ENGROSSED HOUSE
BILL NO. 2306

BY: DAVIS, MONKS, MANAR, LEIST, ROBERTS (Walt), SULLIVAN, APPLE and COMBS of the HOUSE

and

SHEDRICK of the SENATE

AN ACT RELATING TO CRIMINAL PROCEDURE; AMENDING 22 O.S. 1991, SECTIONS 60.1, 60.2, 60.3, 60.4 AND 60.6, WHICH RELATE TO THE PROTECTION FROM DOMESTIC ABUSE ACT; AUTHORIZING PROTECTIVE ORDERS AND EMERGENCY EX PARTE ORDERS FOR STALKING AND HARASSMENT; ADDING DEFINITIONS; MODIFYING SCOPE OF EMERGENCY EX PARTE ORDERS; MODIFYING PETITION FORM; CLARIFYING EFFECT OF EX PARTE ORDERS AND PROTECTIVE ORDERS; MODIFYING CERTAIN PENALTY PROVISIONS TO INCLUDE VIOLATIONS FOR STALKING OR HARASSMENT; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 22 O.S. 1991, Section 60.1, is amended to read as follows:

Section 60.1 As used in Section 60 et seq. of this title and in the Domestic Abuse Reporting Act, Sections 40.5 and 40.6 of this title and Section 150.12B of Title 74 of the Oklahoma Statutes:

1. "Domestic abuse" means any act of physical harm, or the threat of imminent physical harm which is committed by an adult, emancipated minor, or minor age sixteen (16) or seventeen (17) years

against another adult, emancipated minor or minor child who are family or household members; ~~and~~

2. "Stalking" means the willful, malicious, and repeated following of a person by an adult, emancipated minor, or minor sixteen (16) years of age or older, with the intent of placing the person in reasonable fear of death or great bodily injury;

3. "Harassment" means a knowing and willful course or pattern of conduct by an adult, emancipated minor, or minor sixteen (16) years of age or older, directed at a specific person which seriously alarms or annoys the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial distress to the person. "Harassment" shall include, but not be limited to, harassing or obscene telephone calls in violation of Section 1172 of Title 21 of the Oklahoma Statutes; and

4. "Family or household members" means spouses, ex-spouses, present spouses of ex-spouses, parents, children, persons otherwise related by blood or marriage, persons living in the same household or who formerly lived in the same household, or persons who are the biological parents of the same child, regardless of their marital status, or whether they have lived together at any time. This shall include the elderly and handicapped.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 60.2, is amended to read as follows:

Section 60.2 A. A victim of domestic abuse, a victim of stalking, a victim of harassment, any adult or emancipated minor household member on behalf of any other family or household member who is a minor or incompetent, or any minor age sixteen (16) or seventeen (17) years~~,~~ may seek relief under the provisions of this act by filing a petition for protective order with the district

court in either the county in which the victim resides or the county in which the defendant resides.

B. The petition forms shall be provided by the clerk of the court and shall be in substantially the following form:

IN THE DISTRICT COURT IN AND FOR _____ COUNTY

STATE OF OKLAHOMA

_____	)	
Plaintiff	)	
	)	
vs.	)	Case No._____
	)	
_____	)	
Defendant	)	

PETITION FOR PROTECTIVE ORDER

Plaintiff, being sworn, states:

1. (Check one or more)

/___/ The defendant caused or attempted to cause serious physical harm to _____.

/___/ The defendant threatened _____ with imminent serious physical harm.

/___/ The defendant has stalked or harassed _____.

