

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013  
4  
5 By: Representative Fite

# A Bill

HOUSE BILL 2146

## For An Act To Be Entitled

8 AN ACT REGARDING THE OFFENSE OF STALKING; TO  
9 ESTABLISH CIVIL LIABILITY FOR STALKING; AND FOR OTHER  
10 PURPOSES.

## Subtitle

14 REGARDING THE OFFENSE OF STALKING AND TO  
15 ESTABLISH CIVIL LIABILITY FOR STALKING.

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

20 SECTION 1. Arkansas Code § 5-71-229 is amended to read as follows:  
21 5-71-229. Stalking.

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

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

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



- 1 (i) Stalking in the second degree;  
2 (ii) Violating Terroristic threatening, § 5-13-301  
3 or terroristic act, § 5-13-310; or  
4 (iii) Stalking or threats against another person's  
5 safety under the statutory provisions of any other state jurisdiction; or  
6 (C) Is armed with a deadly weapon or represents by word or  
7 conduct that he or she is armed with a deadly weapon.

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

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

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

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

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

24 (b)(1) A person commits stalking in the second degree if he or she purposely  
25 knowingly engages in a course of conduct that harasses another person and  
26 makes a terroristic threat with the intent purpose of placing that person in  
27 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.

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

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

1 section.

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

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

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

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

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

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

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

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

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

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

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

1           (f) As used in this section:

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

9                   (B)(i) "Course of conduct" does not include  
 10 constitutionally protected activity.

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

15                   (2)(A) "Emotional distress" means significant mental suffering  
 16 or distress.

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

19                   (2)(3) "Harasses" means an act of harassment as prohibited by §  
 20 5-71-208; and.

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

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

28                                   CHAPTER 127 STALKER LIABILITY ACT

29  
 30                   16-127-101. Title.

31                   This chapter shall be known and may be cited as the "Stalker Liability  
 32 Act."

33  
 34                   16-127-102. Civil liability for stalking.

35                   (a) A person may recover actual damages, and if applicable, punitive  
 36 damages, reasonable attorney's fees, and court costs against another person

1 if he or she proves by a preponderance of the evidence that another person  
2 knowingly engaged in a course of conduct towards the person that would place  
3 a reasonable person in the person's position under emotional distress or in  
4 fear for his or her safety or a third person's safety.

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

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

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

13 (e) A person shall commence a cause of action under subdivision (a)(1)  
14 of this section against another person one (1) year or less after the most  
15 recent conduct prohibited under § 5-71-229 by the other person toward the  
16 aggrieved party.

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