

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**

A Bill

SENATE BILL 2

4 **By: Senators Canada, *Smith, and Keet***

5

6

7

For An Act To Be Entitled

8

"AN ACT TO ESTABLISH THE CRIME OF STALKING; TO ESTABLISH
9 THE PENALTY THEREFOR; AND FOR OTHER PURPOSES."

10

11

Subtitle

12

"TO ESTABLISH THE CRIME OF STALKING; TO ESTABLISH THE
13 PENALTY THEREFOR."

14

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

16

17 SECTION 1. Stalking in the Second Degree.

18

(a) A person commits stalking in the second degree if: he purposefully
19 engages in a course of conduct that harasses another person and makes a
20 terroristic threat with the intent of placing that person in imminent fear of
21 death or serious bodily injury or placing that person in imminent fear of the
22 death or serious bodily injury of his or her immediate family.

23

(b) The judicial officer *in a court of competent jurisdiction* shall,
24 upon pre-trial release of the defendant, enter an order consistent with Rules
25 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice
26 to defendant of penalties contained in Rule 9.5. This protection order shall
27 remain in effect during the pendency of any appeal of a conviction under this
28 provision.

29

(c) Stalking in the second degree is a Class C felony.

30

(d) It is an affirmative defense to prosecution under this section
31 whenever the actor is a law enforcement officer, a licensed private
32 investigator, *attorney, process server, licensed bail bondsman*, or a store
33 detective acting within the reasonable scope of his duty while conducting a
34 surveillance on an official work assignment.

35

1 SECTION 2. Stalking in the First Degree.

2 (a) A person commits stalking in the first degree if he purposefully
3 engages in a course of conduct that harasses another person and makes a
4 terroristic threat with the intent of placing that person in imminent fear of
5 death or serious bodily injury or placing that person in imminent fear of the
6 death or serious bodily injury of his or her immediate family and:

7 (1) either does so in contravention of an order of protection
8 consistent with the Arkansas Domestic Abuse Act of 1991, Ark. Code Ann. §9-15-
9 101 et seq, protecting the same victim or victims, or any other order of
10 protection issued by the court protecting the same victim or victims; or

11 (2) he has been convicted within the previous ten (10) years of:

12 (A) stalking in the second degree, or

13 (B) violating Ark. Code Ann. §5-13-301 or 5-13-310; or

14 (C) stalking or threats against another person's safety
15 under the statutory provisions of any other state jurisdiction; or

16 (3) is armed with a deadly weapon or represents by word or
17 conduct that he is so armed.

18 (b) The judicial officer *in a court of competent jurisdiction* shall,
19 upon pre-trial release of the defendant, enter an order consistent with Rules
20 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice
21 to defendant of penalties contained in Rule 9.5. This protective order shall
22 remain in effect during the pendency of any appeal of a conviction under this
23 provision.

24 (c) It is an affirmative defense to prosecution under this section
25 whenever the actor is a law enforcement officer, a licensed private
26 investigator, *attorney, process server, licensed bail bondsman*, or a store
27 detective acting within the reasonable scope of his duty while conducting a
28 surveillance on an official work assignment.

29 (d) Stalking in the first degree is a Class B felony.

30

31 SECTION 3. For the purpose of this act:

32 (a) "Course of conduct" means a pattern of conduct composed of two (2)
33 *or more acts separated by at least thirty-six (36) hours but occurring within*
34 *one year. Constitutionally protected activity is not included within the*
35 *meaning of "course of conduct". If the defendant claims that he was engaged*

1 in a constitutionally-protected activity, the court shall determine the
2 validity of that claim as a matter of law and, if found valid, shall exclude
3 that activity from evidence.

4 "(b) ' Harasses' means acts of harassment as defined by Arkansas Code 5-
5 71-208."

6 (c) "Immediate family" means any spouse, parent, child, any person
7 related by consanguinity or affinity within the second degree, or any other
8 person who regularly resides in the household or who, within the prior six (6)
9 months regularly resided in the household.

10

11 SECTION 4. Arkansas Code 5-13-301 is amended to read as follows:

12 "5-13-301. Terroristic threatening.

13 (a) (1) A person commits the offense of terroristic threatening in the
14 first degree if, with the purpose of terrorizing another person, he threatens
15 to cause death or serious physical injury or substantial property damage to
16 another person.

17 (2) Terroristic threatening in the first degree is a Class D
18 felony.

19 (b) (1) A person commits the offense of terroristic threatening in the
20 second degree if, with the purpose of terrorizing another person, he threatens
21 to cause physical injury or property damage to another person.

