

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 86th General Assembly  
3 Regular Session, 2007  
4

As Engrossed: H3/13/07

# A Bill

HOUSE BILL 2343

5 By: Representative S. Prater  
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## For An Act To Be Entitled

9 AN ACT CONCERNING THE OFFENSE OF STALKING; AND  
10 FOR OTHER PURPOSES.

### Subtitle

11  
12 AN ACT CONCERNING THE OFFENSE OF  
13 STALKING.  
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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19 *SECTION 1. Arkansas Code § 5-71-229 is amended to read as follows:*  
20 *5-71-229. Stalking.*

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

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

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

36 *(i) Stalking in the second degree;*



1 (ii) Violating § 5-13-301 or § 5-13-310; or

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

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

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

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

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

16 (D) If the judicial officer has reason to believe that  
17 mental disease or defect of the defendant will or has become an issue in the  
18 cause, the judicial officer shall enter such orders as are consistent with §  
19 5-2-305.

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

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

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

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

36 (C) The judicial officer or prosecuting attorney shall

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

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

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

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

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

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

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

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

20 (e) As used in this section:

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

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

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

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

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~~(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.~~

/s/ S. Prater