

CHAPTER 119**(HB 428)**

AN ACT relating to crimes and punishments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 508.130 is amended to read as follows:

As used in KRS 508.130 to 508.150, unless the context requires otherwise:

- (1) (a) To "stalk" means to engage in an intentional course of conduct:
 1. Directed at a specific person or persons;
 2. Which seriously alarms, annoys, intimidates, or harasses the person or persons; and
 3. Which serves no legitimate purpose.
- (b) The course of conduct shall be that which would cause a reasonable person to suffer substantial mental distress.
- (2) "Course of conduct" means a pattern of conduct composed of two (2) or more acts, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct." If the defendant claims that he was engaged in 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.
- (3) "Protective order" means:
 - (a) An emergency protective order or domestic violence order issued under KRS 403.715 to 403.785;
 - (b) A foreign protective order, as defined in KRS 403.7521(1);
 - (c) An order issued under KRS 431.064; ~~and~~
 - (d) ***A restraining order issued in accordance with Section 2 of this Act; and***
 - (e) Any condition of a bond, conditional release, probation, parole, or pretrial diversion order designed to protect the victim from the offender.

SECTION 2. A NEW SECTION OF KRS CHAPTER 508 IS CREATED TO READ AS FOLLOWS:

- (1) ***A verdict of guilty or a plea of guilty to KRS 508.140 or 508.150 shall operate as an application for a restraining order limiting the contact of the defendant and the victim who was stalked, unless the victim requests otherwise.***
- (2) ***The court shall give the defendant notice of his or her right to request a hearing on the application for a restraining order. If the defendant waives his or her right to a hearing on this matter, then the court may issue the restraining order without a hearing.***
- (3) ***If the defendant requests a hearing, it shall be held at the time of the verdict or plea of guilty, unless the victim or defendant requests otherwise. The hearing shall be held in the court where the verdict or plea of guilty was entered.***
- (4) ***A restraining order may grant the following specific relief:***

- (a) An order restraining the defendant from entering the residence, property, school, or place of employment of the victim; or*
 - (b) An order restraining the defendant from making contact with the victim, including an order forbidding the defendant from personally, or through an agent, initiating any communication likely to cause serious alarm, annoyance, intimidation, or harassment including, but not limited to, personal, written, telephonic, or any other form of written or electronic communication or contact with the victim. An order issued pursuant to this subsection relating to a school, place of business, or similar nonresidential location shall be sufficiently limited to protect the stalking victim but shall also protect the defendant's right to employment, education, or the right to do legitimate business with the employer of a stalking victim as long as the defendant does not have contact with the stalking victim. The provisions of this subsection shall not apply to a contact by an attorney regarding a legal matter.*
- (5) A restraining order issued pursuant to this section shall be valid for a period of not more than ten (10) years, the specific duration of which shall be determined by the court. Any restraining order shall be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim, his or her immediate family, or both.*
 - (6) Unless the defendant has been convicted of a felony, or is otherwise ineligible to purchase or possess a firearm under federal law, a restraining order issued pursuant to this section shall not operate as a ban on the purchase or possession of firearms or ammunition by the defendant.*
 - (7) The restraining order shall be issued on a form prescribed by the Administrative Office of the Courts and may be lifted upon application of the stalking victim to the court which granted the order.*
 - (8) Within twenty-four (24) hours of entry of a restraining order or entry of an order rescinding a restraining order, the circuit clerk shall forward a copy of the order to the Law Information Network of Kentucky (LINK).*
 - (9) A restraining order issued under this section shall be enforced in any county of the Commonwealth. Law enforcement officers acting in good faith in enforcing a restraining order shall be immune from criminal and civil liability.*
 - (10) A violation by the defendant of an order issued pursuant to this section shall be a Class A misdemeanor. Nothing in this section shall preclude the filing of a criminal complaint for stalking based on the same act which is the basis for the violation of the restraining order.*

Section 3. KRS 431.005 is amended to read as follows:

- (1) A peace officer may make an arrest:
 - (a) In obedience to a warrant; or
 - (b) Without a warrant when a felony is committed in his presence; or
 - (c) Without a warrant when he has probable cause to believe that the person being arrested has committed a felony; or
 - (d) Without a warrant when a misdemeanor, as defined in KRS 431.060, has been committed in his presence; or

- (e) Without a warrant when a violation of KRS 189.290, 189.393, 189.520, 189.580, 511.080, or 525.070 has been committed in his presence, except that a violation of KRS 189A.010 or KRS 281A.210 need not be committed in his presence in order to make an arrest without a warrant if the officer has probable cause to believe that the person has violated KRS 189A.010 or KRS 281A.210.
- (2)
 - (a) Any peace officer may arrest a person without warrant when the peace officer has probable cause to believe that the person has intentionally or wantonly caused physical injury to a family member or member of an unmarried couple.
 - (b) For the purposes of this subsection, the term "family member" means a spouse, including a former spouse, a parent, a grandparent, a child, a stepchild, or any other person related by consanguinity or affinity within the second degree.
 - (c) For the purpose of this subsection, the term "member of an unmarried couple" means each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together.
- (3) For purposes of subsection (2) of this section, a "peace officer" is:
 - (a) A full-time sworn officer of the Kentucky State Police, a full-time sworn officer of the Kentucky Horse Park, a commissioned full-time state park ranger, a full-time officer of the Division of Law Enforcement within the Department of Fish and Wildlife Resources who is exercising authority under KRS Chapter 235, a full-time city policeman, a full-time county policeman, a full-time university safety and security officer appointed pursuant to KRS 164.950 to 164.970, a full-time city-county policeman, a duly elected sheriff, or a full-time paid deputy sheriff; or
 - (b) A part-time paid law enforcement officer, or a special paid deputy, who has completed a Kentucky law enforcement council approved education and training program referred to in KRS 403.784.
 - (c) The provisions of this section relating to training shall not apply to a deputy sheriff who is subject to the training requirements specified in KRS 70.263(3).
- (4) If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with KRS 431.064 and verifies that the alleged violator has notice of the conditions, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.
- (5) A private person may make an arrest when a felony has been committed in fact and he has probable cause to believe that the person being arrested has committed it.
- (6) ***If a law enforcement officer has probable cause to believe that a person has violated a restraining order issued under Section 2 of this Act, then the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.***

Approved April 1, 2002