

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 87th General Assembly
3 Regular Session, 2009
4

A Bill

HOUSE BILL 1545

5 By: Representatives D. Creekmore, Garner
6 By: Senator H. Wilkins
7

For An Act To Be Entitled

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

Subtitle

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

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

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

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

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



1 (B) Has been convicted within the previous ten (10) years
2 of:

3 (i) Stalking in the second degree;

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

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

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

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

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

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

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

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

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

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

36 (B) ~~This~~ The no contact order remains in effect during the

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

3 (C) The judicial officer or prosecuting attorney shall
 4 provide a copy of ~~this~~ the no contact order to the victim and arresting
 5 agency 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 G D felony.

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

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

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

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

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

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

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

35 ~~(d)~~(e) It is not a defense to a prosecution under this section that
 36 the actor:

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

3 (2) Did not cause the victim emotional distress; or

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

6 (f) As used in this section:

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

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

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

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

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

24 ~~(2) "Harasses" means an act of harassment as prohibited by § 5-~~
25 ~~71-208; and~~

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

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

33
34 CHAPTER 127
35 STALKER LIABILITY ACT

1 16-127-101. Title.

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

4
 5 16-127-102. Civil liability for stalking.

6 (a)(1) A person may recover damages, actual and punitive, where
 7 applicable, reasonable attorney's fees, and court costs against another
 8 person if he or she proves by a preponderance of the evidence that another
 9 person knowingly engaged in a course of conduct that would have placed a
 10 reasonable person under emotional distress or in fear for his or her safety
 11 or a third person's safety.

12 (b) The definitions at § 5-71-229(e) apply to this chapter;

13 (c) A cause of action under subdivision (a)(1) of this section may be
 14 maintained whether or not the person who is alleged to have engaged in a
 15 course of conduct prohibited under § 5-71-229 has been charged or convicted
 16 under § 5-71-229.

17 (d) The existence or the termination of a cause of action under
 18 subdivision (a)(1) of this section does not prevent the criminal prosecution
 19 of a person for violation of § 5-71-229.

20 (e) A person shall commence a cause of action under subdivision (a)(1)
 21 of this section against another person two (2) years or less after the most
 22 recent conduct prohibited under § 5-71-229 by the other person towards the
 23 aggrieved party.

24 (f) The defense set forth in § 5-71-229(c) does not apply to this
 25 chapter.

26
 27 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
 28 General Assembly of the State of Arkansas that immediate enforcement of the
 29 stalking statutes by local and state law enforcement, criminal prosecution of
 30 persons violating the stalking statutes, and the availability to victims of
 31 civil remedies against persons violating the stalking statutes are necessary
 32 to ensure the safety of the citizens of the State of Arkansas. Therefore, an
 33 emergency is declared to exist and this act being immediately necessary for
 34 the preservation of the public peace, health, and safety shall become
 35 effective on:

36 (1) The date of its approval by the Governor;

1 (2) If the bill is neither approved nor vetoed by the Governor,
2 the expiration of the period of time during which the Governor may veto the
3 bill; or

4 (3) If the bill is vetoed by the Governor and the veto is
5 overridden, the date the last house overrides the veto.

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