

.As Engrossed: 1/23/91, 1/24/91

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

A BILL ACT 266 OF 1991
SENATE BILL 153

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

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
36 State.

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

5

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

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

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

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

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

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

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

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

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

1 _____

2 _____

3 Social Security Number,

4 if known Respondent's work address:

5 _____

6 _____

7

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

10

11 ___ I am filing on behalf of myself.

12

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

14

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

16

17 ___ an adjudicated incompetent person: (list) _____

18

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

21

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

24

25 ___ are spouses ___ are related by blood

26

27 are parent and child currently reside together or
28 cohabit

29

30 ___ are former spouses ___ formerly resided together or
31 cohabited

32

33 If order of protection of children is requested:

34

35 Children Date of Birth Address Relationship to
36 Parties

1 _____

2 _____

3 _____

4 _____

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

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

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

19 _____

20 _____

21 _____

22 _____

23 _____

24 _____

25 _____

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

28 _____

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

31 _____

32 _____

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

35 place of business: _____

36 employment: _____

1 school: _____

2 other (identify) _____

3

4 ___ awarding temporary custody of minor children as follows:

5 Child's name Person to receive custody

6 _____

7 _____

8 _____

9 _____

10 _____

11

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

13 \$_____ per child per month

14

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

16 \$_____ per month

17

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

19

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

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

22

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

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

25 _____

26

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

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

29 place of business: _____

30 employment: _____

31 school: _____

32 other (identify) _____

33

34 ___ awarding temporary custody of minor children as follows:

35

36 Child's name Person to receive custody

1 _____
2 _____
3 _____
4 _____
5 _____

6
7 ___ requiring the respondent to pay child support in the amount of
8 \$_____ per child per month

9
10 ___ requiring the respondent to pay spousal support in the amount of
11 \$_____ per month

12
13 ___ requiring the respondent to pay filing fees, service fees, court
14 costs and petitioner's attorney fees.

15
16 The petitioner under oath states that the facts stated in the above petition
17 are true according to the petitioner's best knowledge and belief.

18
19 _____
20 Date Petitioner's signature

21
22 STATE OF ARKANSAS
23 COUNTY OF _____

24
25 Subscribed and sworn to before me this _____ day of _____,
26 19__.

27
28 _____
29 Notary Public

30
31
32 My Commission Expires:
33 _____

34 SECTION 4. (a) When a petition is filed pursuant to this act, the court
35 shall order a hearing to be held thereon not later than fourteen (14) days from
36 the date on which the petition is filed or at the next court date, whichever is

1 later.

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

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

7

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

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

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

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

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

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

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

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

28

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

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

35 (c) A temporary order of protection shall be effective for a fixed period
36 not to exceed fourteen (14) days.

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

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

9

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

15

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

19

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

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

23

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

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

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

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

36 (e) When a petitioner or any law enforcement officer files an affidavit

1 with a court which has issued an order of protection under the provisions of
2 this act alleging that the respondent or person restrained has violated the
3 order, the court may issue an order to the respondent or person restrained
4 requiring that person to appear and show cause why he should not be found in
5 contempt.

6

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

9

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

13

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

16

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

22

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

25

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

31

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

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

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/s/Bradford, et al

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APPROVED: 2-28-91

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