order, the court may issue an order to the respondent or person restrained
5 requiring that person to appear and show cause why he should not be found in
6 contempt.

7

8 SECTION 11. This act shall be known and may be cited as The Domestic
9 Abuse Act of 1991.

10

11 SECTION 12. All provisions of this act of a general and permanent nature
12 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
13 Revision Commission shall incorporate the same in the Code.

14

15 SECTION 13. Arkansas Code §12-11-105 and §16-113-307 are hereby
16 repealed.

17

18 SECTION 14. If any provision of this act granting jurisdiction in the
19 chancery court is held invalid or if for some reason the chancery court cannot
20 exercise jurisdiction under this act, then pursuant to Article 7, §11 of the
21 Arkansas Constitution, the circuit court shall have jurisdiction over such
22 matters.

23

24 SECTION 15. All laws and parts of laws in conflict with this act are
25 hereby repealed.

26

27 SECTION 16. If any provision of this act or the application thereof to
28 any person or circumstance is held invalid, such invalidity shall not affect
29 other provisions or applications of the act which can be given effect without
30 the invalid provision or application, and to this end the provisions of this
31 act are declared to be severable.

32

33 SECTION 17. EMERGENCY. It is hereby found and determined by the
34 Seventy-Eighth General Assembly that since the recent court decision in Bates
35 v. Bates, this state has lacked adequate remedies for dealing with domestic
36 violence and abuse; that the problem of domestic violence and abuse in our

1 society is so complex that proper judicial remedies for victims and potential
2 victims transcend the traditional jurisdictions of circuit and municipal court;
3 that every potential remedy should be made available to members of households
4 who have been subjected to abuse or are likely to be subjected to abuse such as
5 to provide for the issuance of a protective order. Therefore, an emergency is
6 hereby declared to exist and this act being necessary for the immediate
7 preservation of the public peace, health and safety shall be in full force upon
8 its passage and approval.

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/s/Bradford, et al

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