

## Domestic Violence Laws

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### Domestic Violence = crimes against family or household member

- **Definition of Family/Household member**
  - Spouse/Former spouse
  - Parents
  - Children and other minors residing in household
  - Persons related within 4<sup>th</sup> degree consanguinity
  - Presently or in the past cohabited or resided together
  - Child in common
  - Persons who are presently or in the past have been in a dating relationship.

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### What is a dating relationship?

- Romantic or intimate social relationship.
- It does not include a casual relationship or ordinary fraternization between two people in a business or social context
- Determined by considering the following factors:
  - Length of relationship
  - Type of relationship
  - Frequency of interaction

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• **Mental State**

- Negligently
- Recklessly
- Purposely
- Knowingly

• **Injury**

- Serious Physical
- Physical

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- Negligently: “Should be aware of risk”
- Recklessly: “Consciously disregards risk”
- Knowingly: “Aware of risk and that conduct is practically certain to cause such result”
- Purposely: “Conscious object to engage in conduct and cause such result”

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- Serious Physical Injury: creates a substantial risk of:
  - death or
  - causes prolonged/long-term disfigurement,
  - prolonged/long-term impairment of health, or
  - loss or prolonged/long-term impairment of function.
- Physical Injury:
  - impairment of physical condition,
  - infliction of substantial pain or
  - substantial bruising, swelling, or visible marks.

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## Injury

- Examples of Serious Physical Injury:
  - Gunshot wound
  - Hit three times on the head with a bat
  - Stabbed twice with a knife
- Examples of Physical Injury:
  - Wound near eye that required 7 stitches
  - Struck on head 4 to 6 times
  - Bruises, bite marks, fingerprints on face

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## “Deadly Weapon” 5-1-102

- "Deadly weapon" means:
  - A firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious physical injury; or
  - Anything that in the manner of its use or intended use is capable of causing death or serious physical injury.

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## Battery vs. Assault

- Battery –
  
- Assault -

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**Domestic Battery 1<sup>st</sup> Degree**

5-26-303

- **Purposely** causes **serious** physical injury to a f/hm by means of a deadly weapon; or
- **Purposely** causes serious and permanent disfigurement or destroys, amputates, or permanently disables a body member or organ of a f/hm; or

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- Causes **serious** physical injury to a family or household member under circumstances manifesting **extreme indifference** to the value of human life.
- *Commits Domestic Battering 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup> and has two previous convictions w/in the past 10 years = Domestic Battering 1<sup>st</sup>. (effective July 31)*
- **B felony** UNLESS has committed prior offense within the five years proceeding the current offense OR against pregnant woman (at least 4 weeks pregnant) - then it is an **A felony**.

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**Domestic Battery 2<sup>nd</sup> Degree**

§5-26-304

- With **purpose** to cause **physical** injury, actor causes **serious** physical injury to a f/hm; or
- With **purpose** to cause **physical** injury to a f/hm – causes physical injury by means of a deadly weapon; or

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- **Recklessly** causes **serious** physical injury to a f/hm by means of a deadly weapon.
- **C felony** UNLESS prior offense within the 5 years proceeding the current offense OR against a pregnant woman (at least 4 weeks pregnant) OR 2 prior offenses within past 10 years – then it is a = **B felony**

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**Domestic Battery 3<sup>rd</sup> Degree**

§5-26-305

- With the **purpose to** cause **physical injury** to f/hm causes **physical** injury; or
- **Recklessly** causes **physical** injury to a f/hm; or
- **Negligently** causes **physical** injury to a f/hm by means of a deadly weapon; or

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- **Purposely** causes stupor, unconsciousness, or physical or mental impairment or injury to a f/hm by administering to the f/hm a drug or substance without their consent.
- This is an **A misdemeanor** UNLESS has committed prior offense within the 5 years proceeding the current offense OR against a pregnant woman (at least 4 weeks pregnant) OR 2 prior offenses within past 10 years – then it is a **D felony**.