22 (2) Terroristic threatening in the second degree is a Class A
23 misdemeanor.

24 (3) The judicial officer *in a court of competent jurisdiction*
25 shall, upon pre-trial release of the defendant, enter an order consistent with
26 Rules 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give
27 notice to defendant of penalties contained in Rule 9.5. This protection order
28 shall remain in effect during the pendency of any appeal of a conviction under
29 this provision."

30

31 SECTION 5. Arkansas Code 5-71-208 is amended to read as follows:

32 "5-71-208. Harassment.

33 (a) A person commits the offense of harassment if, with purpose to
34 harass, annoy, or alarm another person, without good cause, he:

35 (1) Strikes, shoves, kicks, or otherwise touches a person,

1 subjects him to offensive physical contact or attempts or threatens to do so;
2 or

3 (2) In a public place, directs obscene language or makes an
4 obscene gesture to or at another person in a manner likely to provoke a
5 violent or disorderly response; or

6 (3) Follows a person in or about a public place; or

7 (4) In a public place repeatedly insults, taunts, or challenges
8 another in a manner likely to provoke a violent or disorderly response; or

9 (5) Engages in conduct or repeatedly commits acts that alarm or
10 seriously annoy another person and that serve no legitimate purpose.

11 (6) Places the person under surveillance by remaining present
12 outside his or her school, place of employment, vehicle, other place occupied
13 *by the person, or residence other than the residence of the defendant for no*
14 *purpose other than to harass, alarm or annoy.*

15 (b) *Nothing in this section may be construed to limit free speech,*
16 *picketing on public property or private property with permission of the*
17 *property owner, or any other constitutionally protected activities.*

18 (c) *Harassment is a Class A misdemeanor.*

19 (d) It is an affirmative defense to prosecution under this section
20 whenever the actor is a law enforcement officer, a licensed private
21 investigator, attorney, process server, licensed bail bondsman, or a store
22 detective acting within the reasonable scope of his duty while conducting a
23 surveillance on an official work assignment.

24 (e) The judicial officer *in a court of competent jurisdiction* shall,
25 upon pre-trial release of the defendant, enter an order consistent with Rules
26 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice
27 to defendant of penalties contained in Rule 9.5. This protective order shall
28 remain in effect during the pendency of any appeal of a conviction under this
29 provision."

30

31 SECTION 6. Arkansas Code 5-71-209 is amended to read as follows:

32 "5-71-209. Harassing communications.

33 (a) A person commits the offense of harassing communications if, with
34 the purpose to harass, annoy, or alarm another person, he:

35 (1) Communicates with a person, anonymously or otherwise, by

1 telephone, telegraph, mail, or any other form of written communication, in a
2 manner likely to harass, annoy, or cause alarm; or

3 (2) Makes a telephone call or causes a telephone to ring
4 repeatedly, with no purpose of legitimate communication, regardless of whether
5 a conversation ensues; or

6 (3) Knowingly permits any telephone under his control to be used
7 for any purpose prohibited by this section.

8 (b) Offenses involving use of telephones may be prosecuted in the
9 county in which the defendant was located when he used a telephone, or in the
10 county in which the telephone made to ring by the defendant was located.

11 (c) Harassing communications is a Class A misdemeanor.

12 (d) The judicial officer *in a court of competent jurisdiction* shall,
13 upon pre-trial release of the defendant, enter an order consistent with Rules
14 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice
15 to defendant of penalties contained in Rule 9.5. This protective order shall
16 remain in effect during the pendency of any appeal of a conviction under this
17 provision."

18

19 SECTION 7. All provisions of this act of a general and permanent nature
20 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
21 Revision Commission shall incorporate the same in the Code.

22

23 SECTION 8. If any provision of this act or the application thereof to
24 any person or circumstance is held invalid, such invalidity shall not affect
25 other provisions or applications of the act which can be given effect without
26 the invalid provision or application, and to this end the provisions of this
27 act are declared to be severable.

28

29 SECTION 9. All laws and parts of laws in conflict with this act are
30 hereby repealed.

31

32 SECTION 10. *Emergency. It is hereby found and determined by the*
33 *General Assembly that the Attorney General and the Prosecuting Attorneys are*
34 *in need of specific legislation by which to eliminate stalking and that*
35 *immediate passage of this act is necessary to protect the public peace, health*

1 and safety of the State of Arkansas. Therefore, an emergency is hereby
2 declared to exist and this act being necessary for the immediate preservation
3 of the public peace, health and safety shall be in full force and effect from
4 and after its passage and approval.

5

/s/ Senator Canada