

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 8th General Assembly  
3 Regular Session, 2005  
4

# A Bill

HOUSE BILL 2787

5 By: Representatives Wills, Wood  
6  
7

## For An Act To Be Entitled

9 AN ACT TO PROVIDE THE OPTION OF OBTAINING AN  
10 ORDER OF PROTECTION TO PROTECT A CHILD FROM  
11 EXPOSURE TO THE MANUFACTURE OF METHAMPHETAMINES  
12 AND OTHER DANGEROUS CONDITIONS; TO DEFINE  
13 ENVIRONMENTAL NEGLECT; AND FOR OTHER PURPOSES.  
14

## Subtitle

15 TO PROVIDE THE OPTION OF OBTAINING AN  
16 ORDER OF PROTECTION TO PROTECT A CHILD  
17 FROM EXPOSURE TO THE MANUFACTURE OF  
18 METHAMPHETAMINES AND OTHER DANGEROUS  
19 CONDITIONS.  
20  
21  
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
24

25 SECTION 1. The purpose of this act is to allow a family member to  
26 obtain an order of protection to obtain temporary custody of a minor child if  
27 there are clear, reasonable grounds to conclude that the child is in  
28 immediate danger and that removal is necessary to prevent the child from  
29 serious harm from his or her surroundings due to environmental neglect or  
30 because of an illness or injury of his or her parent or custodian which  
31 prevents the parent or custodian from taking the action necessary to protect  
32 the child from the environmental neglect.  
33

34 SECTION 2. Arkansas Code § 9-15-103 is amended to read as follows:

35 9-15-103. Definitions.

36 As used in this chapter:



~~(a)~~(1) "Domestic abuse" means:

~~(1)~~(A) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; or

~~(2)~~(B) Any sexual conduct between family or household members, whether minors or adults, which constitutes a crime under the laws of this state;

~~(b)~~(2) "Family or household members" means spouses, former spouses, parents and children, persons related by blood within the fourth degree of consanguinity, any children residing in the household, persons who presently or in the past have resided or cohabited together, and persons who have or have had a child in common; and

(3)(A) "Environmental neglect" means activities conducted with the knowledge of the parent, guardian, or custodian in a dwelling or structure in the presence of a child that may cause serious harm to the child.

(B) "Environmental neglect" includes, but is not limited to, the presence of a child during the manufacture of methamphetamine with the knowledge of the parent, guardian, or custodian.

SECTION 3. Arkansas Code § 9-15-201(e), concerning the petition for an order of protection, is amended to read as follows:

(e) A petition for relief shall allege the existence of domestic abuse or environmental neglect and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances of the domestic abuse and the specific relief sought.

SECTION 4. Arkansas Code § 9-15-202 is amended to read as follows:  
9-15-202. Filing fees.

(a) The court, clerks of the court, and law enforcement agencies shall not require any initial filing fees or service costs.

(b) Established filing fees may be assessed at the full hearing.

(c)(1) The abused or neglected in any domestic violence petition for relief for a protection order sought pursuant to this subchapter shall not bear the cost associated with its filing, or the costs associated with the issuance or service of a warrant and witness subpoena.

(2) Nothing in this subsection shall be construed to prohibit a judge from assessing costs if the allegations of abuse or neglect are determined to be false.

SECTION 5. Arkansas Code § 9-15-203(b), concerning the petition for protection orders, is amended to read as follows:

(b) The petition may be in substantially the following form:

Petition for Order of Protection

Case No. \_\_\_\_\_

\_\_\_\_\_ Petitioner's home address:

Petitioner \_\_\_\_\_

\_\_\_\_\_

~~Social Security Number~~ Date of Birth

Petitioner's work address:

\_\_\_\_\_

vs.

\_\_\_\_\_ Respondent's home address:

Respondent \_\_\_\_\_

\_\_\_\_\_

~~Social Security Number~~ Date of Birth

if known

Respondent's work address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_ I am the petitioner and \_\_\_ at least 18 years of age \_\_\_ under 18 but emancipated.