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## Aggravated Assault on a F/HM

5-26-306

- Under circumstances manifesting extreme indifference to the value of human life, **purposely** engages in conduct that creates a substantial danger of death or **serious** physical injury to a f/hm.
- **D felony**

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## Cases

- D. drove to the victim's home and attacked the victim's girlfriend's car with a razor. D. tried to hit the victim, and D. allegedly tried to run the victim and his girlfriend over with a car. Williams v. State, \_\_\_ Ark. App. \_\_\_ (10-11-06).

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- Defendant's vehicle struck the wife's vehicle head on and with sufficient force to buckle the hood of his car. Hegwood v. State – unpublished opinion 6-21-06 Ark. App.
- D. possessed the firearm and threatened family members with it prior to having the gun taken from his grip. Nelson v. State, 84 Ark. App. 373 (1-21-04).

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**Assault on F/HM 1<sup>st</sup> degree**  
**§5-26-307**

- **Recklessly** engages in conduct that creates a substantial risk of death or **serious** physical injury to a f/hm.
- Recklessly: “Consciously disregards risk”
  
- **A misdemeanor**

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**Assault on F/HM 2<sup>nd</sup> degree**  
**5-26-308**

- **Recklessly** engages in conduct that creates a substantial risk of **physical** injury to a f/hm.
  
- **B misdemeanor**

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**Assault on F/HM 3<sup>rd</sup> degree**  
**5-26-309**

- **Purposely** creates apprehension of imminent **physical** injury to a f/hm.
  
- **C misdemeanor**

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## Crimes

- Domestic Battering 1<sup>st</sup>, 2<sup>nd</sup>, & 3<sup>rd</sup>
- Aggravated Assault on F/HM
- Assault on F/HM 1<sup>st</sup>, 2<sup>nd</sup>, & 3<sup>rd</sup>

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## Other Possible Charges Frequently Associated With Domestic Violence



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## Stalking 1<sup>st</sup> degree 5-71-229

- purposely 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** he -

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- Does so in violation of an order of protection or no contact order OR
- Has been convicted within the previous ten (10) years of - Stalking 2<sup>nd</sup>, Terroristic Threatening, Terroristic Act or Stalking or threats against another person's safety under the statutory provisions of any other state OR
- Is armed with a deadly weapon or represents by word or conduct that he is so armed.
- B felony

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### Stalking 2<sup>nd</sup>

- Purposely 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.
- C felony

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### “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.

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**“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.

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**Terroristic Threatening 1<sup>st</sup>**  
**5-13-301**

- With the purpose of terrorizing another person, he threatens to cause death or serious physical injury or substantial property damage to another person
- D felony
- (terrorizing is not defined)

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**Terroristic Threatening 2<sup>nd</sup>**  
**5-13-301**

- With the purpose of terrorizing another person, he threatens to cause physical injury or property damage to another person.
- Class A misdemeanor.

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## Harassment 5-71-208

- With purpose to harass, annoy, or alarm another person, without good cause, he:
- (1) Strikes, shoves, kicks, or otherwise touches a person, subjects him to offensive physical contact or attempts or threatens to do so; or
- (2) In a public place, directs obscene language or makes an obscene gesture to or at another person in a manner likely to provoke a violent or disorderly response; or

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- (3) Follows a person in or about a public place; or
- (4) In a public place repeatedly insults, taunts, or challenges another in a manner likely to provoke a violent or disorderly response; or
- (5) Engages in conduct or repeatedly commits acts that alarm or seriously annoy another person and that serve no legitimate purpose; or

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

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**Harassing Communications**

**5-71-209**

- With the purpose to harass, annoy, or alarm another person, he:
- (1) Communicates with a person, anonymously or otherwise, by telephone, telegraph, mail, or any other form of written communication, in a manner likely to harass, annoy, or cause alarm; or
- (2) Makes a telephone call or causes a telephone to ring repeatedly, with no purpose of legitimate communication, regardless of whether a conversation ensues; or

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- (3) Knowingly permits any telephone under his control to be used for any purpose prohibited by this section.
- Class A misdemeanor.

