

Act 636 of the 1989 Regular Session.

Act 636

SB414

By: Senators Bradford, Harriman and Kinard

"THE DOMESTIC ABUSE ACT OF 1989".

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

SECTION 1. This act shall be known and may be cited as The Domestic Abuse Act of 1989.

SECTION 2. As used in this act:

(a) "Domestic abuse" means

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

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

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

SECTION 3. (a) In cases involving acts of domestic abuse which also constitute a violation of the Arkansas Criminal Code, a law enforcement officer may arrest a person without a warrant if the law enforcement officer has probable cause to believe the person, within the preceding four (4) hours, has committed such acts even if the incident did not take place in the presence of the law enforcement officer.

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

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

SECTION 4. (a) All petitions under this act shall be verified.

(b) A petition for relief under this act may be filed in a chancery court with jurisdiction over the parties by any family or household member or on behalf

of another family or household member who is a minor or who has been adjudicated incompetent. A petition for relief shall allege the existence of domestic abuse and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances of the domestic abuse and the specific relief sought. The petition may be filed regardless of whether there is any pending litigation between the parties.

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

Petition for Order of Protection

Case No. _____

Petitioner's home address: _____

Petitioner

Social Security Number

vs.

Respondent

Social Security Number,
if known

Petitioner's Work address:

Respondent's home address:

Respondent's work address:

___ I am the petitioner and ___ at least 18 year of age ___ under 18 but
emancipated

___ I am filing on behalf of myself.

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

___ a minor(s): (list) _____

___ an adjudicated incompetent person: (list) _____

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

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

___ are spouses _____ are related by blood

___ are parent and child _____ currently reside together or cohabitate

___ are former spouses _____ formerly resided together or cohabitated

If order of protection of children is requested:

Children	Date_of_Birth	Address	Relationship_to Parties
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

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

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

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

___ restraining the respondent from committing acts of domestic abuse

___ excluding the respondent from a shared residence or from the residence of the petitioner or victim. Address of residence:

___ excluding the respondent from the place of business, employment, school or other location of the petitioner or victim. Address of:

place of business: _____

employment: _____

school: _____

other (identify) _____

___ awarding temporary custody of minor children as follows:

Child's name

Person to receive custody

___ requiring the respondent to pay child support in the amount of \$_____ per child per month

___ requiring the respondent to pay spousal support in the amount of \$_____ per month

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

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

___ restraining the respondent from committing acts of domestic abuse

___ excluding the respondent from the shared residence or from the residence of the petitioner or victim (Address of the residence:

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

school or other location of the petitioner or victim. Address of:
place of business: _____
employment: _____
school: _____
other (identify) _____

___ awarding temporary custody of minor children as follows:

Child's name	Person to receive custody
_____	_____
_____	_____
_____	_____
_____	_____

___ requiring the respondent to pay child support in the amount of \$ _____
per child per month

___ requiring the respondent to pay spousal support in the amount of
\$ _____ per month

___ requiring the respondent to pay filing fees, service fees, court costs
and petitioner's attorney fees.

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

Date

Petitioner's signature

STATE OF ARKANSAS
COUNTY OF _____

Subscribed and sworn to before me this _____ day of _____, 19__.

Notary Public

My Commission Expires:

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

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

- (1) Restrain the abusing party from committing acts of domestic abuse.
- (2) Exclude the abusing party from the dwelling which the parties
share or from the residence of the petitioner or victim.
- (3) Exclude the abusing party from the place of business or
employment, school or other location of the petitioner or victim.
- (4) Award temporary custody or establish temporary visitation
rights with regard to minor children of the parties.

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

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

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

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

(e) When any petition under this act alleges an immediate and present danger of domestic abuse and the court finds sufficient evidence to support the petition, the court shall grant a temporary order of protection pending a full hearing. An ex parte temporary order of protection may include any or all of the orders provided for in Section 4(e) of this Act.

A temporary order of protection shall be effective for a fixed period not to exceed fourteen (14) days. When a temporary order is issued as authorized in this Section, a full hearing as provided for in Section 4 hereof shall be set for no later than ten (10) days from the issuance of the temporary order. Upon the issuance of an ex parte temporary order, a copy of the order together with a copy of the petition (excluding, pursuant to court order, the address of the petitioner) and notice of the date and place set for the full hearing shall be served in accordance with applicable rules of service under the Arkansas Rules of Civil Procedure.

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

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

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

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

SECTION 5. (a) A person commits the offense of violation of an order of protection if:

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

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

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

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

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

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

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

SECTION 6. Any proceeding under this act shall be supplemental and in addition to any other civil or criminal remedies now or hereafter provided by law.

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

SECTION 8. Arkansas Code 16-113-307 is hereby repealed.

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

APPROVED: March 17, 1989