\_\_\_ I am filing on behalf of myself.

\_\_\_ I am filing on behalf of a family or household member who is:

\_\_\_ A minor(s): (list) \_\_\_\_\_

1 \_\_\_ An adjudicated incompetent person: (list) \_\_\_\_\_

2 \_\_\_ The respondent is \_\_\_ at least 18 years of age \_\_\_ under 18 but  
3 emancipated.

4 \_\_\_ The respondent and petitioner (or victim if filling on behalf of a minor  
5 or incompetent person): (check all that apply)

- 6 \_\_\_ Are spouses;
- 7 \_\_\_ Are related by blood;
- 8 \_\_\_ Are parent and child;
- 9 \_\_\_ Currently reside together or cohabitate;
- 10 \_\_\_ Are former spouses;
- 11 \_\_\_ Formerly resided together or cohabitated; or
- 12 \_\_\_ Have or have had a child in common.

13 If order of protection of children is requested:

14 Children	Date of Birth	Address	Relationship to Parties
15			
16			
17			
18			

19 The respondent has committed domestic abuse or environmental neglect to the  
20 petitioner or victim by the following acts: (describe)

21 \_\_\_\_\_

22 \_\_\_\_\_

23 \_\_\_\_\_

24 \_\_\_\_\_

25 \_\_\_\_\_

26 \_\_\_\_\_

27 \_\_\_\_\_

28 \_\_\_\_\_

29 \_\_\_\_\_

30 I am afraid of the respondent or of the harm that will result from the  
31 dangers present in the respondent's dwelling and: (describe)

32 \_\_\_\_\_

33 \_\_\_\_\_

34 \_\_\_\_\_

35 \_\_\_\_\_

36 \_\_\_\_\_

1 \_\_\_\_\_  
 2 \_\_\_\_\_ (1) There is an immediate and present danger of domestic abuse  
 3 or environmental neglect to me; or

4 \_\_\_\_\_ (2) The respondent is scheduled to be released from  
 5 incarceration within thirty (30) days and upon the respondent's release there  
 6 will be an immediate and present danger of domestic abuse to me.  
 7 The reasons are as follows: (describe)

8 \_\_\_\_\_  
 9 \_\_\_\_\_  
 10 \_\_\_\_\_  
 11 \_\_\_\_\_  
 12 \_\_\_\_\_

13 \_\_\_\_\_ Petitioner requests that the court issue an ex parte order of  
 14 protection with the following provisions: (check all that apply)

15 \_\_\_\_\_ excluding the respondent from a shared residence or from the  
 16 residence of the petitioner or victim. Address of residence:

17 \_\_\_\_\_

19 \_\_\_\_\_ excluding the respondent from the place of business, employment,  
 20 school or other location of the petitioner or victim. Address of residence:

21 \_\_\_\_\_

22 \_\_\_\_\_ excluding the respondent from the place of business, employment,  
 23 school or other location of the petitioner or victim. Address of:

24 place of business: \_\_\_\_\_

25 employment: \_\_\_\_\_

26 school: \_\_\_\_\_

27 other (identify): \_\_\_\_\_

28 Prohibiting the respondent, directly or through an agent, from  
 29 contacting the petitioner or victim, except under the following conditions:

30 \_\_\_\_\_  
 31 \_\_\_\_\_  
 32 \_\_\_\_\_

33 \_\_\_\_\_ awarding temporary custody of minor children as follows:

Child's Name	Person to Receive Custody
--------------	---------------------------

35 \_\_\_\_\_  
 36 \_\_\_\_\_

1 \_\_\_\_\_  
2 \_\_\_\_\_  
3 \_\_\_\_\_

4 \_\_\_\_\_ requiring the respondent to pay child support in the amount of  
5 \$\_\_\_\_\_ per child per month

6 \_\_\_\_\_ requiring the respondent to pay spousal support in the amount of  
7 \$\_\_\_\_\_ per month

