

1 **State of Arkansas**  
2 **78th General Assembly**  
3 **Regular Session, 1991**  
4 **By: Senate Judiciary Committee**

# A Bill

**SENATE BILL**

## **For An Act To Be Entitled**

"THE DOMESTIC ABUSE ACT OF 1991."

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

11

12 SECTION 1. This act shall be known and may be cited as The Domestic  
13 Abuse Act of 1991.

14

15 SECTION 2. Jurisdiction of all proceedings under this act are vested in  
16 the municipal court pursuant to Article 7, Sections 40 and 43, and Amendment  
17 64, Constitution of the State of Arkansas.

18

19 SECTION 3. As used in this act:

20 (a) "Domestic abuse" means

21 (1) physical harm, bodily injury, assault, or the infliction of  
22 fear of imminent physical harm, bodily injury or assault between family or  
23 household members;

24 (2) any sexual conduct between family or household members  
25 whether minors or adults which constitutes a crime under the laws of this  
26 State.

27 (b) "Family or household members" means spouses, former spouses,  
28 parents and children, persons related by blood within the fourth degree of  
29 consanguinity, persons who are presently or in the past have resided or  
30 cohabited together.

31

32 SECTION 4. (a) In cases involving acts of domestic abuse which also  
33 constitute a violation of the Arkansas Criminal Code, a law enforcement  
34 officer may arrest a person without a warrant if the law enforcement officer  
35 has probable cause to believe the person, within the preceding four (4) hours,

1 has committed such acts even if the incident did not take place in the  
2 presence of the law enforcement officer.

3 (b) Arrest shall be considered the preferred action by law enforcement  
4 officers in cases of domestic abuse when evidence indicates that a violation  
5 of the Arkansas Criminal Code has been committed.

6 (c) Any law enforcement officer acting in good faith and exercising due  
7 care in making an arrest for domestic abuse shall have immunity from civil  
8 liability.

9

10 SECTION 5. (a) All petitions under this act shall be verified.

11 (b) A petition for relief under this act may be filed in a municipal  
12 court with jurisdiction over the parties by any family or household member or  
13 on behalf of another family or household member who is a minor or who has been  
14 adjudicated incompetent. A petition for relief shall allege the existence of  
15 domestic abuse and shall be accompanied by an affidavit made under oath  
16 stating the specific facts and circumstances of the domestic abuse and the  
17 specific relief sought. The petition may be filed regardless of whether there  
18 is any pending litigation between the parties.

19 (c) The clerks of the municipal courts shall provide simplified forms  
20 and assistance to help petitioners with the writing and filing of a petition  
21 under this act if the petitioner is not represented by counsel. The petition  
22 may be in substantially the following form:

23	Petition for Order of Protection	
24		Case No. _____
25	_____	Petitioner's home address:
26	Petitioner	_____
27	_____	_____
28	Social Security Number	
29		Petitioner's Work address:
30	vs.	_____
31	_____	Respondent's home address:
32	Respondent	_____
33	_____	_____
34	Social Security Number,	
35	if known	Respondent's work address:

1

2 \_\_\_ I am the petitioner and \_\_\_ at least 18 years of age \_\_\_ under 18 but  
3 emancipated.

4 \_\_\_ I am filing on behalf of myself.

5 \_\_\_ I am filing on behalf of a family or household member who is:

6 \_\_\_ a minor(s):

7 (list) \_\_\_\_\_

8 \_\_\_ an adjudicated incompetent person:

9 (list) \_\_\_\_\_

10 \_\_\_ The respondent is \_\_\_ at least 18 years of age \_\_\_ under 18 but  
11 emancipated.

12 \_\_\_ The respondent and petitioner (or victim if filing on behalf of a minor or  
13 incompetent person): (check all that apply)

14 \_\_\_ are spouses \_\_\_ are related by blood

15 \_\_\_ are parent and child \_\_\_ currently reside together or cohabit

16 \_\_\_ are former spouses \_\_\_ formerly resided together or cohabit

17 If order of protection of children is requested:

18 Children	Date of Birth	Address	Relationship
			to Parties

20 \_\_\_\_\_

21 \_\_\_\_\_

22 \_\_\_\_\_

23 \_\_\_\_\_

24 \_\_\_\_\_

25 The respondent has committed domestic abuse to the petitioner or victim by the  
26 following acts: (describe)

27 \_\_\_\_\_

28 \_\_\_\_\_

29 \_\_\_\_\_

30 \_\_\_\_\_

31 \_\_\_\_\_

32 I am afraid of the respondent and there is an immediate and present danger of  
33 domestic abuse to me because: (describe)