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**Unlawful Computerized Communications §5-41-108**

- With the purpose to frighten, intimidate, threaten, abuse, or harass another person, he sends a message to the person by e-mail or other computerized communication system and in that message threatens to cause physical injury to any person or damage to the property of any person; or

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- With the purpose to frighten, intimidate, threaten, abuse, or harass another person, he sends a message on an e-mail or other computerized communication system with the reasonable expectation that the person will receive the message and in that message threatens to cause physical injury to any person or damage to the property of any person; or

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- With the purpose to frighten, intimidate, threaten, abuse, or harass another person, he sends a message to another person by e-mail or other computerized communication system and in that message uses any obscene, lewd, or profane language; or

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- With the purpose to frighten, intimidate, threaten, abuse, or harass another person, he sends a message on by e-mail or other computerized communication system with the reasonable expectation that the person will receive the message and in that message uses any obscene, lewd, or profane language.
- Class A misdemeanor.

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***Interference with Emergency Communications***

***Ark. Code Ann. §§5-60-124 & 125***

- Creates the new crime of Interference with Emergency Communications.
- 1<sup>st</sup> degree = A misdemeanor
- 2<sup>nd</sup> degree = B misdemeanor
- Ark. Code Ann. 5-60-124
- Effective July 31<sup>st</sup> 2007

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**Crimes**

- Stalking 1<sup>st</sup> & 2<sup>nd</sup>
- Terroristic Threatening 1<sup>st</sup> & 2<sup>nd</sup>
- Harassment
- Harassing Communication
- Unlawful Computerized Communication
- Interference with Emergency Communications

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**Domestic Violence in the Presence of Children**

**5-4-701-702**

- The penalties for the offenses of assault, battery, domestic battery or assault on a f/hm may be enhanced when the offense is committed in the presence of a child.
- The sentencing court may add an additional 1 to 10 years to the defendant's sentence.

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**Domestic Violence in the Presence of Children** – *Continued*

- Child : means a person under age sixteen
- 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 of assault, battery, domestic battery or assault on a f/hm.

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**DV Warrantless Arrest**  
**16-81-113(a)(1) & Ark. R. Crim.P. 4.1(a)(iv)**

- Law enforcement officers may make a warrantless arrest for domestic abuse:
  - If there is probable cause to believe the person committed such acts within the previous **4 hours** or
  - For cases involving **physical injury**, if there is probable cause to believe the person committed such acts within the previous **12 hours**.

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- Arrest shall be considered the **preferred action** by law enforcement when evidence indicates that domestic abuse has occurred. 16-81-113(a)(2)
- *If officer receives conflicting reports – officer shall evaluate each account to determine if one party is the predominant aggressor. This new law gives list of factors to consider.*
- *If predominant aggressor can be determined – the officer SHALL arrest if the crime is a felony and MAY arrest if misdemeanor. If no warrant – it must be within the 4/12 hour time frame.*

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## Immunity

- Law enforcement officer acting in good faith and exercising due care in making an arrest for domestic abuse shall have immunity from civil liability.

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## Paper Protection

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## Court ordered “paper protection” 3 types

- 1. Restraining Order (typically mutual)
- 2. No Contact
  - Conditions of Bond (Pretrial Release) or
  - Probation/Suspended Imposition of Sentence S.I.S. (post-trial)
- 3. Order of Protection

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## 1. Restraining Order (*may be mutual*)

- Typically issued in divorce cases.
- Contempt is the punishment. (\$50 &/or 10 days in jail)
- The victim should still seek an order of protection, because the punishment for violating a restraining order is minimal.
- Must notify court if there is a violation.
- This is NOT a criminal order and there is no criminal punishment for violating the order.

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## 2. No Contact

- This is an order for a defendant to have no contact with the victim and the victim's family.
- Issued by Circuit or District Court in conjunction with criminal charges, as either:
  - a condition of pretrial release/bond or
  - a condition of probation/S.I.S. (post-trial).

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## No Contact Orders

- For the following crimes – a no contact order is mandatory upon pre-trial release:
- Harassing Communications, Unlawful Computerized Communications, Harassment, Terroristic Threatening and Stalking.
- Punishment for violation of no contact orders = contempt – \$50 fine/10 days in jail; revoke or raise bond; revoke probation or S.I.S.

