



# ARKANSAS SENTENCING COMMISSION

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## Impact Assessment for HB1668 Sponsored by Representative Gazaway

**Subtitle** CONCERNING THE PENALTIES FOR THE OFFENSE OF STALKING.

**Impact Summary**<sup>1</sup> Minimal, affecting fewer than ten offenders per year.

**Change from Current Law**<sup>2</sup> Amends Arkansas Code Annotated § 5-71-229, Stalking, to raise the felony class for the offenses of stalking in the first degree and stalking in the second degree. The conduct provisions for Stalking are unchanged by the proposed bill. [See attached for a complete reprint of A.C.A. § 5-71-229.] Currently, Stalking in the first degree is a Class C felony. Under the proposed bill, Stalking in the first degree is a Class B felony. Currently, Stalking in the second degree is a Class D felony. Under the proposed bill, Stalking in the second degree is a Class C felony.

**Impact Information** The Administrative Office of the Courts (AOC) reports that for the three (3) year period beginning on 1/1/2017 and ending on 12/31/2019, there were forty-two (42) convictions for a violation of A.C.A. § 5-71-229 (a)(3), Stalking in the first degree, a Class C felony. For the same three (3) year period, AOC reports that there were fourteen (14) convictions for a violation of A.C.A. § 5-71-229 (b)(3), Stalking in the second degree, a Class D felony.

The Division of Correction (ADC) reports that there are currently nine (9) offenders serving a term of incarceration for a violation of A.C.A. § 5-71-229 (a)(3), Stalking in the first degree, a Class C felony. Five (5) of these offenders are serving a term of incarceration for which A.C.A. § 5-71-229 (a)(3) is the most serious offense. The ADC also reports that there are currently four (4) offenders serving a term of incarceration for a violation of A.C.A. § 5-71-229 (b)(3), Stalking in the second degree, a Class D felony. None of these offenders are serving a term of incarceration for which A.C.A. § 5-71-229 (b)(3) is the most serious offense. Due to the small number of individuals serving a term of incarceration for which A.C.A. § 5-71-229 (a)(3) or (b)(3) is the most serious offense, the impact of the proposed bill is projected to be minimal.

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<sup>1</sup> This impact assessment was prepared 3/29/2021 2:46 PM by the staff of the Arkansas Sentencing Commission pursuant to A. C. A. § 16-90-802(d)(6) with data supplied by the Arkansas Department of Corrections and the Administrative Office of the Courts. A micro-simulation model may be used for bills which have the potential for significant impact on correctional resources. The following designations will be used: “minimal” = less than 10 offenders per year will be affected; “medium” = would require budgetary increases for ADC inmate costs; and “major” = would require budgetary increases for ADC inmate costs and construction costs for additional beds

<sup>2</sup> Standard punishment ranges:

Class Y 10-40 years or life  
Class A 6-30 years; up to \$15,000  
Class B 5-20 years; up to \$15,000

Class C 3-10 years; up to \$10,000  
Class D 0-6 years; up to \$10,000  
Unclassified As specified in statute

Misdemeanors

Class A Up to 1 year; up to \$2,500  
Class B Up to 90 days; up to \$1,000  
Class C Up to 30 days; up to \$500

**A.C.A. § 5-71-229. Stalking.**

(a)

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

(C) The judicial officer or prosecuting attorney shall provide a copy of 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 case, the judicial officer shall enter orders consistent with § 5-2-327 or § 5-2-328, or both.

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

(b)

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

(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 case, the judicial officer shall enter orders consistent with § 5-2-327 or § 5-2-328, or both.

(3) Stalking in the second degree is a Class 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) 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 case, the judicial officer shall enter orders consistent with § 5-2-327 or § 5-2-328, or both.

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

(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.

(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

(3) "Harasses" means an act of harassment as prohibited by § 5-71-208.

## History

Acts 1993, No. 379, §§ 1-3; 1993, No. 388, §§ 1-3; 1995, No. 1302, § 1; 2007, No. 827, § 94; 2013, No. 1014, § 1; 2017, No. 472, §§ 22-24.