

1 State of Arkansas

2 80th General Assembly

3 Regular Session, 1995

4 By: Representative J. Smith

5

6

7

## For An Act To Be Entitled

8 "AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS CODE TO  
9 PROVIDE FOR NO CONTACT ORDERS AGAINST PERSONS COMMITTING  
10 THE CRIMINAL OFFENSES OF STALKING, TERRORISTIC  
11 THREATENING, HARASSMENT, AND HARASSING COMMUNICATIONS; AND  
12 FOR OTHER PURPOSES."

13

14

### Subtitle

15

16

17

18

19

20

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

22

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

25

"5-71-229. Stalking.

26

27

28

29

30

31

32

33

34

35

(a)(1) A person commits stalking in the first degree if he purposely 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 he:

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

1 (B) Has been convicted within the previous ten (10) years  
2 of:  
3 (i) Stalking in the second degree; or  
4 (ii) Violating §§ 5-13-301 or 5-13-310; or  
5 (iii) Stalking or threats against another person's  
6 safety under the statutory provisions of any other state jurisdiction; or  
7 (C) Is armed with a deadly weapon or represents by word or  
8 conduct that he is so armed.

9 (2)(A) A *judicial officer*, upon pre-trial release of defendant,  
10 shall enter a no contact order in writing consistent with Rules 9.3 and 9.4  
11 of the Arkansas Rules of Criminal Procedure and shall give notice to  
12 defendant of penalties contained in Rule 9.5 of the Arkansas Rules of  
13 Criminal Procedure.

14 (B) This no contact order shall remain in effect during  
15 the pendency of any appeal of a conviction under subsection (a) of this  
16 section.

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

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

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

25 (b)(1) A person commits stalking in the second degree if he purposely  
26 engages in a course of conduct that harasses another person and makes a  
27 terroristic threat with the intent of placing that person in imminent fear of  
28 death or serious bodily injury or placing that person in imminent fear of the  
29 death or serious bodily injury of his or her immediate family.

30 (2)(A) A *judicial officer*, upon pre-trial release of defendant,  
31 shall enter a no contact order in writing consistent with Rules 9.3 and 9.4  
32 of the Arkansas Rules of Criminal Procedure and shall give notice to the  
33 defendant of penalties contained in Rule 9.5 of the Arkansas Rules of  
34 Criminal Procedure.

35 (B) This no contact order shall remain in effect during

1 the pendency of any appeal of a conviction under subsection (b) of this  
2 section.

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

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

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

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

16 (d) For the purpose of this section:

17 (1)(A) Course of conduct means a pattern of conduct composed  
18 of two (2) or more acts separated by at least thirty-six (36) hours but  
19 occurring within one (1) year.

20 (B)(i) Constitutionally protected activity is not included  
21 within the meaning of course of conduct.

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

26 (2) Harasses means acts of harassment as defined by  
27 § 5-71-208; and

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

32

33 SECTION 2. Arkansas Code Annotated 5-13-301 is amended to read as  
34 follows:

35 "5-13-301. Terroristic threatening.

1 (a)(1) A person commits the offense of terroristic threatening in the  
2 first degree if:

3 (A) With the purpose of terrorizing another person, he  
4 threatens to cause death or serious physical injury or substantial property  
5 damage to another person; or

6 (B) With the purpose of terrorizing another person, he  
7 threatens to cause physical injury or property damage to a teacher or other  
8 school employee acting in the line of duty.

9 (2) Terroristic threatening in the first degree is a Class D  
10 felony.

11 (b)(1) A person commits the offense of terroristic threatening in the  
12 second degree if, with the purpose of terrorizing another person, he  
13 threatens to cause physical injury or property damage to another person.

14 (2) Terroristic threatening in the second degree is a Class A  
15 misdemeanor.

16 (c)(1) *A judicial officer, upon pre-trial release of defendant, shall*  
17 enter a no contact order in writing consistent with Rules 9.3 and 9.4 of the  
18 Arkansas Rules of Criminal Procedure and shall give notice to the defendant  
19 of penalties contained in Rule 9.5 of the Arkansas Rules of Criminal  
20 Procedure.

21 (2) This no contact order shall remain in effect during the  
22 pendency of any appeal of a conviction under this section.

23 (d)(1) *The judicial officer or prosecuting attorney shall provide a*  
24 copy of this no contact order to the victim and arresting agency without  
25 unnecessary delay.

