

Faulkner County Court Project:

STOPDV presents



Arkansas' Domestic Violence Law Manual

A quick reference guide for partners

510 S. German Lane #306 Conway, AR 72034
501.746.6401

Domestic Violence Law Manual Table of Contents

Introduction/disclaimer 1

Orders of Protection 2

Effect of No Contact Order 4

Domestic Battering 4

Aggravated Assault 7

**Legislation Involving Children and
Domestic Violence 8**

Frequently Associated Crimes 9

**Timeline of Important Arkansas
Domestic Violence Legislation 10**

STOPDV

Arkansas' DV Law Manual

7/27/2020

Introduction/disclaimer:

This manual is written in a type of “plain language” format and is to be used for quick reference to a previously understood law/statute, it does not consist of the entirety of the statute or law discussed, but instead consists of key points for readability purposes. Included below each description, however, is the AR code which has the full language of the selected statutes for any continued research. The information provided regarding the law/statute can be found with a simple search within the Arkansas Legislature’s website or another reliable web source. It is important to note that this manual is a living document and is to be changed as Arkansas laws regarding and affecting Domestic Violence update and/or change.

(I) Orders of Protection

Out of State Orders of Protection

Any order of protection issued by a court of another state, a federally recognized indigenous tribe or territory, shall be afforded full faith and credit by the courts of this state and shall be enforced by law enforcement as if it were issued in this state. Any order of protection issued meeting the listed requirements above will also meet further requirements of this section if:

- The court had jurisdiction over the parties and matters under the laws of the other state, the federally recognized Indigenous tribe or territory; and Reasonable notice and opportunity to be heard was given to the person against whom the order was sought sufficient to protect that person's right to due process.
- In the case of ex-parte orders, notice and opportunity to be heard must be provided within the time required by the laws or rules of the other state, the federally recognized indigenous tribe or territory and within a reasonable time after the order is issued sufficient to protect the due process rights of the party against whom the order is enforced.

Note: An order of protection issued against both the petitioner and the respondent by a court of another state or a federally recognized Indigenous tribe or territory shall **NOT** be enforceable against the petitioner unless:

- (1) The respondent filed a cross or counter petition, complaint, or other written pleading seeking an order of protection.
- (2) The issuing court made specific findings against both the petitioner and the respondent; and
- (3) The issuing court determined that each party was entitled to an order.

A.C.A § 9-15-302

(II) Mutual Orders of Protection

Mutual and Separate Orders of Protection

- a) A circuit court may not provide a mutual order of protection to opposing parties except as provided here:
- b) Separate orders of protection restraining each opposing party may only be granted in cases in which each party:
 - (1) Has properly filed and served a petition for an order of protection
 - (2) Has committed domestic abuse as defined in § 9-15-103 (definition of domestic abuse)
 - (3) Poses a risk of violence to the other; and
 - (4) Has otherwise satisfied all prerequisites for the type of order and remedies sought

A.C.A §9-15-216

(III) Order of Protection (cont.)

Violation of an Order of Protection

Once an order of protection has been violated, pursuant to the Domestic Abuse Act of 1991, §9-15-101 et seq, the penalties are as follows:

- (1) Violation of an order of protection is a Class A misdemeanor carrying a maximum penalty of one year's imprisonment in the county jail or a fine of up to one thousand dollars, or both
- (2) Violation of an order of protection under this section is a Class D Felony only if:
 - a. The offense is committed within 5 years of a previous conviction for a violation of an order of protection
 - b. The order of protection was issued after a hearing of which the person received notice; and
 - c. The facts constituting the violation on their own merit satisfy the elements of any felony or misdemeanor offense

A.C.A § 9-15-207 & § 5-53-134

- A person who is charged with violating an order of protection (ex-parte or final) may be ordered as a condition of his or her release from custody to be placed under electronic surveillance at his or her expense until the charge is adjudicated.
- "Electronic surveillance" is a defined term in the statute.
- A person who is found guilty of violating an order of protection may be placed under electronic surveillance at his or her expense as part of his or her sentence for a minimum of four (4) months but not to exceed one (1) year.

A.C.A § 9-15-217

(IV) No Contact Order

Effect of a No Contract Order

- A no contact order shall prohibit the person from making contact, directly or through an agent, except under such conditions as may be provided within the order.

