

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

A Bill

HOUSE BILL 1014

5 By: Representatives D. Creekmore, S. Prater
6 By: Senator Broadway
7
8

For An Act To Be Entitled

9
10 AN ACT TO CREATE THE OFFENSE OF VIOLATION OF A
11 SEXUAL ASSAULT PROTECTION ORDER; TO PROVIDE
12 EQUITABLE RELIEF TO VICTIMS OF SEXUAL ASSAULT;
13 AND FOR OTHER PURPOSES.
14

Subtitle

15
16 VICTIM'S PROTECTION ORDER ACT.
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Arkansas Code Title 5, Chapter 53, Subchapter 1 is amended
22 to add an additional section to read as follows:

23 5-53-135. Violation of a sexual assault protection order.

24 (a) A person commits the offense of violation of a sexual assault
25 protection order if:

26 (1) A circuit court or other court with competent jurisdiction
27 has issued a temporary sexual assault protection order or a sexual assault
28 protection order against the person pursuant to the Sexual Assault Protection
29 Order Act, § 16-118-201 et seq.;

30 (2) The person has received actual notice or notice pursuant to
31 the Arkansas Rules of Civil Procedure of a temporary sexual assault
32 protection order or a sexual assault protection order issued under the Sexual
33 Assault Protection Order Act, § 16-118-201 et seq.; and

34 (3) The person knowingly violates a term of a temporary sexual
35 assault protection order or a sexual assault protection order issued under
36 the Sexual Assault Protection Order Act, § 16-118-201 et seq.



1 (b) Violation of a temporary sexual assault protection order or a
 2 sexual assault protection order under this section is a Class D felony.

3 (c) A law enforcement officer may arrest and take into custody without
 4 a warrant any person who the law enforcement officer has probable cause to
 5 believe:

6 (1) Is subject to a temporary sexual assault protection order or
 7 a sexual assault protection order issued pursuant to the Sexual Assault
 8 Protection Order Act, § 16-118-201 et seq.; and

9 (2) Has violated a term of the temporary sexual assault
 10 protection order or the sexual assault protection order, even if the
 11 violation did not take place in the presence of the law enforcement officer.

12 (d) Any law enforcement officer acting in good faith and exercising
 13 due care in making an arrest for violation of a temporary sexual assault
 14 protection order or a sexual assault protection order in an effort to comply
 15 with this section has immunity from civil or criminal liability.

16
 17 SECTION 2. Arkansas Code Title 16, Chapter 118 is amended to add an
 18 additional subchapter to read as follows:

19 Subchapter 2 – Sexual Assault Protection Order Act.
 20 16-118-201. Title.

21 This subchapter shall be known as the "Sexual Assault Protection Order
 22 Act".

23
 24 16-118-202. Purpose – Findings.

25 (a) The purpose of this subchapter is to provide an adequate mechanism
 26 for this state to protect the general health, welfare, and safety of its
 27 citizens by intervening when sexual assault of a person occurs or is
 28 threatened to occur in order to prevent further violence.

29 (b) The General Assembly has assessed sexual assault in this state and
 30 has determined that the relief contemplated under this subchapter is
 31 injunctive and therefore equitable in nature.

32 (c) The General Assembly finds that this subchapter is necessary to
 33 secure important governmental interests in the protection of victims of
 34 sexual assault and the prevention of further sexual assault through
 35 injunctive relief for which there is no adequate remedy in current law. The
 36 General Assembly also finds that this subchapter will meet a compelling

1 societal need and is necessary to correct the acute and pervasive problem of
 2 sexual assault in this state.

3
 4 16-118-203. Definitions.