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

30

31 SECTION 3. Arkansas Code Annotated 5-71-208 is amended to read as  
32 follows:

33 "5-71-208. Harassment.

34 (a) A person commits the offense of harassment if, with purpose to  
35 harass, annoy, or alarm another person, without good cause, he:

1           (1) Strikes, shoves, kicks, or otherwise touches a person,  
2 subjects him to offensive physical contact or attempts or threatens to do so;  
3 or

4           (2) In a public place, directs obscene language or makes an  
5 obscene gesture to or at another person in a manner likely to provoke a  
6 violent or disorderly response; or

7           (3) Follows a person in or about a public place; or

8           (4) In a public place repeatedly insults, taunts, or challenges  
9 another in a manner likely to provoke a violent or disorderly response; or

10          (5) Engages in conduct or repeatedly commits acts that alarm or  
11 seriously annoy another person and that serve no legitimate purpose; or

12          (6) Places the person under surveillance by remaining present  
13 outside his or her school, place of employment, vehicle, other place occupied  
14 by the person, or residence, other than the residence of the defendant, for  
15 no purpose other than to harass, alarm, or annoy.

16          (b) Harassment is a Class A misdemeanor.

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

22          (d)(1) *A judicial officer, upon pre-trial release of defendant, shall*  
23 *enter a no contact order in writing consistent with Rules 9.3 and 9.4 of the*  
24 *Arkansas Rules of Criminal Procedure and shall give notice to defendant of*  
25 *penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.*

26                 (2) This no contact order shall remain in effect during the  
27 pendency of any appeal of a conviction under this section.

28          (e)(1) *The judicial officer or prosecuting attorney shall provide a*  
29 *copy of this no contact order to the victim and arresting agency without*  
30 *unnecessary delay.*

31                 (2) If the judicial officer has reason to believe that mental  
32 disease or defect of the defendant will or has become an issue in the cause,  
33 the judicial officer shall enter such orders as are consistent with  
34 § 5-2-305."

35

1 SECTION 4. Arkansas Code Annotated 5-71-209 is amended to read as  
2 follows:

3 "5-71-209. Harassing communications.

4 (a) A person commits the offense of harassing communications if, with  
5 the purpose to harass, annoy, or alarm another person, he:

6 (1) Communicates with a person, anonymously or otherwise, by  
7 telephone, telegraph, mail, or any other form of written communication, in a  
8 manner likely to harass, annoy, or cause alarm; or

9 (2) Makes a telephone call or causes a telephone to ring  
10 repeatedly, with no purpose of legitimate communication, regardless of  
11 whether a conversation ensues; or

12 (3) Knowingly permits any telephone under his control to be used  
13 for any purpose prohibited by this section.

14 (b) Offenses involving use of telephones may be prosecuted in the  
15 county in which the defendant was located when he used a telephone, or in the  
16 county in which the telephone made to ring by the defendant was located.

17 (c) Harassing communications is a Class A misdemeanor.

18 (d)(1) *A judicial officer, upon the pre-trial release of defendant,*  
19 *shall enter a no contact order in writing consistent with Rules 9.3 and 9.4*  
20 *of the Arkansas Rules of Criminal Procedure and shall give notice to*  
21 *defendant of penalties contained in Rule 9.5 of the Arkansas Rules of*  
22 *Criminal Procedure.*

23 (2) This no contact order shall remain in effect during the  
24 pendency of any appeal of a conviction under this section.

25 (e)(1) *The judicial officer or prosecuting attorney shall provide a*  
26 *copy of this no contact order to the victim and arresting agency without*  
27 *unnecessary delay.*

28 (2) If the judicial officer has reason to believe that mental  
29 disease or defect of the defendant will or has become an issue in the cause,  
30 the judicial officer shall enter such orders as are consistent with  
31 § 5-2-305."  
32

33 SECTION 5. All provisions of this act of a general and permanent  
34 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
35 Code Revision Commission shall incorporate the same in the Code.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

SECTION 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 7. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 8. EMERGENCY. It is hereby found and determined by the General Assembly of the State of Arkansas that the Attorney General and the Prosecuting Attorneys are in need of specific legislation by which to eliminate stalking and that immediate passage of this act is necessary to protect the public peace, health and safety of the State of Arkansas. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.

*/s/Rep. J. Smith*

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11