A.C.A § 9-15-212

(V) Domestic Battering

Battering in the First Degree

A person commits domestic battering in the **first degree** if:

- (1) With the purpose of causing serious physical injury to a family or household member, the person causes serious physical injury to a family or household member by means of a deadly weapon or (6) ... by means of a firearm
 - (2) With the purpose of seriously and permanently disfiguring a family or household member or of destroying, amputating, or permanently disabling a member or organ of a family or household member's body, the person causes such injury to the party or parties listed
 - (3) The person causes serious physical injury to a family or household member under circumstances manifesting extreme indifference to the value of human life
 - (4) The person knowingly causes serious physical injury to a family or household member he or she knows to be sixty years of age or older or twelve years of age or younger (7) ... or four years of age or younger
 - (5) The person:
 - a. Commits any act of domestic battering as defined in § 5-26-304 or § 5-26-305; and
 - b. For conduct that occurred within the ten years preceding the commission of the current offense, the person has on two previous occasions been convicted of any act of battery against a family or household member as defined by the laws of this state or by the equivalent laws of any other state or foreign jurisdiction
- Domestic battering in the first degree is a Class B felony.
 - Domestic battering in the first degree is a Class A felony upon conviction under subsection (a) if:
 - o Committed against a woman the person knew or should have known was pregnant; or
 - o The person committed one or more of the following offenses within five years of the offense of domestic battering in the first degree:

<ul style="list-style-type: none">▪ Domestic battering in the first degree▪ Domestic battering in the second degree	<ul style="list-style-type: none">▪ Domestic battering in the third degree▪ A violation of an equivalent penal law of this state or another state or foreign territory
--	---

A.C.A § 5-26-303

Battering in the Second Degree

A person commits domestic battering in the **second degree** if:

- (1) With the purpose of causing physical injury to a family or household member, the person causes serious physical injury to a family or household member (2) ... by means of a deadly weapon
- (3) The person recklessly causes serious physical injury to a family or household member by means of a deadly weapon; or
- (4) The person knowingly causes physical injury to a family or household member he or she knows to be sixty years of age or older or twelve years of age or younger
 - Domestic battering in the second degree is a Class C felony
 - Domestic battering in the second degree is a Class B felony if:
 - [listed here all the requirements for domestic battering in the first degree to be considered a Class A felony]
- (5) the person committed two or more offenses of battery against a family or household member as defined by a law of this state or by an equivalent law of any other state or foreign jurisdiction within ten years of the offense of domestic battering in the second degree

A.C.A § 5-26-304

Battering in the Third Degree

A person commits domestic battering in the **third degree** if:

- (1) With purpose of causing physical injury, the person causes physical injury to a family or household member;
 - (2) The person recklessly causes physical injury to a family or household member;
 - (3) The person negligently causes physical injury to a family or household member by means of a deadly weapon; or
 - (4) The person purposely causes stupor, unconsciousness, or physical or mental impairment or injury to a family or household member by administering to the family or household member, without the family or household member's consent, any drug or other substance
- Domestic battering in the third degree is a Class A misdemeanor.
 - Domestic battering in the third degree is a Class D felony if:
 - o Committed against a pregnant individual the person should have known was pregnant
 - o The person committed one or more of the following within five years of the offense of domestic battering in the third degree

<ul style="list-style-type: none">▪ Domestic battering in the first degree▪ Domestic battering in the second degree▪ Domestic battering in the third degree	<ul style="list-style-type: none">▪ Aggravated assault on a family of household member▪ A violation of an equivalent penal law of this state or another state or foreign jurisdiction
---	--
- (5) The person committed two or more offenses of battery against a family or household member within ten years of the offense of domestic battering in the second degree

A.C.A § 5-26.305

(VI) Assault

Aggravated Assault

A person commits aggravated assault if, under circumstances manifesting extreme indifference to the value of human life, he or she purposely:

- (1) Engages in conduct that creates a substantial danger of death or serious physical injury to another person;
- (2) Displays a firearm in such a manner that creates a substantial danger of death or serious physical injury to another person; or
- (3) Impedes or prevents the respiration of another person or the circulation of another person's blood by applying pressure on the chest, throat, or neck by blocking the nose or mouth of the other person.

Aggravated assault is a **Class D felony**

The provisions of this section do not apply to:

- (2) A person acting in self-defense of a third party

A.C.A § 5-13.204

Aggravated Assault in the First Degree

A person commits assault in the **First Degree** if:

- (1) he or she recklessly engages in conduct that creates a substantial risk of death or serious physical injury to another person; or
- (2) purposely impedes or prevents the respiration of another person or the circulation of another person's blood

Assault in the **first degree** is a **Class A misdemeanor**

A.C.A § 5-13.205

Aggravated Assault in the Second Degree

A person commits assault in the **Second Degree** if he or she:

- (1) recklessly engages in conduct that creates a substantial risk of physical injury to another person

Assault in the **Second Degree** is a **Class B misdemeanor**

A.C.A § 5-13.206

Aggravated Assault in the Third Degree

A person commits assault in the **Third Degree** if he or she:

- (1) purposely creates apprehension of imminent physical injury in another person

Assault in the **Third Degree** is a **Class C misdemeanor**

A.C.A § 5-13.207

(VII) Legislation Involving Children and Domestic Violence

Circumstances that Constitute Witnessing

In criminal law: ‘In the presence of a child’ means in the physical presence of a child or knowing or having reason to know that a child is present and may see or hear an act.