8 \_\_\_\_\_ excluding the petitioner's address from notice to the respondent

9 \_\_\_\_\_ It is further requested that upon hearing the court issue a full  
10 order of protection with the following provisions: (check all that apply)

11 \_\_\_\_\_ excluding the respondent from the shared residence or from the  
12 residence of the petitioner or victim. Address of the residence:

13 \_\_\_\_\_

14 \_\_\_\_\_ excluding the respondent from the place of business, employment,  
15 school or other location of the petitioner or victim. Address of:

16 place of business: \_\_\_\_\_

17 employment: \_\_\_\_\_

18 school: \_\_\_\_\_

19 other (identify): \_\_\_\_\_

20 \_\_\_\_\_ awarding temporary custody of minor children as follows:

21	Child's Name	Person to Receive Custody
22	_____	_____
23	_____	_____
24	_____	_____
25	_____	_____
26	_____	_____

27 \_\_\_\_\_ requiring the respondent to pay child support in the amount of  
28 \$\_\_\_\_\_ per child per month

29 \_\_\_\_\_ requiring the respondent to pay spousal support in the amount of  
30 \$\_\_\_\_\_ per month

31 \_\_\_\_\_ requiring the respondent to pay filing fees, service fees, court  
32 costs and petitioner's attorney fees.

33 The petitioner under oath states that the facts stated in the above  
34 petition are true according to the petitioner's best knowledge and belief.

35 \_\_\_\_\_  
36 Date

\_\_\_\_\_  
Petitioner's signature

1 STATE OF ARKANSAS

2 COUNTY OF \_\_\_\_\_

3 Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
4 20 \_\_.

5 \_\_\_\_\_  
6 Notary Public

7 My Commission Expires:

8 \_\_\_\_\_  
9

10 SECTION 6. Arkansas Code § 9-15-205 is amended to read as follows:

11 9-15-205. Relief generally - Duration.

12 (a) At the hearing on the petition, the circuit court may provide the  
13 following relief:

14 (1) Exclude the abusing or neglecting party from the dwelling  
15 which the parties share or from the residence of the petitioner or victim;

16 (2) Exclude the abusing or neglecting party from the place of  
17 business or employment, school, or other location of the petitioner or  
18 victim;

19 (3) Award temporary custody or establish temporary visitation  
20 rights with regard to minor children of the parties;

21 (4) Order temporary support for minor children or a spouse, with  
22 such support to be enforced in the manner prescribed by law for other child  
23 support and alimony awards;

24 (5) Allow the prevailing party a reasonable attorney's fee as  
25 part of the costs;

26 (6) Prohibit the abusing or neglecting party directly or through  
27 an agent from contacting the petitioner or victim except under specific  
28 conditions named in the order; and

29 (7)(A) Order such other relief as the court deems necessary or  
30 appropriate for the protection of a family or household member.

31 (B) The relief may include, but not be limited to:

32 (i) ~~enjoining~~ Enjoining and restraining the abusing  
33 party from doing, attempting to do, or threatening to do any act injuring,  
34 mistreating, molesting, or harassing the petitioner; and

35 (ii) Enjoining and restraining the neglecting party  
36 from knowingly engaging in activities in a dwelling or structure in the

1 presence of a child that may cause serious harm to the child, including the  
2 ordering of the child to be removed from the dwelling.

3 (b) Any relief granted by the court for protection under the  
4 provisions of this chapter shall be for a fixed period of time not less than  
5 ninety (90) days nor more than two (2) years in duration, and may be renewed  
6 at a subsequent hearing upon proof and a finding by the court that the threat  
7 of domestic abuse still exists.

8  
9 SECTION 7. Arkansas Code § 9-15-206 is amended to read as follows:  
10 9-15-206. Temporary order.