5 As used in this subchapter:

6 (1) "County where the victim resides" means the county where a
 7 victim physically resides at the time a petition for a sexual assault
 8 protection order is filed;

9 (2) "Guardian" means a parent, stepparent, legal guardian, legal
 10 custodian, foster parent, or any person who by virtue of a living arrangement
 11 is placed in an apparent position of power or authority over a minor;

12 (3) "Nonconsensual" means a lack of freely given agreement;

13 (4) "Nonphysical contact" means contact with a petitioner that
 14 does not require physical contact and includes without limitation a telephone
 15 call, mail, email, fax, and a written note;

16 (5) "Petitioner" means any person who files or any person on
 17 whose behalf is filed a petition for a sexual assault protection order;

18 (6) "Respondent" means any person from whom a petitioner is
 19 seeking protection in a petition for a sexual assault protection order;

20 (7) "Sexual assault" means nonconsensual sexual conduct or
 21 nonconsensual sexual penetration;

22 (8) "Sexual assault protection order" means an ex parte
 23 temporary order or a final order granted under this subchapter, including a
 24 remedy authorized by § 16-118-208;

25 (9) "Sexual conduct" means any of the following:

26 (A) To knowingly touch or fondle a person's genital, anus,
 27 or breast, directly or indirectly, including through clothing;

28 (B) To knowingly display a person's genital, anus, or
 29 breast to another person for the purpose of arousal or sexual gratification
 30 of the person;

31 (C) Any touching or fondling of a person's genital, anus,
 32 or breast, directly or indirectly, including through clothing, that a person
 33 is forced to perform by another person; or

34 (D) Any forced display of a person's genital, anus, or
 35 breast for the purposes of arousal or sexual gratification of another person;

36 (10)(A) "Sexual penetration" means:

1 (i) The penetration, however slight, of the anus or
2 mouth of a person by the penis of another person for the purpose of arousal
3 or sexual gratification of the actor; or

4 (ii) The penetration, however slight, of the labia
5 majora or anus of a person by any body member or foreign instrument
6 manipulated by another person for the purpose of arousal or sexual
7 gratification of the actor.

8 (B) Evidence of emission of semen is not required to prove
9 sexual penetration;

10 (11) "Victim" means any person who has been a victim of any
11 alleged sexual assault who files or on whose behalf is filed a petition for a
12 sexual assault protection order; and

13 (12) "Victim advocate" means a person trained to assist a victim
14 of sexual assault with procurement of counseling, treatment, court and
15 medical accompaniment, and related services.

16
17 16-118-204. Petition – Requirements generally.

18 (a) A petition for a sexual assault protection order may be filed:

19 (1) By a person who alleges that he or she is a victim of sexual
20 assault; or

21 (2) A guardian or victim advocate on behalf of any of the
22 following persons who allege that he or she is a victim of sexual assault:

23 (A) A minor; or

24 (B) Any adult who because of age, disability, or health
25 cannot file the petition.

26 (b)(1) A petition for a sexual assault protection order filed under
27 this subchapter shall be filed in the circuit court in the county where the
28 victim resides, where the alleged incident of sexual assault occurred, or
29 where the respondent may be served under the Arkansas Rules of Civil
30 Procedure.

31 (2) The petition shall be verified by the petitioner or the
32 person filing the petition on behalf of the victim.

33 (3) The petition may be filed regardless of whether there is any
34 pending litigation between the respondent and the petitioner or victim.

35 (c) A petition for a sexual assault protection order filed under this
36 subchapter shall allege the commission of a sexual assault and shall be

1 accompanied by an affidavit made under oath stating the specific facts and
 2 circumstances of the sexual assault and the specific relief sought.

3
 4 16-118-205. Filing fees.

5 (a) A circuit court, clerk of a court, or law enforcement agency shall
 6 not require any initial filing fee or service costs relating to a petition
 7 for a sexual assault protection order.

8 (b) The filing fee may be assessed against the petitioner or the
 9 respondent at the hearing held pursuant to § 16-118-208.

10 (c)(1) A petitioner shall not bear the cost associated with the
 11 issuance or service of a warrant and witness subpoena.

12 (2) Nothing in this section shall be construed to prohibit a
 13 circuit court from assessing costs if an allegation of sexual assault is
 14 determined to be false.

15
 16 16-118-206. Petition – Form.