A.C.A § 5-4-701

Consequences

- Any person who commits a felony offense involving homicide, assault, battery, domestic battering, or assault on a family member or household member may be subject to an enhanced sentence of an additional term of imprisonment of not less than 1 year and not greater than 10 years if the offense is committed in the presence of a child. The enhanced portion of the sentence is consecutive to any other sentence imposed.
- Any person who commits the offense of aggravated cruelty to a dog, cat, or horse may be subject to an enhanced sentence of an additional term of imprisonment not to exceed 5 years if the offense is committed in the presence of a child.
- Any person convicted under this section is not eligible for early release on parole or community correction transfer for the enhanced portion of the sentence.

A.C.A § 5-4-702

(VIII) Frequently Associated Crimes

Harassment

A person commits the offense of harassment if with purpose to harass, annoy, or alarm another person, without good cause, he or she:

- (1) Strikes, shoves, kicks, or otherwise touches a person, subjects a person to offensive physical contact or attempts or threatens to do so;
- (2) Directs obscene language or gestures to or at another person in a provoking manner in a public place; (3) follows a person in or about a public place; (4) repeatedly insults, taunts, or challenges another person in a manner likely to provoke a violent response; (5) engages in conduct or repeatedly commits an act that serves no legitimate purpose and that alarms or seriously annoys another person; or
- (6) Places a person under surveillance ... for no purpose other than to harass, alarm, or annoy.

Harassment is a **Class A Misdemeanor**

Harassing Communications pursuant to §5-71-209 is a **Class A Misdemeanor**

A.C.A §5-71-208

Stalking

A person commits stalking in the **First Degree** if he or she knowingly engages in a course of conduct 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, no contact order protecting the same victim, or any other order issued by any court protecting the same victim; ...

Stalking in the **First Degree** is a **Class C Felony**

A person commits stalking in the **Second Degree** if he or she knowingly engages in a course of conduct that harasses another person and makes a terroristic threat with the purpose of placing in imminent fear of death or serious bodily injury or placing that person in imminent fear of the death or serious bodily injury or his or her immediate family

Stalking in the **Second Degree** is a **Class D Felony**

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

Stalking in the **Third Degree** is a **Class A Misdemeanor**

A.C.A §5-71-229

(IX) Timeline: Important Arkansas Domestic Violence

Legislation (Regular and extraordinary sessions 1993-2019

every other year)

1993

- **Senate Bill 213 created act 175 of 1993** which amends A.C.A §20-82-201 to include a “representative of the office of the attorney general to the Arkansas child abuse/rape/domestic violence commission”
- **House Bill 1953 created act 887 of 1993** which called for the creation of the “child abuse/rape/domestic violence section within the office of [the] chancellor of the University of Arkansas for Medical Sciences”

1995

- **House Bill 1842 created act 1336 of 1995** which amended A.C.A. §20-82-201 to include the membership of “a representative of domestic violence programs or violence service providers in Arkansas”, etc. into the 27 members that compose the Arkansas Child Abuse/Rape/Domestic Violence Commission
- **Senate Bill 34 created act 401 of 1995** which provides that “persons abused in domestic violence incidents shall **not** be required to bear any costs associated with the filing or prosecution of criminal charges against the domestic violence offender”
 - (a) The abused in any misdemeanor or felony domestic violence offense shall not bear the costs associated with the filing of criminal charges against the domestic violence offender, or the costs associated with the issuance or service of a warrant and witness subpoena, except as provided in (b). The abused in any domestic violence petition for relief for a protection order sought pursuant to § 9-15-201 et seq. shall not bear the cost associated with its filing, or the costs associated with the issuance or service of a warrant and witness subpoena.
 - (b) Nothing in this act shall be construed to prohibit a judge from assessing costs if the allegations of abuse are determined to be false

1997

- **House Bill 1064 created the “DNA Detection of Sexual and Violent Offenders Act”** which allowed Arkansas to establish a “DNA data bank containing DNA samples submitted by individuals convicted of sex offenses and violent offenses.” The term violent offenses mentioned within the act pertains to “Domestic Battering §5-26-303, 5-26-304, and 5-26-305” among others
- **House Bill 1890 created act 1197 of 1997** which amended A.C.A §5-4-501 to include “... domestic battering in the first degree as a felony involving violence in subsection (d) (2) ...”
- **House Bill 2004 created act 1328 of 1997** which amends A.C.A. §9-13-101 “to make domestic abuse a factor for the court to consider in an award of custody”
 - (b) where a party to an action concerning custody of or a right to visitation with a child has committed an act of domestic violence against the party making the allegation or a family or household member of either party, must consider the effect of such

domestic violence upon the best interests of the child, whether or not the child was physically injured or personally witnessed the abuse, together with such other facts and circumstances as the court deems relevant in making a direction pursuant to this section

- **House Bill 2007 created act 1257 of 1997** which concerns the use of deadly physical force in defense of a person— “a person is justified in using deadly force upon another person if he reasonably believes that the other person is: ... (3) imminently endangering his or her life or imminently about to victimize the person as described in A.C.A. §9-15-103 (a) (2), from the continuation of a pattern of domestic abuse ...”

