

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.

Act 331 of the Regular Session

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: S2/26/09

A Bill

HOUSE BILL 1038

5 By: Representatives D. Creekmore, Cash, T. Baker, Hobbs, Lea, M. Martin, Pyle, Rice, Wagner, B.
6 Wilkins

7 By: Senators D. Johnson, Broadway, H. Wilkins
8
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10 **For An Act To Be Entitled**

11 AN ACT CONCERNING AN ARREST FOR VIOLATION OF AN
12 ORDER OF PROTECTION AND THE PENALTY FOR THE
13 OFFENSE OF VIOLATION OF AN ORDER OF PROTECTION;
14 AND FOR OTHER PURPOSES.
15

16 **Subtitle**

17 AN ACT CONCERNING AN ARREST FOR
18 VIOLATION OF AN ORDER OF PROTECTION AND
19 THE PENALTY FOR THE OFFENSE OF VIOLATION
20 OF AN ORDER OF PROTECTION.
21
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code § 5-53-134(b), concerning the penalty
26 classification for violation of an order of protection, is amended to read as
27 follows:

28 (b)(1) ~~Violation~~ Except as provided in subdivision (b)(2) of this
29 section, violation of an order of protection under this section is a Class A
30 misdemeanor.

31 (2) Violation of an order of protection under this section is a
32 Class D felony if:

33 (A) The offense is committed within five (5) years of a
34 previous conviction for violation of an order of protection under this
35 section;



1 (B) The order of protection was issued after a hearing of
2 which the person received actual notice and at which the person had an
3 opportunity to participate; and

4 (C) The facts constituting the violation on their own
5 merit satisfy the elements of any felony offense or misdemeanor offense, not
6 including an offense provided for in this section.

7
8 SECTION 2. Arkansas Code § 9-15-207 is amended to read as follows:

9 9-15-207. Order of Protection – Enforcement – Penalties – Criminal
10 jurisdiction.

11 (a) Any order of protection granted ~~pursuant to~~ under this chapter
12 ~~shall be is~~ enforceable by ~~any a~~ law enforcement agency with proper
13 jurisdiction.

14 ~~(b) Any order of protection shall include a notice to the respondent~~
15 ~~or party restrained that a violation of the order is a Class A misdemeanor~~
16 ~~carrying a maximum penalty of one (1) year imprisonment in the county jail or~~
17 ~~a fine of up to one thousand dollars (\$1,000), or both.~~

18 ~~(c) Any order of protection shall include a notice to the respondent~~
19 ~~or party restrained that it is unlawful for an individual who is subject to~~
20 ~~an order of protection or convicted of any misdemeanor of domestic violence~~
21 ~~to ship, transport, or possess a firearm or ammunition pursuant to 18 U.S.C.~~
22 ~~§ 922(g)(8) and (9) as it existed on January 1, 2007.~~

23 (b) An order of protection shall include a notice to the respondent or
24 party restrained that:

25 (1) A violation of the order of protection is a Class A
26 misdemeanor carrying a maximum penalty of one (1) year imprisonment in the
27 county jail or a fine of up to one thousand dollars (\$1,000), or both;

28 (2) A violation of an order of protection under this section
29 within five (5) years of a previous conviction for violation of an order of
30 protection is a Class D felony;

31 (3) It is unlawful for an individual who is subject to an order
32 of protection or convicted of a misdemeanor of domestic violence to ship,
33 transport, or possess a firearm or ammunition pursuant to 18 U.S.C. §
34 922(g)(8) and (9) as it existed on January 1, 2007; and

35 (4) A conviction of violation of an order of protection under
36 this section within five (5) years of a previous conviction for violation of

1 an order of protection is a Class D felony.

2 ~~(d)~~(c) Jurisdiction for the criminal offense of violating the terms of
3 an order of protection ~~shall be~~ is with the circuit court or other courts
4 having jurisdiction over criminal matters.

5 ~~(e)~~(d)(1) In the final order of protection, the petitioner's home or
6 business address may ~~specifically~~ be excluded from notice to the respondent.

7 (2) A court shall also order that the petitioner's copy of the
8 order of protection be excluded from any address where the respondent happens
9 to reside.

10 ~~(f)~~(e) A law enforcement officer shall not arrest a petitioner for the
11 violation of an order of protection issued against a respondent.

12 (f) When a law enforcement officer has probable cause to believe that
13 a respondent has violated an order of protection and has been presented
14 verification of the existence of the order of protection, the officer may,
15 ~~without a warrant~~, arrest the ~~apparent violator~~ respondent without a warrant
16 whether or not the violation was in or outside occurred in the presence of
17 the officer if the order of protection was obtained according to this chapter
18 and with the Arkansas Rules of Criminal Procedure.

19 (g) An order of protection issued by a court of competent
20 jurisdiction in any county of this state is enforceable in every county of
21 this state by any court or law enforcement officer.

22
23 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the General
24 Assembly of the State of Arkansas that domestic violence is on the rise and
25 poses a danger to the public; that increasing the penalty for repeat
26 offenders aids both law enforcement and the victims of domestic violence and
27 that this act is immediately necessary because current enforcement and
28 prosecution will be greatly aided by the new, more serious penalties for
29 those persons who repeatedly violate orders of protection. Therefore, an
30 emergency is declared to exist and this act being immediately necessary for
31 the preservation of the public peace, health, and safety shall become
32 effective on:

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

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

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

/s/ D. Creekmore

APPROVED: 3/10/2009