34 \_\_\_\_\_

35 \_\_\_\_\_

1 \_\_\_\_\_  
2 \_\_\_\_\_  
3 \_\_\_\_\_

4 \_\_\_ Petitioner requests that the court issue an ex-parte order of protection  
5 with the following provisions: (check all that apply)

6 \_\_\_restraining the respondent from committing acts of domestic abuse

7 \_\_\_excluding the respondent from a shared residence or from the residence of  
8 the petitioner or victim. Address of residence:

9 \_\_\_\_\_

10 \_\_\_excluding the respondent from the place of business, employment, school or  
11 other location of the petitioner or victim. Address of:

12 place of business: \_\_\_\_\_

13 employment: \_\_\_\_\_

14 school: \_\_\_\_\_

15 other (identify): \_\_\_\_\_

16 \_\_\_awarding temporary custody of minor children as follows:

17 Child's name Person to receive custody

18 \_\_\_\_\_

19 \_\_\_\_\_

20 \_\_\_\_\_

21 \_\_\_\_\_

22 \_\_\_\_\_

23 \_\_\_requiring the respondent to pay child support in the amount of \$\_\_\_\_\_  
24 per child per month

25 \_\_\_requiring the respondent to pay spousal support in the amount of \$\_\_\_\_\_  
26 per month

27 \_\_\_ excluding the petitioner's address from notice to the respondent

28 \_\_\_ It is further requested that upon hearing the court issue a full order of  
29 protection with the following provisions: (check all that apply)

30 \_\_\_restraining the respondent from committing acts of domestic abuse

31 \_\_\_excluding the respondent from the shared residence or from the residence  
32 of the petitioner or victim (Address of the residence:)

33 \_\_\_\_\_

34 \_\_\_excluding the respondent from the place of business, employment, school or  
35 other location of the petitioner or victim. Address of:

1 place of business: \_\_\_\_\_

2 employment: \_\_\_\_\_

3 school: \_\_\_\_\_

4 other (identify): \_\_\_\_\_

5 \_\_\_\_\_ awarding temporary custody of minor children as follows:

6 Child's name		Person to receive custody
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7 \_\_\_\_\_

8 \_\_\_\_\_

9 \_\_\_\_\_

10 \_\_\_\_\_

11 \_\_\_\_\_

12 \_\_\_\_\_ requiring the respondent to pay child support in the amount of \$\_\_\_\_\_ per  
13 child per month

14 \_\_\_\_\_ requiring the respondent to pay spousal support in the amount of \$\_\_\_\_\_ per  
15 month

16 \_\_\_\_\_ requiring the respondent to pay filing fees, service fees, court costs and  
17 petitioner's attorney fees.

18 The petitioner under oath states that the facts stated in the above petition  
19 are true according to the petitioner's best knowledge and belief.

20 \_\_\_\_\_

21 Date

\_\_\_\_\_  
Petitioner's signature

22 STATE OF ARKANSAS

23 COUNTY OF \_\_\_\_\_

24 Subscribed and sworn to before me this \_\_\_\_\_ day \_\_\_ of \_\_\_\_\_, 19\_\_.

25 \_\_\_\_\_

26 \_\_\_\_\_  
Notary Public

27 My Commission Expires:

28 \_\_\_\_\_

29 (d) When a petition is filed pursuant to this act, the court shall order  
30 a hearing to be held thereon not later than fourteen (14) days from the date  
31 on which the petition is filed or at the next court date, whichever is later.  
32 Service shall be made upon the respondent at least five (5) days prior to the  
33 date of the hearing. If service cannot be made on the respondent, the court  
34 may set a new date for the hearing. This paragraph shall not preclude the  
35 court from setting an earlier hearing.

1 (e) At the hearing on the petition, the court may provide the following  
2 relief:

3 (1) Restrain the abusing party from committing acts of domestic  
4 abuse.

5 (2) Exclude the abusing party from the dwelling which the parties  
6 share or from the residence of the petitioner or victim.

7 (3) Exclude the abusing party from the place of business or  
8 employment, school or other location of the petitioner or victim.

9 (4) Award temporary custody or establish temporary visitation  
10 rights with regard to minor children of the parties.

