

Hall of the House of Representatives

86th General Assembly - Regular Session, 2007

Amendment Form

Subtitle of House Bill No. 2343

"AN ACT CONCERNING THE OFFENSE OF STALKING."

Amendment No. 1 to House Bill No. 2343.

Amend House Bill No. 2343 as originally introduced:

Delete everything after the enacting clause and substitute the following:

"SECTION 1. Arkansas Code § 5-71-229 is amended to read as follows:
5-71-229. Stalking.

(a)(1) A person commits stalking in the first degree if he or she ~~purposely knowingly~~ engages in a course of conduct that ~~harasses another person and makes a terroristic threat with the intent of placing that person in imminent fear of death or serious bodily injury or placing that person in imminent fear of the death or serious bodily injury of his or her immediate family and the person would place a reasonable person in the victim's position under emotional distress or in fear for his or her safety or a third person's safety, and the actor:~~

(A) Does so in contravention of an order of protection consistent with The Domestic Abuse Act of 1991, § 9-15-101 et seq., or a no contact order as set out in subdivision (a)(2)(A) of this section, protecting the same victim, or any other order issued by any court protecting the same victim;

(B) Has been convicted within the previous ten (10) years of:

(i) Stalking in the second degree;
(ii) Violating § 5-13-301 or § 5-13-310; or
(iii) Stalking or threats against another person's safety under the statutory provisions of any other state jurisdiction; or

(C) Is armed with a deadly weapon or represents by word or conduct that he or she is armed with a deadly weapon.

(2)(A) Upon pretrial release of the defendant, a judicial officer shall enter a no contact order in writing consistent with Rules 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice to the defendant of penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.

(B) This no contact order remains in effect during the pendency of any appeal of a conviction under subsection (a) of this section.

(C) The judicial officer or prosecuting attorney shall



provide a copy of this no contact order to the victim and the arresting agency without unnecessary delay.

(D) If the judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the cause, the judicial officer shall enter such orders as are consistent with § 5-2-305.

(3) Stalking in the first degree is a Class B felony.

(b)(1) A person commits stalking in the second degree if he or she ~~purposely knowingly~~ engages in a course of conduct that ~~harasses another person and makes a terroristic threat with the intent of placing that person in imminent fear of death or serious bodily injury or placing that person in imminent fear of the death or serious bodily injury of his or her immediate family~~ would place a reasonable person in the victim's position under emotional distress or in fear for his or her safety or a third person's safety.

(2)(A) Upon pretrial release of the defendant, a judicial officer shall enter a no contact order in writing consistent with Rules 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice to the defendant of penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.

(B) This no contact order remains in effect during the pendency of any appeal of a conviction under subsection (b) of this section.

(C) The judicial officer or prosecuting attorney shall provide a copy of this no contact order to the victim and arresting agency without unnecessary delay.

(D) If the judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the cause, the judicial officer shall enter such orders as are consistent with § 5-2-305.

(3) Stalking in the second degree is a Class C felony.

(c) It is an affirmative defense to prosecution under this section if the actor is a law enforcement officer, licensed private investigator, attorney, process server, licensed bail bondsman, or a store detective acting within the reasonable scope of his or her duty while conducting surveillance on an official work assignment.

(d) It is not a defense to a prosecution under this section that the actor:

(1) Was not given actual notice by the victim that the actor's conduct was not wanted;

(2) Did not intend to cause the victim emotional distress; or

(3) Did not intend to cause the victim to fear for his or her safety or a third person's safety.

(e) As used in this section:

(1)(A) "Course of conduct" means ~~a pattern of conduct composed of two (2) or more acts, separated by at least thirty six (36) hours, but occurring within one (1) year~~ including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, places under surveillance, threatens, or communicates to or about, a person, or interferes with a person's property.

(B)(i) "Course of conduct" does not include constitutionally protected activity.

(ii) If the defendant claims that he or she was engaged in a constitutionally protected activity, the court shall determine the validity of that claim as a matter of law and, if found valid, shall exclude that activity from evidence; and

(2) "Emotional distress" means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

~~(2) "Harasses" means an act of harassment as defined by § 5-71-208; and~~

~~(3) "Immediate family" means any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household or who, within the prior six (6) months, regularly resided in the household."~~

The Amendment was read _____

By: Representative S. Prater
GRH/YTC - 03-12-2007 08:11
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Chief Clerk