



*Arkansas
Sentencing
Commission*

**Impact Assessment for HB1059
Sponsored by Representative House**

Subtitle TO AMEND THE LAW CONCERNING THE OFFENSE OF VIOLATION OF AN ORDER OF PROTECTION AND TO CRIMINALIZE THE VIOLATION OF A MILITARY ORDER OF PROTECTION.

Impact Summary¹ Cannot be determined.

Change from current law² Amends Arkansas Code Annotated § 5-53-134, Violation of an order of protection, to create a new course of conduct. As currently written, a conviction for a violation of an order of protection is a Class A misdemeanor. If an offender commits a subsequent offense within five (5) years of a previous conviction for violating an order of protection, the order of protection was issued after a hearing of which the person had notice and an opportunity to participate, and the facts constituting the violation also constitute any misdemeanor or felony offense, a conviction for violating this section is a Class D felony. See attached for a complete reprint of the current code provision.

The proposed bill creates a new course of conduct for which a person may be convicted of violating an order of protection. A person commits the offense of violation of a military order of protection if a commanding general, military judge, or military commander issues a military order of protection against the service member, the service member receives actual notice of the military order of protection, and the service member knowingly violates a condition of the military order of protection. Under the proposed bill, a violation of a military order of protection is a Class A misdemeanor. This conduct would be a Class D felony if the offense is committed within five (5) years of a conviction for violation of an order of protection, the order of protection was issued after a hearing of which the person had notice and an opportunity to participate, and the facts constituting the violation also constitute any misdemeanor or felony offense.

The proposed bill also defines service member, military order of protection, and amends A.C.A. § 9-15-303, Immunity from liability, to require law enforcement officers to enforce military orders of protection.

¹ This impact assessment was prepared (3/6/2017, 2:44 p.m.) by the staff of the Arkansas Sentencing Commission pursuant to A. C. A. § 16-90-802(d)(6) with data supplied by the Arkansas Department of Correction and the Administrative Office of the Courts. A micro-simulation model may be used for bills which have the potential for significant impact on correctional resources. The following designations will be used: “minimal” = less than 10 offenders per year will be affected; “medium” = would require budgetary increases for ADC inmate costs; and “major” = would require budgetary increases for ADC inmate costs and construction costs for additional beds.

² Standard punishment ranges:

Class Y	10-40 years or life	Class C	3-10 years; up to \$10,000	Class A	Up to 1 year; up to \$2,500
Class A	6-30 years; up to \$15,000	Class D	0-6 years; up to \$10,000	Class B	Up to 90 days; up to \$1,000
Class B	5-20 years; up to \$15,000	Unclassified	As specified in statute	Class C	Up to 30 days; up to \$500

Impact Information

Because this proposed bill creates a new course of conduct for committing this offense, data is unavailable as to the likely number of convictions per year. Therefore, the impact of this proposed bill is undetermined.

The Administrative Office of the Courts (AOC) reports that for the three year period beginning January 1, 2013, and ending December 31, 2015, there were 169 convictions for a violation of § 5-53-134(b)(1), Violation of an order of protection, a Class A misdemeanor, as currently written.

The AOC reports that for the three year period beginning January 1, 2013, and ending December 31, 2015, there were 72 convictions for a violation of § 5-53-134(b)(2), Violation of an order of protection, a Class D felony, as currently written.

The Arkansas Department of Correction reports that as of January 5, 2017, there are eighteen (18) inmates serving a sentence for A.C.A. § 5-53-134(b)(2), Violation of an order of protection, Class D felony, as currently written. Three (3) of these offenders are serving a sentence where Violation of an order of protection is their most serious offense.

A.C.A. § 5-53-134. Violation of an order of protection.

(a) (1) A person commits the offense of violation of an order of protection if:

(A) A circuit court or other court with competent jurisdiction has issued a temporary order of protection or an order of protection against the person pursuant to the Domestic Abuse Act of 1991, § 9-15-101 et seq.;

(B) The person 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 pursuant to the Domestic Abuse Act of 1991, § 9-15-101 et seq.; and

(C) The person knowingly violates a condition of an order of protection issued pursuant to the Domestic Abuse Act of 1991, § 9-15-101 et seq.

(2) A person commits the offense of violation of an out-of-state order of protection if:

(A) The court of another state, a federally recognized Indian tribe, or a territory with jurisdiction over the parties and matters has issued a temporary order of protection or an order of protection against the person pursuant to the laws or rules of the other state, federally recognized Indian tribe, or territory;

(B) The person has received actual notice or other lawful notice of a temporary order of protection or an order of protection pursuant to the laws or rules of the other state, the federally recognized Indian tribe, or the territory;

(C) The person knowingly violates a condition of an order of protection issued pursuant to the laws or rules of the other state, the federally recognized Indian tribe, or the territory; and

(D) The requirements of § 9-15-302 concerning the full faith and credit for an out-of-state order of protection have been met.

(b) (1) Except as provided in subdivision (b)(2) of this section, violation of an order of protection under this section is a Class A misdemeanor.

(2) Violation of an order of protection under this section is a Class D felony if:

(A) The offense is committed within five (5) years of a previous conviction for violation of an order of protection under this section;

(B) The order of protection was issued after a hearing of which the person received actual notice and at which the person had an opportunity to participate; and

(C) The facts constituting the violation on their own merit satisfy the elements of any felony offense or misdemeanor offense, not including an offense provided for in this section.

(c) (1) A law enforcement officer may arrest and take into custody without a warrant any person who the law enforcement officer has probable cause to believe:

(A) Is subject to an order of protection issued pursuant to the laws of this state; and

(B) Has violated the terms of the order of protection, even if the violation did not take place in the presence of the law enforcement officer.

(2) Under § 9-15-302, a law enforcement officer or law enforcement agency may arrest and take into custody without a warrant any person who the law enforcement officer or law enforcement agency has probable cause to believe:

(A) Is subject to an order of protection issued pursuant to the laws or rules of another state, a federally recognized Indian tribe, or a territory; and

(B) Has violated the terms of the out-of-state order of protection, even if the violation did not take place in the presence of the law enforcement officer.

(d) It is an affirmative defense to a prosecution under this section if:

(1) The parties have reconciled prior to the violation of the order of protection; or

(2) The petitioner for the order of protection:

(A) Invited the defendant to come to the petitioner's residence or place of employment listed in the order of protection; and

(B) Knew that the defendant's presence at the petitioner's residence or place of employment would be in violation of the order of protection.

(e) Any law enforcement officer acting in good faith and exercising due care in making an arrest for domestic abuse in an effort to comply with this subchapter shall have immunity from civil or criminal liability.

HISTORY: Acts 1991, No. 267, § 1; 1991, No. 1236, § 1; 2003, No. 651, § 4; 2009, No. 331, § 1; 2011, No. 810, § 1.