

As Engrossed: 4/7/95

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**
4 **By: Representative J. Smith**

A Bill

ACT 1302 OF 1995
HOUSE BILL 1988

For An Act To Be Entitled

8 "AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS CODE TO
9 PROVIDE FOR NO CONTACT ORDERS AGAINST PERSONS COMMITTING
10 THE CRIMINAL OFFENSES OF STALKING, TERRORISTIC
11 THREATENING, HARASSMENT, AND HARASSING COMMUNICATIONS; AND
12 FOR OTHER PURPOSES."

Subtitle

15 "TO PROVIDE FOR NO CONTACT ORDERS
16 AGAINST PERSONS COMMITTING THE CRIMINAL
17 OFFENSES OF STALKING, TERRORISTIC
18 THREATENING, HARASSMENT, AND HARASSING
19 COMMUNICATIONS"

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

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

25 "5-71-229. Stalking.

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

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

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

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1 of:

2 (i) Stalking in the second degree; or

3 (ii) Violating §§ 5-13-301 or 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 is so armed.

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

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

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

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

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

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

27 (2)(A) *A judicial officer, upon pre-trial release of defendant,*
28 shall enter a no contact order in writing consistent with Rules 9.3 and 9.4 of
29 the Arkansas Rules of Criminal Procedure and shall give notice to the
30 defendant of penalties contained in Rule 9.5 of the Arkansas Rules of Criminal
31 Procedure.

32 (B) This no contact order shall remain in effect during the
33 pendency of any appeal of a conviction under subsection (b) of this section.

34 (C) *The judicial officer or prosecuting attorney shall*
35 provide a copy of this no contact order to the victim and arresting agency

1 without unnecessary delay.

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

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

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

12 (d) For the purpose of this section:

13 (1) (A) Course of conduct means a pattern of conduct composed of
14 two (2) or more acts separated by at least thirty-six (36) hours but occurring
15 within one (1) year.

16 (B) (i) Constitutionally protected activity is not included
17 within the meaning of course of conduct.

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

22 (2) Harasses means acts of harassment as defined by § 5-71-208;
23 and

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

29 SECTION 2. Arkansas Code Annotated 5-13-301 is amended to read as
30 follows:

31 "5-13-301. Terroristic threatening.

32 (a) (1) A person commits the offense of terroristic threatening in the
33 first degree if:

34 (A) With the purpose of terrorizing another person, he
35 threatens to cause death or serious physical injury or substantial property

1 damage to another person; or

2 (B) With the purpose of terrorizing another person, he
3 threatens to cause physical injury or property damage to a teacher or other
4 school employee acting in the line of duty.

5 (2) Terroristic threatening in the first degree is a Class D
6 felony.

7 (b)(1) A person commits the offense of terroristic threatening in the
8 second degree if, with the purpose of terrorizing another person, he threatens
9 to cause physical injury or property damage to another person.

10 (2) Terroristic threatening in the second degree is a Class A
11 misdemeanor.

12 (c)(1) A judicial officer, upon pre-trial release of defendant, shall
13 enter a no contact order in writing consistent with Rules 9.3 and 9.4 of the
14 Arkansas Rules of Criminal Procedure and shall give notice to the defendant of
15 penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.

16 (2) This no contact order shall remain in effect during the
17 pendency of any appeal of a conviction under this section.

18 (d)(1) The judicial officer or prosecuting attorney shall provide a
19 copy of this no contact order to the victim and arresting agency without
20 unnecessary delay.

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

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26 SECTION 3. Arkansas Code Annotated 5-71-208 is amended to read as
27 follows:

28 "5-71-208. Harassment.

29 (a) A person commits the offense of harassment if, with purpose to
30 harass, annoy, or alarm another person, without good cause, he:

31 (1) Strikes, shoves, kicks, or otherwise touches a person,
32 subjects him to offensive physical contact or attempts or threatens to do so;
33 or

34 (2) In a public place, directs obscene language or makes an
35 obscene gesture to or at another person in a manner likely to provoke a

1 violent or disorderly response; or

2 (3) Follows a person in or about a public place; or

3 (4) In a public place repeatedly insults, taunts, or challenges
4 another in a manner likely to provoke a violent or disorderly response; or

5 (5) Engages in conduct or repeatedly commits acts that alarm or
6 seriously annoy another person and that serve no legitimate purpose; or

7 (6) Places the person under surveillance by remaining present
8 outside his or her school, place of employment, vehicle, other place occupied
9 by the person, or residence, other than the residence of the defendant, for no
10 purpose other than to harass, alarm, or annoy.

11 (b) Harassment is a Class A misdemeanor.

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

17 (d) (1) A judicial officer, upon pre-trial release of defendant, shall
18 enter a no contact order in writing consistent with Rules 9.3 and 9.4 of the
19 Arkansas Rules of Criminal Procedure and shall give notice to defendant of
20 penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.

21 (2) This no contact order shall remain in effect during the
22 pendency of any appeal of a conviction under this section.

23 (e) (1) The judicial officer or prosecuting attorney shall provide a
24 copy of this no contact order to the victim and arresting agency without
25 unnecessary delay.

26 (2) If the judicial officer has reason to believe that mental
27 disease or defect of the defendant will or has become an issue in the cause,
28 the judicial officer shall enter such orders as are consistent with
29 § 5-2-305."

30

31 SECTION 4. Arkansas Code Annotated 5-71-209 is amended to read as
32 follows:

33 "5-71-209. Harassing communications.

34 (a) A person commits the offense of harassing communications if, with
35 the purpose to harass, annoy, or alarm another person, he:

1 (1) Communicates with a person, anonymously or otherwise, by
2 telephone, telegraph, mail, or any other form of written communication, in a
3 manner likely to harass, annoy, or cause alarm; or

4 (2) Makes a telephone call or causes a telephone to ring
5 repeatedly, with no purpose of legitimate communication, regardless of whether
6 a conversation ensues; or

7 (3) Knowingly permits any telephone under his control to be used
8 for any purpose prohibited by this section.

9 (b) Offenses involving use of telephones may be prosecuted in the
10 county in which the defendant was located when he used a telephone, or in the
11 county in which the telephone made to ring by the defendant was located.

12 (c) Harassing communications is a Class A misdemeanor.

13 (d) (1) *A judicial officer, upon the pre-trial release of defendant,*
14 shall enter a no contact order in writing consistent with Rules 9.3 and 9.4 of
15 the Arkansas Rules of Criminal Procedure and shall give notice to defendant of
16 penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.

17 (2) This no contact order shall remain in effect during the
18 pendency of any appeal of a conviction under this section.

19 (e) (1) *The judicial officer or prosecuting attorney shall provide a*
20 copy of this no contact order to the victim and arresting agency without
21 unnecessary delay.

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

26

27 SECTION 5. All provisions of this act of a general and permanent nature
28 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
29 Revision Commission shall incorporate the same in the Code.

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31 SECTION 6. If any provision of this act or the application thereof to
32 any person or circumstance is held invalid, such invalidity shall not affect
33 other provisions or applications of the act which can be given effect without
34 the invalid provision or application, and to this end the provisions of this
35 act are declared to be severable.

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SECTION 7. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 8. EMERGENCY. It is hereby found and determined by the General Assembly of the State of Arkansas that the Attorney General and the Prosecuting Attorneys are in need of specific legislation by which to eliminate stalking and that immediate passage of this act is necessary to protect the public peace, health and safety of the State of Arkansas. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.

/s/Rep. J. Smith

APPROVED: 4-14-95

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