



*Arkansas  
Sentencing  
Commission*

**Impact Assessment for SB402  
Sponsored by Senator Leding**

**Subtitle** CONCERNING THE OFFENSE OF VIOLATION OF AN ORDER OF PROTECTION.

**Impact Summary**<sup>1</sup> Cannot be determined.

**Change from current law**<sup>2</sup> Amends Arkansas Code Annotated § 5-53-134, Violation of an order of protection, by removing an element from the conduct punishable as a Class D felony. Currently, violation of an order of protection is a Class D felony if (1) the offense is committed within five years of a previous conviction for violation of an order of protection, (2) 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 (3) the facts constituting the violation on their own merit satisfy the elements of any felony offense or misdemeanor offense, not including the offense of violation of an order of protection. If otherwise committed, violation of an order of protection is a Class A misdemeanor.

Under the proposed bill, violation of an order of protection is a Class D felony if (1) the offense is committed within five years of a previous conviction for violation of an order of protection and (2) the order of a protection was issued after a hearing of which the person received actual notice and at which the person had an opportunity to participate, regardless of whether the facts constituting the violation on their own merit satisfy the elements of any felony offense or misdemeanor offense other than violation of an order of protection.

**Impact Information**

Because available data does not distinguish the number of convictions for a violation of an order of protection, Class A misdemeanor, which meet the elements of the Class D felony under the proposed bill, this impact cannot be determined. The following numbers are provided for informational purposes only.

The Administrative Office of the Courts (AOC) reports that for the three (3) year period beginning January 1, 2015 and ending December 31, 2017, there were 52 convictions for a violation of A.C.A. § 5-53-134, Violation of an order of protection, Class D felony, as currently written. AOC reports for the same three (3) year period, there were 110 convictions for a violation of A.C.A. § 5-53-134, Violation of an order of protection, Class A misdemeanor, as currently written.

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<sup>1</sup> This impact assessment was prepared (2/26/2019, 1:47 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.

<sup>2</sup> 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

The Arkansas Department of Correction (ADC) reports that there are currently twenty (20) inmates serving a term of incarceration for a violation of A.C.A. § 5-53-134, Violation of an order of protection, a Class D felony. Of these, four (4) inmates are serving a term of incarceration for which A.C.A. § 5-53-134 is the primary 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.
- (3) (A) A service member commits the offense of violation of a military order of protection if:
- (i) The commanding general, a military judge, or a special courts-martial convening authority as authorized by § 12-64-406(b) issues a military order of protection against the service member;
  - (ii) The service member receives actual notice or other lawful notice of the military order of protection as authorized under United States Department of Defense Instruction 6400.06, as it existed on January 1, 2017; and
  - (iii) The service member knowingly violates a condition of the military order of protection.
- (B) A prosecution against a service member for the offense of violation of a military order of protection does not prohibit the commanding general or military commander who issued the military order of protection from pursuing appropriate disciplinary action against the service member under the Military Code of Arkansas.
- (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 a person whom the law enforcement officer has probable cause to believe:
- (A) Is subject to an order of protection issued under 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 a person whom the law enforcement officer or law enforcement agency has probable cause to believe:
- (A) Is subject to:
    - (i) An order of protection issued under the laws or rules of another state, a federally recognized Indian tribe, or a territory; or
    - (ii) A military order of protection; and

**(B)** Has violated the terms of the order of protection issued under the laws or rules of the other state, federally recognized Indian tribe, or territory, or the military order of protection, even if the violation did not take place in the presence of the law enforcement officer.

**(3)**

**(A)** If a service member is in the custody of a law enforcement agency as authorized in subdivision (c)(2) of this section, the law enforcement agency shall notify the office of the Adjutant General of the Arkansas National Guard within twenty-four (24) hours from the time the service member was placed in the custody of the law enforcement agency.

**(B)**

**(i)** The Arkansas National Guard shall take custody of the service member within forty-eight (48) hours from the time the service member was placed in the custody of the law enforcement agency.

**(ii)** However, if the Arkansas National Guard does not take custody of the service member as required by subdivision (c)(3)(B)(i) of this section, the law enforcement agency shall release the service member.

**(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.

**(f)** As used in this section:

**(1)** "Military order of protection" means an official command directed at a service member for the purpose of preventing violent and threatening acts against a person who:

**(A)** Is the current or former spouse of the service member;

**(B)** Is or was a child, step-child, parent, step-parent, sibling, guardian, or ward of the service member;

**(C)** Is residing or cohabitating or in the past has resided or cohabitated with the service member;

**(D)** Has or had a child in common with the service member;

**(E)** Is or has been in a dating relationship with the service member as defined by § 9-15-103;

**(F)** Has had an intimate sexual relationship with the service member; or

**(G)** Has made allegations against the service member of violations of the punitive article of sexual misconduct as defined by § 12-64-845; and

**(2)** "Service member" means a person serving in:

**(A)** Any branch or reserve component of the United States Armed Forces; or

**(B)** The National Guard of any state.

**HISTORY:** Acts 1991, No. 267, § 1; 1991, No. 1236, § 1; 2003, No. 651, § 4; 2009, No. 331, § 1; 2011, No. 810, § 1; 2017, No. 515, §§ 1-3.