

1 SB134  
2 115804-2  
3 By Senators Dunn, Bedford, Mitchell, Little (T), and Mitchem  
4 RFD: Judiciary  
5 First Read: 12-JAN-10

1 SB134

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4 ENROLLED, An Act,

5 Relating to the Protection From Abuse Act; to amend

6 Sections 30-5-1, 30-5-2, 30-5-3, 30-5-4, 30-5-5, 30-5-6,

7 30-5-7, and 30-5-8 of the Code of Alabama 1975; to repeal

8 Sections 30-5-9 and 30-5-10 of the Code of Alabama 1975; to

9 further provide the issuance and the procedures for the

10 issuance of protection orders relating to domestic violence

11 and to repeal the provisions for criminal penalties.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Sections 30-5-1, 30-5-2, 30-5-3, 30-5-4,

14 30-5-5, 30-5-6, 30-5-7, and 30-5-8 of the Code of Alabama

15 1975, are amended to read as follows:

16 "§30-5-1.

17 "(a) This chapter shall be known as and may be cited

18 as the "Protection From Abuse Act."

19 "(b) This chapter shall be liberally construed and

20 applied to promote all of the following purposes:

21 "(1) To assure victims of domestic violence the

22 maximum protection from abuse that the law can provide.

23 "(2) To create a flexible and speedy remedy to

24 discourage violence and harassment against family members or

25 others with whom the perpetrator has continuing contact.

1           "(3) To expand the ability of law enforcement  
2 officers to assist victims, to enforce the law effectively in  
3 cases of domestic violence, and to prevent further incidents  
4 of abuse.

5           "(4) To facilitate equal enforcement of criminal law  
6 by deterring and punishing violence against family members and  
7 others who are personally involved with the perpetrators.

8           "(5) To recognize that domestic violence is a crime  
9 that will not be excused or tolerated.

10          "(6) To provide for protection orders to prevent  
11 domestic violence and provide for court jurisdiction and  
12 venue; to provide for court hearing for petitions for relief;  
13 and to provide for the contents and the issuance of protection  
14 orders.

15          "§30-5-2.

16          " In this chapter, the following words shall have  
17 the following meanings unless the context clearly indicates  
18 otherwise:

19               "(1) ABUSE. The occurrence of conduct directed at a  
20 plaintiff as defined by this chapter, including the following:

21                   "a. Arson. Arson as defined under Sections 13A-7-40  
22 to 13A-7-43, inclusive.

23                   " b. Assault. Assault as defined under Sections  
24 13A-6-20 to 13A-6-22, inclusive.

1           " c. Attempt. With the intent to commit any crime  
2 under this section or any other criminal act under the laws of  
3 this state, performing any overt act towards the commission of  
4 the offense.

5           " d. Child abuse. Abusing children as defined under  
6 Chapter 15 (commencing with Section 26-15-1) of Title 26,  
7 known as "The Alabama Child Abuse Act."

8           " e. Criminal coercion. Criminal coercion as defined  
9 under Section 13A-6-25.

10          " f. Criminal trespass. Entering or remaining in the  
11 dwelling or on the premises of another after having been  
12 warned not to do so either orally or in writing by the owner  
13 of the premises or other authorized person as defined under  
14 Sections 13A-7-2 to 13A-7-4.1, inclusive.

15          " g. Harassment. Harassment as defined under Section  
16 13A-11-8.

17          " h. Kidnapping. Kidnapping as defined under  
18 Sections 13A-6-43 and 13A-6-44.

19          " i. Menacing. Menacing as defined under Section  
20 13A-6-23.

21          " j. Other conduct. Any other conduct directed  
22 toward a plaintiff covered by this chapter that could be  
23 punished as a criminal act under the laws of this state.

24          " k. Reckless endangerment. Reckless endangerment as  
25 defined under Section 13A-6-24.

1           " l. Sexual abuse. Any sexual offenses included in  
2 Article 4 (commencing with Section 13A-6-60) of Chapter 6 of  
3 Title 13A.

4           " m. Stalking. Stalking as defined under Sections  
5 13A-6-90 to 13A-6-94, inclusive.

6           " n. Theft. Knowingly obtaining or exerting  
7 unauthorized control or obtaining control by deception over  
8 property owned by or jointly owned by the plaintiff and  
9 another. Theft includes theft as defined under Sections  
10 13A-8-1 to 13A-8-5, inclusive.

11           " o. Unlawful imprisonment. Unlawful imprisonment as  
12 defined under Sections 13A-6-41 and 13A-6-42.

13           "(2) ADULT. Any person 19 years of age or older, or  
14 who otherwise is emancipated.

15           "(3) CHILD. A person 18 years of age or younger.