17 (a) A circuit clerk shall provide simplified forms and clerical
 18 assistance to help a petitioner or victim with the filing of a petition for a
 19 sexual assault protection order under this subchapter if the petitioner or
 20 victim is not represented by counsel.

21 (b) The petition form for a sexual assault protection order shall not
 22 require or suggest that a petitioner or victim include his or her social
 23 security number or the social security number of the respondent in the
 24 petition.

25 (c)(1)(A) A petitioner or victim may omit his or her home or business
 26 address from any document filed with the circuit court.

27 (B) If a petitioner or victim omits his or her home or
 28 business address under subdivision (c)(1)(A) of this section, the petitioner
 29 shall provide the circuit court with a mailing address.

30 (2) If disclosure of an address to the circuit court is
 31 necessary to determine jurisdiction or consider venue, the circuit court may
 32 order that the disclosure be made:

33 (A) After receiving the petitioner’s consent;

34 (B) Orally and in chambers, out of the presence of the
 35 respondent, and a sealed record to be made; or

36 (C) After a hearing, if the circuit court takes into

1 consideration the safety of the petitioner or victim and finds the disclosure
2 is in the interest of justice.

3 (d) The petition for a sexual assault protection order may be in
4 substantially the following form:

5
6
7 “Petition for Sexual Assault Protection Order

8
9
10 Case No. _____

11
12 _____ Petitioner’s home address:

13 Petitioner

14 _____
15 _____
16 _____
17 _____
18 Date of Birth

19
20 Petitioner’s work address:

21 _____
22 _____
23 vs.

24
25 _____ Respondent’s home address:

26 Respondent

27 _____
28 _____
29 _____
30 _____
31 Date of Birth,
32 if known

33
34 Respondent’s work address:

35 _____
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I am the petitioner and at least 18 years of age under 18 but emancipated.

I am filing on behalf of myself.

I am filing on behalf of another person who is:

A minor, whose guardian or victim advocate is _____;

or

An adult who is unable to file the petition because of age, disability, or health, whose guardian or victim advocate is _____.

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

or

The respondent is under 18 years of age and has not been emancipated.

The respondent has sexually assaulted the victim by the following acts: (describe)

(1) There is an immediate and present danger of sexual assault to the petitioner or victim; or

(2) The respondent is scheduled to be released from incarceration within thirty (30) days and upon the respondent's release there will be an immediate and present danger of sexual assault to the petitioner or victim.

The reasons for the immediate and present danger to the petitioner or victim are as follows: (describe)

1 _____
 2 _____
 3 _____
 4 _____
 5 _____
 6 _____
 7 _____
 8 _____

9
 10 Petitioner requests that the court issue an ex parte sexual assault
 11 protection order with the following provisions: (check all that apply)

12
 13 Excluding the respondent from the residence of the petitioner. Address of
 14 residence:

15 _____
 16 _____

17
 18 Excluding the respondent from the residence of the victim. Address of
 19 residence:

20 _____
 21 _____

22
 23 Excluding the respondent from the residence of the guardian of the victim.
 24 Address of residence:

25 _____
 26 _____

27
 28 Excluding the respondent from the place of business, employment, school, or
 29 other location of the victim. Address of residence:

30 _____
 31 _____

32
 33 Address of place of business:

34 _____
 35 _____

36 Address of place of employment:

1 _____

2 _____

3 _____

4 Address of school:

5 _____

6 _____

7 _____

8 Other (identify):

9 _____

10 _____

11 _____

12 Prohibiting the respondent, directly or through an agent, from contacting the
13 victim, except under the following conditions:

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

20 _____

21 _____

22 _____

23 _____

24 Excluding the victim's address from notice to the respondent

25 _____

26 It is further requested that upon hearing, the court issue a full sexual
27 assault protection order with the following provisions: (check all that
28 apply)

29 _____

30 Excluding the respondent from the residence of the petitioner. Address of
31 the residence:

32 _____

33 _____

34 _____

35 Excluding the respondent from the residence of the victim. Address of
36 residence:

1 _____
2 _____

3
4 Excluding the respondent from the residence of the guardian of the victim.
5 Address of residence:
6 _____
7 _____

8
9 Excluding the respondent from the place of business, employment, school, or
10 other location of the victim. Address of residence:
11 _____
12 _____

13
14 Address of place of business:
15 _____
16 _____

17 Address of place of employment:
18 _____
19 _____

20
21 Address of school:
22 _____
23 _____

24
25 Other (identify):
26 _____
27 _____

28
29 Requiring the respondent to pay filing fees, service fees, court costs and
30 petitioner's attorney's fees.