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**Warrantless Arrest Authority –  
Pretrial Release**

- Arkansas Rules of Criminal Procedure 9.5
- A law enforcement officer having reasonable grounds to believe that a released defendant has violated the conditions of his release or the terms of an order is authorized to arrest the defendant and to take him forthwith before any judicial officer having jurisdiction when it would be impracticable to secure a warrant.

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**Warrantless Arrest  
Authority S.I.S./Probation**

- A.C.A. 5-4-309 – At any time prior to the expiration of a period of S.I.S. or probation, any law enforcement officer may arrest a defendant without a warrant if the officer has reasonable cause to believe that the defendant has failed to comply with a condition of his or her S.I.S. or probation.

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**3. Order of Protection**

- To file for an OOP the following requirements must be met:
- 1. the petitioner (victim) & respondent (abuser) must fit the definition of “family or household member.”
- 2. The petition must allege the existence of “domestic abuse” & be accompanied by an affidavit made under oath stating the specific facts of the domestic abuse & the relief sought.

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## Definitions (continued)

- **“Family or household member”** – spouses, former spouses, parents and children, persons related by blood w/in the 4<sup>th</sup> degree of consanguinity, any children residing in the household, persons who presently or in the past have resided or cohabited together, persons who have or have had a child in common and persons who are presently or in the past have been in a dating relationship together. (new 2005)

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## “Dating Relationship”

- Means a a romantic or intimate social relationship between two individuals which shall be determined by examining the following factors:
  - The length of the relationship
  - The type of the relationship; and
  - The frequency of interaction between the two individual involved in the relationship.

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- “Dating Relationship” shall not include a casual relationship or ordinary fraternization between two individuals in a business or social context.

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### Definitions

- - **Domestic Abuse** = physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault between family or household members OR any sexual conduct between family or household members, whether minors or adults, which constitutes a crime under the laws of this state.

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### What are the basic steps to getting an order of protection?

- 1. Get the petition and fill it out and file it with the court (typically circuit clerks office). *This 1<sup>st</sup> step may be more difficult than it looks.*
- 2. Get temporary order. (if you qualify)
- 3. Approximately 30 days later – go to hearing on final order - get final order.

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### Where do I get the petition? Will it cost me?

- Petitions are provided by court clerks and most prosecutor based victim/witness coordinators have the petition and can assist you with it.
- No cost to you.

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## Where do I file it?

- The petition for an order of protection may be filed:
  - in the county where the petitioner resides or
  - where the alleged incident of abuse occurred or
  - where the respondent may be served.
  - “resides” for the purposes of this law includes temporarily staying at a domestic violence shelter.

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## Who may file?

- any adult f/hm on behalf of himself
- any adult f/hm on behalf of another f/hm who is a minor, including a married minor
- any adult f/hm on behalf of another f/hm who has been adjudicated incompetent or
- an employee or volunteer of a dv shelter or program on behalf of a minor, including a married minor.

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## What will the order say? What will it prevent my abuser from doing?

- The order may:
  - Exclude the abuser from the home the two of you share, your place of business, employment, or school;
  - Award temporary custody or visitation rights;
  - Order temporary support;
  - Prohibit abuser from contacting you (directly or through someone else)
  - Any other relief deemed necessary

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## How long will my order last?

- 90 days to 10 years and may be renewed.

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## So what is a temporary order?

- Temporary orders (a.k.a. *ex parte* order) gives you immediate relief while the abuser is being served with notice to appear at a hearing regarding the final order. This gives him time to get an attorney and make arrangements to be in court. A temporary order is in effect for no more than 30 days.
- The temporary order will be issued when:
  - a petitioner (victim) alleges an immediate and present danger of domestic abuse OR
  - alleges that respondent (abuser) is to be released from incarceration within 30 days and then there will be an immediate and present danger of domestic abuse.

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I have the temporary order against my husband – but he lives at my house. How do I get my things out of the house or have him removed?

- You can request the court to order law enforcement to accompany you and assist you with these matters.