16           "(4) COURT. A circuit court judge or, when the  
17 circuit court judge is unavailable, a district court judge. A  
18 district court judge may be designated by a written standing  
19 order from the presiding circuit court judge to handle  
20 protection from abuse cases.

21           "(5) PLAINTIFF. For the purposes of this chapter,  
22 the term plaintiff is a person in need of protection from  
23 domestic violence who is 18 years of age or older, is or has  
24 been married, or is emancipated, and has one of the following  
25 relationships:

1           "a. Related by marriage to the defendant including a  
2 common law marriage.

3           "b. Had a former marriage or common law marriage  
4 with the defendant.

5           "c. Has a child in common with the defendant.

6           "d. Has a dating relationship with the defendant.

7           "A dating relationship means a recent frequent,  
8 intimate association, primarily characterized by the  
9 expectation of affectionate or sexual involvement within the  
10 last six months. A dating relationship does not include a  
11 casual or business relationship.

12          "e. Is a current or former household member.

13          "A household member is a person maintaining or  
14 having maintained a living arrangement with the defendant  
15 where he or she is in, or was engaged in, a romantic or sexual  
16 relationship.

17          "(6) PROTECTION ORDER. Any order of protection  
18 issued under this chapter for the purpose of preventing acts  
19 of abuse as defined in this chapter.

20          "(7) THREAT. Any word or action, expressed or  
21 implied, made to cause the plaintiff to fear for his or her  
22 safety or for the safety of another person.

23          "§30-5-3.

24          "(a) The courts, as provided in this chapter, shall  
25 have jurisdiction to issue protection orders.

1           "(b) A protection order may be requested in any  
2 pending civil or domestic relations action, as an independent  
3 civil action, or in conjunction with the preliminary, final,  
4 or postjudgment relief in a civil action.

5           "(c) A petition for a protection order may be filed  
6 in any of the following locations:

7           "(1) Where the plaintiff or defendant resides.

8           "(2) Where the plaintiff is temporarily located if  
9 he or she has left his or her residence to avoid further  
10 abuse.

11           "(3) Where a civil matter is pending before the  
12 court in which the plaintiff and the defendant are opposing  
13 parties.

14           "(d) When custody, visitation, or support, or a  
15 combination of them, of a child or children has been  
16 established in a previous court order in this state, or an  
17 action containing any of the issues above is pending in a  
18 court in this state in which the plaintiff and the defendant  
19 are opposing parties, a copy of any temporary ex parte  
20 protection order issued pursuant to this chapter and the case  
21 giving rise thereto should be transferred to the court of  
22 original venue for further disposition as soon as practical  
23 taking into account the safety of the plaintiff and any  
24 children.

1           "(e) A minimum period of residency of a plaintiff is  
2 not required to petition the court for an order of protection.

3           "§30-5-4.

4           "(a) The plaintiff's right to relief under this  
5 chapter shall not be affected by his or her leaving the  
6 residence or household to avoid further abuse.

7           "(b) At any hearing in a proceeding to obtain a  
8 protection order, each party has a continuing duty to inform  
9 the court of each pending proceeding in this state or any  
10 other state for a protection order, any pending civil  
11 litigation in this state or any other state, each pending  
12 proceeding in any family or juvenile court of this state or  
13 any other state, each pending criminal case involving the  
14 parties in this state or any other state, and any existing  
15 child custody or support order, including the case name, the  
16 file number, and the county and state of the proceeding, if  
17 that information is known to the party.

18           "(c) The remedies and procedures provided in this  
19 chapter are in addition to and not in lieu of any other  
20 available civil or criminal remedies. Plaintiffs shall not be  
21 barred from relief under this chapter because of other  
22 proceedings or judgments involving the parties in a court of  
23 this state or any other state.

24           " (d) If child custody, visitation, or support have  
25 been ordered previously by a court of this state or any other



1 state prior to the filing of an action under this chapter, the  
2 terms of the previous court order concerning these matters may  
3 be incorporated into a protection order as long as the  
4 provisions of the Uniform Child Custody Jurisdiction and  
5 Enforcement Act, Chapter 3B, and the Uniform Interstate Family  
6 Support Act, Chapter 3A, are followed if an order was issued  
7 in another state.

8 " (e) Any protection order issued in this state  
9 pursuant to this chapter shall be effective throughout this  
10 state .

11 " (f) Any protection order issued by the court of  
12 another state shall be accorded full faith and credit and  
13 enforced as if it were an order of this state.

14 "§30-5-5.

15 "(a) A parent, legal guardian, legal custodian, or  
16 the State Department of Human Resources may petition for  
17 relief on behalf of the following:

18 "(1) A minor.

19 "(2) Any person prevented by physical or mental  
20 incapacity from seeking a protection order.