11 (a) When any petition under this chapter alleges an immediate and  
12 present danger of domestic abuse, environmental neglect, or that the  
13 respondent is scheduled to be released from incarceration within thirty (30)  
14 days, and upon the respondent's release there will be an immediate and  
15 present danger of domestic abuse, and the circuit court finds sufficient  
16 evidence to support the petition, the court shall grant a temporary order of  
17 protection pending a full hearing.

18 (b) An ex parte temporary order of protection may include any or all  
19 of the orders provided for in §§ 9-15-201 and 9-15-203.

20 (c) A temporary order of protection shall be effective for a fixed  
21 period not to exceed thirty (30) days.

22 (d) When a temporary order is issued as authorized in this section, a  
23 hearing shall be set for no later than thirty (30) days from the issuance of  
24 the temporary order.

25 (e) Upon the issuance of an ex parte temporary order, a copy of the  
26 order together with a copy of the petition, excluding, pursuant to court  
27 order, the address of the petitioner and notice of the date and place set for  
28 the full hearing shall be served in accordance with applicable rules of  
29 service under the Arkansas Rules of Civil Procedure.

30 (f) Incarceration or imprisonment of the abusing or neglecting party  
31 shall not bar the court from issuing an order of protection.

32 (g)(1)(A) A petitioner may omit his or her home or business address  
33 from all documents filed with the court.

34 (B) If a petitioner omits his or her address, the  
35 petitioner must provide the court with a mailing address.

36 (2) If disclosure of a petitioner's address is necessary to



1 determine jurisdiction or consider venue, the court may order the disclosure  
2 be made:

- 3 (A) After receiving the petitioner’s consent;
- 4 (B) Orally and in chambers, out of the presence of the  
5 respondent, and a sealed record to be made; or
- 6 (C) After a hearing, if the court takes into consideration  
7 the safety of the petitioner and finds such disclosure in the interest of  
8 justice.

9  
10 SECTION 8. Arkansas Code § 5-26-302 is amended to read as follows:  
11 5-26-302. Definitions.

12 As used in this subchapter,:

13 (1) ~~family~~ Family or household member" or "family or household  
14 members" means:

- 15 ~~(1)~~(A) Spouses;
- 16 ~~(2)~~(B) Former spouses;
- 17 ~~(3)~~(C) Parents;
- 18 ~~(4)~~(D) Children, including any minors residing in the  
19 household;

20 ~~(5)~~(A)(E)(i) Persons related by blood within the fourth  
21 degree of consanguinity.

22 ~~(B)~~(ii) Degrees of consanguinity shall be computed  
23 pursuant to § 28-9-212;

24 ~~(6)~~(F) Persons who presently or in the past have resided  
25 or cohabited together; ~~and~~ or

26 ~~(7)~~(G) Persons who have or have had a child in common;  
27 and

28 (2)(A) “Environmental neglect” means activities conducted with  
29 the knowledge of the parent, guardian, or custodian in a dwelling or  
30 structure in the presence of a child that may cause serious harm to the  
31 child.

32 (B) “Environmental neglect” includes, but is not limited  
33 to, the presence of a child during the manufacture of methamphetamine with  
34 the knowledge of the parent, guardian, or custodian.

35  
36 SECTION 9. Arkansas Code § 16-81-113(b) is amended to read as follows:

(b) As used in this section:

(1) "Domestic abuse" means:

(A) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; or

(B) Any sexual conduct between family or household members, whether minors or adults, which constitutes a crime under the laws of this state; ~~and~~

(2) "Family or household member" means spouses, former spouses, parents and children, persons related by blood within the fourth degree of consanguinity, any child residing in the household, persons who presently or in the past have resided or cohabited together, and persons who have or have had a child in common; and

(3)(A) "Environmental neglect" means activities conducted with the knowledge of the parent, guardian, or custodian in a dwelling or structure in the presence of a child that may cause serious harm to the child.

(B) "Environmental neglect" includes, but is not limited to, the presence of a child during the manufacture of methamphetamine with the knowledge of the parent, guardian, or custodian.

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  
36