

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997

# A Bill

HOUSE BILL 1897

4  
5 By: Representative Ferrell  
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## For An Act To Be Entitled

8  
9 "AN ACT TO AMEND TITLE 5, CHAPTER 26 OF THE ARKANSAS CODE  
10 BY ADDING SECTION 5-26-311 AND TO AMEND ARKANSAS CODE  
11 ANNOTATED § 5-53-134 TO ALLOW PROSECUTING ATTORNEYS TO  
12 PURSUE DOMESTIC BATTERING AND ASSAULT CHARGES AND CHARGES  
13 FOR VIOLATION OF AN ORDER OF PROTECTION IN SPITE OF THE  
14 VICTIMS UNWILLINGNESS TO PURSUE CHARGES AND TO ALLOW LAW  
15 ENFORCEMENT OFFICERS TO ARREST OR CHARGE A PERSON WHO HAS  
16 COMMITTED THE OFFENSES OF DOMESTIC BATTERING OR ASSAULT OR  
17 VIOLATION OF AN ORDER OF PROTECTION WITHOUT THE VICTIMS  
18 CONSENT TO THE FILING OF CHARGES; AND FOR OTHER PURPOSES."  
19

## Subtitle

20  
21 "AN ACT TO AMEND TITLE 5, CHAPTER 26 OF  
22 THE ARKANSAS CODE AND TO AMEND § 5-53-134  
23 OF THE ARKANSAS CODE"  
24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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27 SECTION 1. Title 5, Chapter 26 of the Arkansas Code is amended by  
28 adding the following section:

29 "5-26-311. Arrest or pursuit of charges without victim's consent or  
30 cooperation.

31 (a) A law enforcement officer shall not require, as a prerequisite to  
32 arresting or charging a person who has committed the offense of domestic  
33 battering or assault as defined in Subchapter 3 of Title 5, Chapter 26 of the  
34 Arkansas Code of 1987 Annotated that the victim of the offense specifically  
35 consent to the filing of charges against the person who has committed the  
36 offense.

1           (b) If a person is arrested for or charged with committing the offense  
 2 of domestic battering or assault as defined in Subchapter 3 of Title 5,  
 3 Chapter 26 of the Arkansas Code of 1987 and if the victim of the offense does  
 4 not cooperate with the involved law enforcement or prosecuting authorities in  
 5 the prosecution of the offense or, subsequent to the arrest or the filing of  
 6 the charges, informs the involved law enforcement or prosecuting authorities  
 7 that the victim does not wish the prosecution of the offense to continue or  
 8 wishes to drop charges against the alleged offender relative to the offense,  
 9 the involved prosecuting authorities, in determining whether to continue with  
 10 the prosecution of the offense or whether to dismiss charges against the  
 11 alleged offender relative to the offense and notwithstanding the victim's  
 12 failure to cooperate or the victim's wishes, shall consider all facts and  
 13 circumstances that are relevant to the offense, including, but not limited to,  
 14 the statements and observations of the law enforcement officers who responded  
 15 to the incident that resulted in the arrest or filing of the charges and of  
 16 all witnesses to that incident."

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18           SECTION 2. Arkansas Code Annotated § 5-53-134 is amended to read as  
 19 follows:

20           "5-53-134. Violation of a protection order.

21           (a) A person commits the offense of violation of an order of protection  
 22 if:

23                     (1) A chancery court or other court with competent jurisdiction  
 24 has issued a temporary order of protection or an order of protection against  
 25 him pursuant to the Domestic Abuse Act of 1991, § 9-15-101 et seq.; 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 pursuant to the Domestic Abuse Act of 1991, § 9-15-101 et  
 29 seq.; and

30                     (3) He knowingly violates a condition of an order of protection  
 31 issued pursuant to the Domestic Abuse Act of 1991, § 9-15-101 et seq.

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

33           (c) A law enforcement officer may arrest and take into custody without  
 34 a warrant any person who the law enforcement officer has probable cause to  
 35 believe is subject to an order of protection issued pursuant to the laws of  
 36 this state and who the officer has probable cause to believe has violated the

1 terms of the order, even if the violation did not take place in the presence  
 2 of the law enforcement officer.

3 (d) It shall be an affirmative defense to a prosecution under this  
 4 section that the parties have reconciled prior to the violation of the order.

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

8 (f) A law enforcement officer shall not require, as a prerequisite to  
 9 arresting or charging a person who has violated the Domestic Abuse Act of  
 10 1991, § 9-15-101 et seq., or who has committed the offense of violating a  
 11 protection order in violation of this section, that the victim of the offense  
 12 specifically consent to the filing of charges against the person who has  
 13 committed the offense or sign a complaint against the person who has committed  
 14 the offense.

15 (g) If a person is arrested for violating the Domestic Abuse Act of  
 16 1991, § 9-15-101 et seq., or is arrested for or charged with the offense of  
 17 violating a protection order in violation of this section, § 5-53-134, and if  
 18 the victim of the offense does not cooperate with the involved law enforcement  
 19 or prosecuting authorities in the prosecution of the offense or, subsequent to  
 20 the arrest or the filing of the charges, informs the involved law enforcement  
 21 or prosecuting authorities that the victim does not wish the prosecution of  
 22 the offense to continue or wishes to drop charges against the alleged offender  
 23 relative to the offense, the involved prosecuting authorities, in determining  
 24 whether to continue with the prosecution of the offense or whether to dismiss  
 25 charges against the alleged offender relative to the offense and  
 26 notwithstanding the victim's failure to cooperate or the victim's wishes,  
 27 shall consider all facts and circumstances that are relevant to the offense,  
 28 including, but not limited to, the statements and observations of the law  
 29 enforcement officers who responded to the incident that resulted in the arrest  
 30 or filing of the charges and of all witnesses to that incident."

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32 SECTION 3. All provisions of this act of a general and permanent nature  
 33 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
 34 Revision Commission shall incorporate the same in the Code.

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36 SECTION 4. If any provision of this act or the application thereof to

1 any person or circumstance is held invalid, such invalidity shall not affect  
 2 other provisions or applications of the act which can be given effect without  
 3 the invalid provision or application, and to this end the provisions of this  
 4 act are declared to be severable.

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6 SECTION 5. All laws and parts of laws in conflict with this act are  
 7 hereby repealed.

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9 SECTION 6. EMERGENCY. It is found and determined by the General  
 10 Assembly of the State of Arkansas that domestic violence is a serious threat  
 11 to public health and safety, but victims of domestic violence are often in  
 12 such positions that they are unable or unwilling to pursue charges against  
 13 their aggressors after an attack. It should be clearly expressed that law  
 14 enforcement and prosecuting authorities retain the authority to pursue valid  
 15 arrests and charges absent a victims consent or willingness to do so.  
 16 Therefore an emergency is declared to exist and this act being immediately  
 17 necessary for the preservation of the public peace, health and safety shall  
 18 become effective on the date of its approval by the Governor. If the bill is  
 19 neither approved nor vetoed by the Governor, it shall become effective on the  
 20 expiration of the period of time during which the Governor may veto the bill.  
 21 If the bill is vetoed by the Governor and the veto is overridden, it shall  
 22 become effective on the date the last house overrides the veto.

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