

1 State of Arkansas As Engrossed: H3/18/13 H3/27/13 S4/4/13

2 89th General Assembly

# A Bill

3 Regular Session, 2013

HOUSE BILL 2146

4

5 By: Representative Fite

6 By: Senator J. Woods

7

8

## For An Act To Be Entitled

9

AN ACT REGARDING THE OFFENSE OF STALKING; TO

10

ESTABLISH CIVIL LIABILITY FOR STALKING; AND FOR OTHER

11

PURPOSES.

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13

14

## Subtitle

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REGARDING THE OFFENSE OF STALKING AND TO

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ESTABLISH CIVIL LIABILITY FOR STALKING.

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

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

22

5-71-229. Stalking.

23

(a)(1) A person commits stalking in the first degree if he or she

24

~~purposefully knowingly engages in a course of conduct that harasses another~~

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~~person and makes a terroristic threat with the intent of placing that person~~

26

~~in imminent fear of death or serious bodily injury or placing that person in~~

27

~~imminent fear of the death or serious bodily injury of his or her immediate~~

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~~family and the person that would place a reasonable person in the victim's~~

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position under emotional distress and in fear for his or her safety or a

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third person's safety, and the actor:

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(A) Does so in contravention of an order of protection

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consistent with ~~The~~ the Domestic Abuse Act of 1991, § 9-15-101 et seq., or a

33

no contact order as set out in subdivision (a)(2)(A) of this section,

34

protecting the same victim, or any other order issued by any court protecting

35

the same victim;

36

(B) Has been convicted within the previous ten (10) years



1 of:

2 (i) Stalking in the second degree;

3 (ii) ~~Violating~~ Terroristic threatening, § 5-13-301  
4 or terroristic act, § 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 or she is armed with a deadly weapon.

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

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

17 (C) The judicial officer or prosecuting attorney shall  
18 provide a copy of ~~this~~ the no contact order to the victim and the arresting  
19 law enforcement agency 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 C felony.

25 (b)(1) A person commits stalking in the second degree if he or she ~~purposefully~~  
26 knowingly engages in a course of conduct that harasses another person and  
27 makes a terroristic threat with the ~~intent~~ purpose of placing that person in  
28 imminent fear of death or serious bodily injury or placing that person in  
29 imminent fear of the death or serious bodily injury of his or her immediate  
30 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 law  
5 enforcement 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 C 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 officer  
16 shall enter a no contact order in writing consistent with Rules 9.3 and 9.4  
17 of the Arkansas Rules of Criminal Procedure and shall give notice to the  
18 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 law  
24 enforcement agency 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 orders as are consistent with § 5-2-  
28 305.

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 was not given actual notice by the victim that the actor's conduct

1 was not wanted.

2 (f) As used in this section:

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

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

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

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

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

20 ~~(2)(3) "Harasses" means an act of harassment as prohibited by §~~  
21 ~~5-71-208; and~~

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

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

29 CHAPTER 127 STALKER LIABILITY ACT

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31 16-127-101. Title.

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

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35 16-127-102. Civil liability for stalking.

36 (a) A person may recover actual damages, and if applicable, punitive

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

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

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

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

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

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