31
32 The petitioner under oath states that the facts stated in the above petition
33 are true according to the petitioner's best knowledge and belief.

34
35 _____
36 Date

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Petitioner's signature

STATE OF ARKANSAS

COUNTY OF _____

Subscribed and sworn to before me this _____ day of _____,
20____

Notary Public

My Commission Expires:
_____”

16-118-207. Hearing – Service – Attorney ad litem.

(a) When a petition for a sexual assault protection order is filed under this subchapter, the circuit court shall order a hearing to be held on the petition not later than thirty (30) days from the date on which the petition is filed or at the next court date, whichever is later.

(b) 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 circuit court may set a new date for the hearing.

(c) Service shall be made upon a guardian of the victim at least five (5) days prior to the date of the hearing. If service cannot be made on the guardian of the victim, the circuit court may set a new date for the hearing.

(d) Nothing in this section precludes the circuit court from setting an earlier hearing.

(e) The circuit court shall appoint an attorney ad litem to represent the respondent:

(1) If the respondent:

1 (A) Is under eighteen (18) years of age;
 2 (B) Has not been emancipated; and
 3 (C) Is not represented by an attorney; or
 4 (2) If the respondent is an attorney pro se and disclosure of an
 5 address is to be made out of the presence of the respondent under § 16-118-
 6 206.

7
 8 16-118-208. Relief generally – Duration.

9 (a) At the hearing on the petition for a sexual assault protection
 10 order, the circuit court may provide the following relief if the circuit
 11 court finds the relief is necessary to protect the victim from an immediate
 12 and present danger of sexual assault:

13 (1) Exclude the respondent from the residence of the petitioner,
 14 victim, or guardian of the victim;

15 (2) Exclude the respondent from the place of business or
 16 employment, school, or other location of the victim;

17 (3) Allow the prevailing party an award of costs for any filing
 18 fee, service fee, and court costs including a reasonable attorney’s fee;

19 (4) Prohibit the respondent directly or through an agent from
 20 contacting the victim except under specific conditions named in the sexual
 21 assault protection order; and

22 (5)(A) Order other relief that is necessary or appropriate for
 23 the protection of the petitioner or victim.

24 (B) Relief under subdivision (a)(5)(A) of this section may
 25 include without limitation enjoining and restraining the respondent from
 26 doing, attempting to do, or threatening to do any act injuring, mistreating,
 27 molesting, or harassing the victim.

28 (b) Any relief granted by the circuit court for protection under this
 29 subchapter shall be for a fixed period of time not less than ninety (90) days
 30 nor more than two (2) years in duration, and may be renewed at a subsequent
 31 hearing upon proof and a finding by the circuit court that the threat of
 32 sexual assault still exists.

33 (c) Any sexual assault protection order issued by the circuit court
 34 pursuant to a petition filed under this subchapter may be modified upon
 35 application of either party, notice to all parties, and a hearing.

36

16-118-209. Temporary order.

(a) The circuit court shall grant ex parte a temporary sexual assault protection order pending a full hearing when:

(1) Any petition filed under this subchapter alleges either:

(A) An immediate and present danger of sexual assault; or

(B) That the respondent is scheduled to be released from incarceration within thirty (30) days and upon the respondent's release there will be an immediate and present danger of sexual assault; and

(2) The circuit court finds sufficient evidence to support the petition for a sexual assault protection order.

(b) A temporary sexual assault protection order may include any relief provided for in § 16-118-208.