1999

- **Senate Bill 207 created the “Uniform Child Custody Jurisdiction and Enforcement Act” of 1997** which sets provisions for courts determining custody in the event of an act of domestic violence
- **Senate Bill 766 created act 1317** which amended the “Arkansas criminal code to further provide penalties for those who commit domestic battery”
- **Senate Bill 767 created act 1551** which provides further protections to domestic violence victims.

2001

- **House Bill 1691, referred to as “The Arkansas Domestic Violence Act of 2001”,** focuses mainly on crimes committed against a person based on related to that person’s gender and states that “all persons within the state of Arkansas shall have the right to be free from acts of violence motivated by gender”
- **House Bill 1887 created act 1437 of 2001** which is an act to “prohibit mutual orders of protection”.
- **House Bill 2173 created act 1235 of 2001** amends A.C.A. §9-13-101 and §9-15-215 to create a reputable presumption that it is not in the best interest of a child involved in a custody hearing to be placed in the custody of an abusive parent
- **Senate Bill 846 created act 1084 of 2001,** is an act to prevent workplace violence

2003

- **House Bill 1540 created act 944 of 2003** which enhances “the penalty for offenses of domestic violence committed on a pregnant woman.” Section 1 (b) (2) reads “However, domestic battering in the first degree is a Class A felony upon a conviction pursuant to subdivisions (a) (1) (A) – (C) or subsection (b) of this section if committed against a woman the person knew or should have known was pregnant ...”
- **House Bill 2218 created act 1276 of 2003 which was entitled “The Arkansas Domestic Peace Act”** and allows for the creation of a program and procedure for funding domestic violence shelters in the state and the creation of the domestic peace fund.

2005

- **House Bill 2635 created act 1676** which amends Arkansas’ Domestic Abuse Act by furthering the definition of “county where the petitioner resides”

2007

- **House Bill 2559 created act 1414 of 2007** which amended Arkansas Code Title 9, Chapter 15 by addition, creating the “spousal abuse safety plan act for education and training on the prevention of and intervention in spousal abuse”

2009

- **House Bill 1038 created act 331 of 2009** which concerns the “arrest for violation of an order of protection and the penalty for the offense of violation of an order of protection.”

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

- **House Bill 1414 created act 698 of 2009** which amends the Domestic Abuse Act of 1991
- **House Bill 1711 created act 1447 of 2009** which requires “persons who violate orders of protection to pay for and wear global positioning devices at all times so as to protect the victim and enable law enforcement to easily locate the offender.”
Section 1 (a) (1) (A) of 9-15-217 states “a person who is charged with violating an ex parte order of protection under § 5-53-134 may be ordered as a condition of his or her release from custody to be placed under electronic surveillance at his or her expense until the charge is adjudicated.”

2011

- **Senate Bill 751 created act 1004 of 2011** which provided “for adult abuse and domestic violence reporting.”

2013

- **House Bill 2108 created act 1357 of 2013** which imposed an “additional court cost on all persons convicted of a criminal offense involving domestic violence with the proceeds funding crisis centers”
- **Senate Bill 170 created act 156 of 2013 “The Pregnant Woman’s Protection Act”**

2015

- **House Bill 2103 created act 828 of 2015** which concerns the use of deadly physical force in defense of a person
Section 1 (a) states that “a person is justified in using deadly physical force upon another person if the person reasonably believes that the other person is (3) imminently endangering the person’s life or imminently about to victimize the person as described in §9-15-103 from the continuation of a pattern of domestic abuse.”
- **House Bill 1599 created act 873 of 2015** which amended laws concerning the victim information provided by law enforcement in cases involving domestic violence; and provided for the creation of “Laura’s Card”
- **House Bill 1707 created act 877 of 2015, “Laura’s Law”,** which provides the provisions for the first responding officer law enforcement officer of a report of domestic violence when conducting an interview with the victim of an act of domestic violence

2017

- **House Bill 1420 created act 583 of 2017** which created the Arkansas Domestic Violence Shelter Act, the domestic violence shelter fund and established procedures for funding domestic violence shelters

2019

- **House Bill 1380 created act 499 of 2017** which provided provision for a “privileged of communication between a victim of domestic violence and the personnel of a domestic violence shelter or center; and to make confidential communications between a victim and a victim advocate.”
- **House Bill 1851 created act 908 of 2017** which amended the issuance of an order of protection