

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
89th General Assembly  
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As Engrossed: H3/18/13 H3/27/13 S4/4/13

# A Bill

HOUSE BILL 2146

By: Representative Fite  
By: Senator J. Woods

## For An Act To Be Entitled

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

### Subtitle

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

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

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

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

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

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



of:

(i) Stalking in the second degree;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

was not wanted.

(f) As used in this section:

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

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

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

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

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

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

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

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

CHAPTER 127 STALKER LIABILITY ACT

16-127-101. Title.

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

16-127-102. Civil liability for stalking.

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

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

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

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

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

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

*/s/Fite*