(c) A temporary sexual assault protection order shall be effective for a fixed period of time not to exceed thirty (30) days.

(d) When a temporary sexual assault protection order is issued as authorized by this section, a hearing shall be set for no later than thirty (30) days from the issuance of the temporary sexual assault protection order.

(e) Upon the issuance of a temporary sexual assault protection order, the respondent and a guardian of the victim shall be served pursuant to the applicable rules of service under the Arkansas Rules of Civil Procedure with:

(1) A copy of the temporary sexual assault protection order;

(2) A copy of the petition, excluding, pursuant to court order, the address of the victim; and

(3) Notice of the date and place set for the full hearing.

(f) Incarceration or imprisonment of the respondent does not bar the circuit court from issuing a temporary sexual assault protection order.

16-118-210. Sexual assault protection order – Enforcement – Penalties – Criminal jurisdiction.

(a) Any sexual assault protection order granted under this subchapter is enforceable by any law enforcement agency with proper jurisdiction.

(b) Any sexual assault protection order shall include a notice to the respondent that a violation of the sexual assault protection order is a Class D felony carrying a maximum penalty of six (6) years imprisonment or a fine of up to ten thousand dollars (\$10,000), or both.

(c) Jurisdiction for the criminal offense of violating a term of a

1 sexual assault protection order is with the circuit court or any other court
 2 having jurisdiction over criminal matters.

3 (d) In the final sexual assault protection order, the petitioner's and
 4 victim's home or business address may specifically be excluded from notice to
 5 the respondent.

6 (e) When a law enforcement officer has probable cause to believe that
 7 a respondent has violated a sexual assault protection order and has been
 8 presented verification of the existence of the sexual assault protection
 9 order, the officer may, without a warrant, arrest the apparent violator
 10 whether the violation was in or outside the presence of the officer if the
 11 sexual assault protection order was obtained according to this subchapter.

12 (f) A sexual assault protection order issued by a circuit court of
 13 competent jurisdiction in any county of this state is enforceable in every
 14 county of this state by any court or law enforcement officer.

15
 16 16-118-211. Law enforcement assistance.

17 (a) Upon request of the petitioner or victim, when a sexual assault
 18 protection order is issued under this subchapter, the circuit court may order
 19 a law enforcement officer with jurisdiction to accompany the petitioner or
 20 victim and assist in placing the petitioner or victim in possession of a
 21 dwelling or residence or to otherwise assist in execution or service of the
 22 sexual assault protection order.

23 (b) The circuit court may also order a law enforcement officer to
 24 assist the petitioner or victim in returning to a residence and obtaining the
 25 petitioner's or victim's personal effects.

26 (c) Any law enforcement officer acting pursuant to this section shall
 27 follow the same procedures as outlined in § 16-90-1107.

28
 29 16-118-212. Contempt proceedings.

30 When a petitioner, victim, or any law enforcement officer files an
 31 affidavit with a circuit court that has issued a sexual assault protection
 32 order under this subchapter alleging that the respondent has violated the
 33 sexual assault protection order, the circuit court may issue an order to the
 34 respondent requiring the respondent to appear and show cause why he or she
 35 should not be found in contempt.

1 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
 2 General Assembly of the State of Arkansas that there is an acute and
 3 pervasive problem of sexual assault in this state; that the injunctive relief
 4 provided by this act will aid in the prevention of further sexual assault
 5 against the citizens of this state; and that this act is immediately
 6 necessary because of the need to provide an adequate mechanism for this state
 7 to protect the general health, welfare, and safety of its citizens by
 8 intervening when sexual assault of a person has occurred. Therefore, an
 9 emergency is declared to exist and this act being immediately necessary for
 10 the preservation of the public peace, health, and safety shall become
 11 effective on:

- 12 (1) The date of its approval by the Governor;
- 13 (2) If the bill is neither approved nor vetoed by the Governor,
 14 the expiration of the period of time during which the Governor may veto the
 15 bill; or
- 16 (3) If the bill is vetoed by the Governor and the veto is
 17 overridden, the date the last house overrides the veto.

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