21 "(b) Standardized petitions for actions pursuant to  
22 this chapter, shall be made available through the circuit  
23 clerks' offices around the state. The circuit clerk shall not  
24 be required to provide assistance to persons in completing the  
25 forms or in presenting their case to the court.

1           "(c) The court shall not enter mutual orders. The  
2 court shall issue separate orders that specifically and  
3 independently state the prohibited behavior and relief granted  
4 in order to clearly provide law enforcement with sufficient  
5 direction when determining if a violation of the order has  
6 occurred. For the purpose of judicial economy, a court may  
7 consolidate two separately filed petitions into a single case.

8           "(d) Any plaintiff or petitioner who files a  
9 petition under this chapter, may do so through an attorney or  
10 may represent himself or herself pro se throughout the legal  
11 process outlined in this chapter, including, but not limited  
12 to, the filing of pleadings, motions, and any other legal  
13 documents with any court, and the appearance in ex parte and  
14 formal court proceedings on his or her behalf.

15           "(e) (1) The following information shall not be  
16 contained on any court document made available to the public  
17 and the defendant by the circuit clerk's office: The  
18 plaintiff's home address and, if applicable, business address;  
19 a plaintiff's home telephone number and, if applicable,  
20 business telephone number; the home or business address or  
21 telephone number of any member of the plaintiff's family or  
22 household; or an address that would reveal the confidential  
23 location of a shelter for victims of domestic violence as  
24 defined in Section 30-6-1.

1           "(2) If disclosure of the plaintiff's address, the  
2 address of any member of the plaintiff's family or household,  
3 or an address that would reveal the confidential location of a  
4 shelter for victims of domestic violence is necessary to  
5 determine jurisdiction or to consider a venue issue, it shall  
6 be made orally and in camera.

7           "(3) If the plaintiff has not disclosed an address  
8 or telephone number under this section the plaintiff shall  
9 satisfy one of the following requirements:

10           "a. Designate and provide to the court an  
11 alternative address.

12           "b. Elect to substitute the business address and  
13 telephone number of his or her attorney of record in place of  
14 the address of the plaintiff on any court document.

15           "(f) No court costs and fees shall be assessed for  
16 the filing and service of a petition for a protection order,  
17 for the issuance or registration of a protection order, or for  
18 the issuance of a witness subpoena under this chapter. Costs  
19 and fees may be assessed against the defendant at the  
20 discretion of the court.

21           "§30-5-6.

22           "(a) The court shall hold a hearing after the filing  
23 of a petition under this chapter upon the request of the  
24 defendant or within 10 days of the perfection of service. A  
25 final hearing shall be set at which the standard of proof

1 shall be a preponderance of the evidence. If the defendant has  
2 not been served, a final hearing may be continued to allow for  
3 service to be perfected.

4 "(b) The court may enter such temporary ex parte  
5 protection orders as it deems necessary to protect the  
6 plaintiff or children from abuse, or the immediate and present  
7 danger of abuse to the plaintiff or children, upon good cause  
8 shown . The court shall grant or deny a petition for a  
9 temporary ex parte protection order filed under this chapter  
10 within three business days of the filing of the petition. Any  
11 granted temporary ex parte protection order shall be effective  
12 until the final hearing date.

13 "(c) If a final hearing under subsection (a) is  
14 continued, the court may make or extend temporary ex parte  
15 protection orders under subsection (b) as it deems reasonably  
16 necessary.

17 "§30-5-7.

18 " (a) If it appears from a petition for a protection  
19 order or a petition to modify a protection order that abuse  
20 has occurred or from a petition for a modification of a  
21 protection order that a modification is warranted, the court  
22 may:

23 "(1) Without notice or hearing, immediately issue an  
24 ex parte protection order or modify an ex parte protection  
25 order as it deems necessary .

1           "(2) After providing notice as required by the  
2 Alabama Rules of Civil Procedure, issue a final protection  
3 order or modify a protection order after a hearing whether or  
4 not the defendant appears.

5           " (b) A court may grant any of the following relief  
6 without notice and a hearing in an ex parte protection order  
7 or an ex parte modification of a protection order:

8           "(1) Enjoin the defendant from threatening to commit  
9 or committing acts of abuse, as defined in this chapter,  
10 against the plaintiff or children of the plaintiff, and any  
11 other person designated by the court.

12           "(2) Restrain and enjoin the defendant from  
13 harassing, stalking, annoying, telephoning, contacting, or  
14 otherwise communicating, directly or indirectly, with the  
15 plaintiff or children or threatening or engaging in conduct  
16 that would place the plaintiff, minors, children of the  
17 plaintiff, or any other person designated by the court in  
18 reasonable fear of bodily injury.