11 (5) Order temporary support for minor children or a spouse, with  
12 such support to be enforced in the manner prescribed by law for other child  
13 support and alimony awards.

14 (6) Allow the prevailing party a reasonable attorney's fee as  
15 part of the costs.

16 (7) Order such other relief as the court deems necessary or  
17 appropriate for the protection of a family or household member.

18 Any relief granted by the court for protection under the provisions of  
19 this subsection shall be for a fixed period of time not less than ninety (90)  
20 days nor more than one (1) year in duration, and may be renewed at a  
21 subsequent hearing upon proof and a finding by the court that the threat of  
22 domestic abuse still exists.

23 (f) When any petition under this act alleges an immediate and present  
24 danger of domestic abuse and the court finds sufficient evidence to support  
25 the petition, the court shall grant a temporary order of protection pending a  
26 full hearing. An ex parte temporary order of protection may include any or  
27 all of the orders provided for in Section 4(e) of this act. A temporary order  
28 of protection shall be effective for a fixed period not to exceed fourteen  
29 (14) days. When a temporary order is issued as authorized in this Section, a  
30 full hearing as provided for in Section 4 hereof shall be set for no later  
31 than ten (10) days from the issuance of the temporary order. Upon the  
32 issuance of an ex parte temporary order, a copy of the order together with a  
33 copy of the petition (excluding, pursuant to court order, the address of the  
34 petitioner) and notice of the date and place set for the full hearing shall be  
35 served in accordance with applicable rules of service under the Arkansas Rules

1 of Civil Procedure.

2 (g) When an order is issued under this act, upon request of the  
3 petitioner the court may order a law enforcement officer with jurisdiction to  
4 accompany the petitioner and assist in placing the petitioner in possession of  
5 the dwelling or residence or to otherwise assist in execution or service of  
6 the order of protection.

7 (h) A person's right to file a petition, or obtain relief hereunder  
8 shall not be affected by his or her leaving the residence or household to  
9 avoid abuse, and the court, clerks of the court, and law enforcement agencies  
10 shall not require any initial filing fees or service costs. Established  
11 filing fees assessed by the clerk of the court having jurisdiction over the  
12 matter may be assessed at the full hearing. Any order of protection issued by  
13 the court pursuant to petition filed as authorized herein may be modified upon  
14 application of either party, notice to all parties, and a hearing thereon.

15 (i) Any order of protection granted pursuant to this act shall be  
16 enforceable by any law enforcement agency with proper jurisdiction.

17 (j) Any order of protection shall include a notice to the respondent or  
18 party restrained that a violation of the order is a Class A misdemeanor  
19 carrying a maximum penalty of one year imprisonment in the county jail or a  
20 fine of up to one thousand dollars (\$1,000), or both.

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22 SECTION 6. (a) A person commits the offense of violation of an order of  
23 protection if:

24 (1) a municipal court has issued a temporary order of protection  
25 or an order of protection against him; and

26 (2) he has received actual notice or notice pursuant to the  
27 Arkansas Rules of Civil Procedure of a temporary order of protection or an  
28 order of protection; and

29 (3) he knowingly violates a condition of that order.

30 (b) Violation of an order of protection is a Class A misdemeanor.

31 (c) It is an affirmative defense to a prosecution under this section  
32 that the parties have reconciled prior to the violation of the order.

33 (d) A law enforcement officer may arrest and take into custody without a  
34 warrant any person who the law enforcement officer has reasonable grounds to  
35 believe is subject to an order of protection issued pursuant to this act and

1 who the officer has reasonable grounds to believe has violated the terms of  
2 the order.

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

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10 SECTION 7. Any proceeding under this act shall be supplemental and in  
11 addition to any other civil or criminal remedies now or hereafter provided by  
12 law.

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14 SECTION 8. All provisions of this act of a general and permanent nature  
15 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
16 Revision Commission shall incorporate the same in the Code.

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18 SECTION 9. If any provision of this act or the application thereof to  
19 any person or circumstance is held invalid, such invalidity shall not affect  
20 other provisions or applications of the act which can be given effect without  
21 the invalid provision or application, and to this end the provisions of this  
22 act are declared to be severable.

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24 SECTION 10. Arkansas Code 16-113-307 is hereby repealed.

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26 SECTION 11. All laws and parts of laws in conflict with this act are  
27 hereby repealed.

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