

INTERIM STUDY PROPOSAL 2009-208

1  
2 State of Arkansas  
3 87th General Assembly  
4 Fiscal Session, 2010

**A Bill**

**BPG/BPG**  
**HOUSE BILL**

5  
6 By: Representative D. Creekmore

7  
8 Filed with: House Committee on Judiciary  
9 pursuant to A.C.A. §10-3-217.

10  
11 **For An Act To Be Entitled**

12 AN ACT CONCERNING THE OFFENSE OF STALKING; TO  
13 ESTABLISH CIVIL LIABILITY FOR STALKING; AND FOR  
14 OTHER PURPOSES.

15  
16 **Subtitle**

17 AN ACT CONCERNING THE OFFENSE OF  
18 STALKING AND TO ESTABLISH CIVIL  
19 LIABILITY FOR STALKING.

20  
21  
22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

23  
24 SECTION 1. Arkansas Code § 5-71-229 is amended to read as follows:  
25 5-71-229. Stalking.

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

34 (A) Does so in contravention of an order of protection  
35 consistent with ~~The~~ the Domestic Abuse Act of 1991, § 9-15-101 et seq., or a  
36 no contact order as set out in subdivision (a)(2)(A) of this section,

1 protecting the same victim, or any other order issued by any court protecting  
2 the same victim;

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

5 (i) Stalking in the second degree;

6 (ii) ~~Violating~~ Terroristic threatening, § 5-13-301  
7 or terroristic act, § 5-13-310; or

8 (iii) Stalking or threats against another person's  
9 safety under the statutory provisions of any other state jurisdiction; or

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

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

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

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

23 (D) If the judicial officer has reason to believe that  
24 mental disease or defect of the defendant will or has become an issue in the  
25 cause, the judicial officer shall enter such orders as are consistent with §  
26 5-2-305.

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

28 (b)(1) A person commits stalking in the second degree if he or she  
29 ~~purposefully~~ knowingly engages in a course of conduct that harasses another  
30 person and makes a terroristic threat with the intent of placing that person  
31 in imminent fear of death or serious bodily injury or placing that person in  
32 imminent fear of the death or serious bodily injury of his or her immediate  
33 family.

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

1 the defendant of penalties contained in Rule 9.5 of the Arkansas Rules of  
2 Criminal Procedure.

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

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

9 (D) If the judicial officer has reason to believe that  
10 mental disease or defect of the defendant will or has become an issue in the  
11 cause, the judicial officer shall enter such orders as are consistent with §  
12 5-2-305.

13 (3) Stalking in the second degree is a Class G D felony.

14 (c)(1) A person commits stalking in the third degree if he or she  
15 knowingly commits an act that would place a reasonable person in the victim's  
16 position under emotional distress and in fear for his or her safety or a  
17 third person's safety.

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

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

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

28 (D) If the judicial officer has reason to believe that  
29 mental disease or defect of the defendant will or has become an issue in the  
30 cause, the judicial officer shall enter such orders as are consistent with §  
31 5-2-305.

32 (3) Stalking in the third degree is a Class A misdemeanor.

33 ~~(e)~~(d) It is an affirmative defense to prosecution under this section  
34 if the actor is a law enforcement officer, licensed private investigator,  
35 attorney, process server, licensed bail bondsman, or a store detective acting  
36 within the reasonable scope of his or her duty while conducting surveillance

1 on an official work assignment.

2 ~~(d)~~(e) It is not a defense to a prosecution under this section that  
3 the actor was not given actual notice by the victim that the actor's conduct  
4 was not wanted.

5 (f) As used in this section:

6 (1)(A) "Course of conduct" means ~~a pattern of conduct composed~~  
7 ~~of two (2) or more acts, separated by at least thirty-six (36) hours, but~~  
8 ~~occurring within one (1) year~~ including without limitation acts in which the  
9 actor directly, indirectly, or through third parties, by any action, method,  
10 device, or means follows, monitors, observes, places under surveillance,  
11 threatens, or communicates to or about a person or interferes with a person's  
12 property.

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

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

19 (2)(A) "Emotional distress" means significant mental suffering  
20 or distress.

21 (B) "Emotional distress" does not require that the victim  
22 sought or received medical or other professional treatment or counseling; and

23 ~~(2)(3) "Harasses" means an act of harassment as prohibited by §~~  
24 ~~5-71-208, and.~~

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

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30 SECTION 2. Arkansas Code Title 16 is amended to add an additional  
31 chapter to read as follows:

32  
33 CHAPTER 127

34 STALKER LIABILITY ACT

35  
36 16-127-101. Title.

1 This chapter shall be known and may be cited as the "Stalker Liability  
2 Act".

3  
4 16-127-102. Civil liability for stalking.

5 (a) A person may recover actual and punitive damages if applicable,  
6 reasonable attorney's fees, and court costs against another person if he or  
7 she proves by a preponderance of the evidence that the other person knowingly  
8 engaged in a course of conduct that would have placed a reasonable person in  
9 the person's position under emotional distress or in fear for his or her  
10 safety or a third person's safety.

11 (b) The definitions at § 5-71-229(f) apply to this chapter.

12 (c) A cause of action under subsection (a) of this section may be  
13 maintained whether or not the person who is alleged to have engaged in a  
14 course of conduct prohibited under § 5-71-229 has been charged or convicted  
15 under § 5-71-229.

16 (d) The existence or the termination of a cause of action under  
17 subsection (a) of this section does not prevent the criminal prosecution of a  
18 person for violation of § 5-71-229.

19 (e) A person shall commence a cause of action under subsection (a) of  
20 this section against another person one (1) year or less after the most  
21 recent conduct prohibited under § 5-71-229 by the other person towards the  
22 aggrieved party.

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36 Filed Date: 02/03/2010 By: BPG\KSW