19           "(3) Order the defendant to stay away from the  
20 residence, school, or place of employment of the plaintiff,  
21 any children, or any other person designated by the court, or  
22 order the defendant to stay away from any specified place  
23 frequented by the plaintiff, any children, or any person  
24 designated by the court where the court determines the  
25 defendant has no legitimate reason to frequent.

1           "(4) Award temporary custody of any children of the  
2 parties.

3           "(5) Enjoin the defendant from interfering with the  
4 plaintiff's efforts to remove any children of the plaintiff  
5 and direct the appropriate law enforcement officer to  
6 accompany the plaintiff during the effort to remove any  
7 children of the plaintiff as necessary to protect the  
8 plaintiff or any children from abuse.

9           "(6) Enjoin the defendant from removing any children  
10 from the individual having legal custody of the children,  
11 except as subsequently authorized by a custody or visitation  
12 order issued by a court of competent jurisdiction.

13           "(7) Remove and exclude the defendant from the  
14 residence of the plaintiff, regardless of ownership of the  
15 residence.

16           "(8) Order possession and use of an automobile and  
17 other essential personal effects, regardless of ownership, and  
18 direct the appropriate law enforcement officer to accompany  
19 the plaintiff to the residence of the parties or to other  
20 specified locations as necessary to protect the plaintiff or  
21 any children from abuse.

22           "(9) Order other relief as it deems necessary to  
23 provide for the safety and welfare of the plaintiff or any  
24 children and any person designated by the court.

1           "(10) Prohibit the defendant from transferring,  
2           concealing, encumbering, or otherwise disposing of specified  
3           property mutually owned or leased by the parties.

4           " (c) The court may grant any of the following  
5           relief in a final protection order or a modification of a  
6           protection order after notice and a hearing, whether or not  
7           the defendant appears:

8                   "(1) Grant the relief available in subsection (b).

9                   "(2) Specify arrangements for visitation of any  
10           children by the defendant on a basis that gives primary  
11           consideration to the safety of the plaintiff or any children,  
12           or both, and require supervision by a third party or deny  
13           visitation if necessary to protect the safety of the plaintiff  
14           or any children, or both.

15                   "(3) Order the defendant to pay attorney's fees and  
16           court costs.

17                   "(4) When the defendant has a duty to support the  
18           plaintiff or any children living in the residence or household  
19           and the defendant is the sole owner or lessee, grant to the  
20           plaintiff possession of the residence or household to the  
21           exclusion of the defendant by evicting the defendant or  
22           restoring possession to the plaintiff, or both, or by consent  
23           agreement allowing the defendant to provide suitable alternate  
24           housing.

1           "(5) Order the defendant to pay temporary reasonable  
2 support for the plaintiff or any children in the plaintiff's  
3 custody, or both, when the defendant has a legal obligation to  
4 support such persons. The amount of temporary support awarded  
5 shall be in accordance with Child Support Guidelines found in  
6 Rule 32, Alabama Rules of Judicial Administration.

7           "(6) Order the defendant to provide temporary  
8 possession of a vehicle to the plaintiff, if the plaintiff has  
9 no other means of transportation of his or her own and the  
10 defendant either has control of more than one vehicle or has  
11 alternate means of transportation.

12           " (d) (1) Any temporary ex parte order issued  
13 pursuant to this chapter shall remain in effect until the  
14 final protection order is entered. While the final protection  
15 order is in effect, the court may amend its order at any time  
16 upon subsequent petition being filed by either party and a  
17 hearing held pursuant to this chapter.

18           "(2) Any final protection order is of permanent  
19 duration unless otherwise specified or modified by a  
20 subsequent court order.

21           " (e) No order or agreement under this chapter shall  
22 in any manner affect title to any real property, except final  
23 subsequent proceedings available by law.

24           "§30-5-8.



1           "(a) A copy of any order under this chapter shall be  
2 issued to the plaintiff, the defendant, and the law  
3 enforcement officials with jurisdiction to enforce the order .  
4 Certain information in these orders shall be entered in the  
5 Protection Order Registry of the Administrative Office of  
6 Courts.

7           "(b) Ex parte and final protection orders shall be  
8 in a format as provided by the Administrative Office of  
9 Courts. If a court wishes to provide additional information in  
10 these standardized court orders, the court may attach  
11 additional pages containing this additional information."

12           Section 2. Sections 30-5-9 and 30-5-10 of the Code  
13 of Alabama 1975, are repealed.

14           Section 3. This act shall become effective on the  
15 first day of the third month following its passage and  
16 approval by the Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB134  
Senate 09-MAR-10  
I hereby certify that the within Act originated in and passed  
the Senate.

McDowell Lee  
Secretary

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House of Representatives  
Passed: 14-APR-10

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By: Senator Dunn