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### Miscellaneous

- An Arkansas order of protection is valid throughout the state – in every county and is valid throughout the United States.
- Your home or business address may specifically be excluded from notice to the abuser.

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### Can orders be “mutual” ? Can petitioner violate his/her own order?

- No –
- Both parties can get an order but both must file the petition and have notice and opportunity for a hearing (due process requirements). This will result in two separate orders – not one mutual order.
- No - The order restricts the respondent – not the petitioner.

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### Can I violate my own order?

- No. The order restricts him – not you – but please do not go near him.

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We are back together. So is the order null and void?

- No! If you invite the abuser to your home or call him or the two of you get back together - these actions do NOT nullify the order of protection. This would take power away from judges and their orders, by rendering a judge's order meaningless.
- However – “reconciliation” – is a defense that the abuser can use once he has been arrested and charged with the crime of violation of an order of protection.

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Abuser has violated it and has been charged and found guilty – what is the punishment?

- Violation of an OOP is a Class A misdemeanor (up to 1 year imprisonment & up to \$1,000 fine or both)

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He says police officers cannot arrest him unless they have a warrant – is that true?

- No. When a law enforcement officer has probable cause to believe that a respondent/abuser has violated an OOP & upon verification of the existence of the order, the officer may, w/out a warrant, arrest him whether the violation was in or outside the presence of the officer.
- A.C.A. 5-53-134(c)(1)&9-15-207(e)
- No 4 hour/12 hour restriction.

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I am going to stay with my mother in Arizona for a month to let things cool down. Will my OOP be good there?

- Yes! Orders are good throughout the U.S. As long as they meet certain requirements.

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What are those requirements?

- The order must meet *due process requirements* of notice and opportunity for a hearing. In other words – the abuser must be served with notice of the filed petition and of when the hearing will be so that he can go to the hearing and present his side of the story.

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Once I arrive in Arizona or any other state for that matter– do I need to give a copy of my order to the police?

- No – you do not have to – but it is not a bad idea. The police will enter it into their computer database (here in Arkansas the database is called ACIC Protection Order Registry.)
- There is no cost to you.

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In Arkansas – for an officer to enforce an out-of-state order – what is needed?

- The protected person may present a copy of the order to law enforcement in the city or county where enforcement may be necessary OR
- Officers may rely on a statement by the person protected that the order exists AND verification of the order by the clerk of the court of the other state, tribe or territory in writing, by telephone, fax or other electronic transmission.

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How will law enforcement know if an order has been violated?

- They see the crime occur.
- They take a statement from protected person or any other witness.
- They have any other evidence.

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Can Arkansas officers make warrantless arrests on out of state orders?

- Yes, authority to make a warrantless arrest for out-of-state orders can be found at 5-53-134(c)(2).

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What if officers make a mistake – like arrest the wrong guy or there was no crime at all?

- In State orders: Law enforcement officers and law enforcement agencies shall be immune from civil or criminal liability if acting in good faith in an effort to comply with these laws. 5-53-134(e)
- Out-of-State orders immunity: 9-15-303.

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### **Guns**

- While subject to an **order of protection** – respondent (the abuser) cannot possess a gun for the duration of the order. There is a law enforcement/military exception, but this exception only applies while respondent (the abuser) is on duty.
- If convicted of a **misdemeanor domestic violence** crime – cannot possess a gun – no exception for law enforcement or military and no expiration.

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### **5-26-313 Notice**

- *A person who is convicted of misdemeanor domestic violence shall be notified by the court that it is unlawful for the person to possess a firearm or ammunition.*

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**9-15-207 Notice**

- *OOP shall include a notice to the respondent that it is unlawful for the person if subject to an OOP or if he/she has been convicted of misdemeanor domestic violence – to possess a firearm or ammunition.*

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**Prosecuting Without  
Victim Cooperation**

- Many times the victim will not cooperate and wants the charges dropped.
- For a prosecutor to successfully prosecute in this situation – a thorough investigation must be conducted in the beginning. Without evidence that “speaks for itself” the prosecution will likely fail. (pictures, pictures, pictures)
- Another crime we prosecute without victim’s cooperation? Homicide.

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