2. The incident causing the filing of this petition occurred on or about _____.

(date)

(Describe what happened:)

_____

_____

_____

_____

_____

_____

_____

3. The victim and the defendant are related as follows:

(check one)

/___/ married

/___/ divorced

/___/ parent and child

/___/ persons related by blood

/___/ persons related by marriage

/___/ present spouse of an ex-spouse

/___/ persons living in the same household

/___/ persons formerly living in the same household

/___/ biological parents of the same child

/___/ not related

4. (Answer this question only if the plaintiff is filing on behalf of someone else, minor or incompetent)

The plaintiff and the victim are related as follows:

/___/ married

/___/ divorced

/___/ parent and child

/___/ persons related by blood

/___/ persons related by marriage

/___/ present spouse of an ex-spouse

/___/ persons living in the same household

/___/ persons formerly living in the same household

/___/ biological parents of the same child

5. (Check A or B)

(A) /___/ The victim is in immediate and present danger of abuse from

the defendant and an emergency ex parte order is necessary to protect the victim from serious harm. The plaintiff requests the

following relief in the emergency ex parte order: (check one or more)

/___/ order the defendant not to abuse or injure the victim.

/___/ order the defendant not to visit, assault, molest~~, harass~~ or otherwise interfere with the victim.

/___/ order the defendant not to threaten the victim.

/___/ order the defendant to cease stalking the victim.

/___/ order the defendant to cease harassment of the victim.

/___/ order the defendant to leave the residence located at _____ on or before _____.

/___/ _____ (describe other relief that plaintiff requests)

(B) /___/ The plaintiff does not request an emergency ex parte order.

6. Plaintiff requests the following order to be made by the court following notice to the defendant and a hearing: (check one or more)

/___/ order the defendant not to abuse or injure the victim.

/___/ order the defendant not to visit, assault, molest~~, harass~~ or otherwise interfere with the victim.

/___/ order the defendant not to threaten the victim.

/___/ order the defendant to cease stalking the victim.

/___/ order the defendant to cease harassment of the victim.

/___/ order the defendant to leave the residence located at _____ on or before _____.

/___/ _____ (describe other relief that plaintiff requests)

/___/ order the defendant to pay attorney fees of the plaintiff in the sum of _____ on or before _____.

/___/ order the defendant to pay the court costs of this action in the sum of _____ on or before _____.

7. /___/ Victim is a resident of the county wherein this petition is filed.

/___/ Defendant is a resident of the county wherein this petition is filed.

8. Plaintiff has stated the truth, the whole truth and nothing but the truth in this petition.

_____

Plaintiff

Witness my hand and seal,

affixed on the ___ day of _____, 19__.

_____

Court Clerk, Deputy Court Clerk,

or Notary Public

C. No filing fee shall be charged the plaintiff at the time the petition is filed. The court may assess court costs and filing fees to either party at the hearing on the petition.

D. The plaintiff shall prepare the petition as set forth above or, at the request of the plaintiff, the clerk of the court or the victim-witness coordinator shall prepare or assist the plaintiff in preparing the same.

SECTION 3. AMENDATORY 22 O.S. 1991, Section 60.3, is amended to read as follows:

Section 60.3 If a plaintiff requests an emergency ex parte order pursuant to Section 60.2 of this title, the court shall hold an ex parte hearing on the same day the petition is filed. The court may, for good cause shown at the hearing, issue any emergency ex parte order that it finds necessary to protect the victim from immediate and present danger of domestic abuse, stalking, or harassment. The emergency ex parte order shall be in effect until after the full hearing is conducted. An emergency ex parte order authorized by this section may include the following:

1. An order to the defendant not to abuse or injure the victim;

2. An order to the defendant not to visit, assault, molest, harass or otherwise interfere with the victim;

3. An order to the defendant not to threaten the victim; ~~or~~

4. An order to the defendant not to stalk the victim;

5. An order to the defendant not to harass the victim; or

6. An order to the defendant to leave the residence.

SECTION 4. AMENDATORY 22 O.S. 1991, Section 60.4, is amended to read as follows:

Section 60.4 A. A copy of the petition, notice of hearing and a copy of any ex parte order issued by the court shall be served

upon the defendant in the same manner as a summons. Ex parte orders shall be given priority for service by the sheriff's office and can be served twenty-four (24) hours a day.

B. Within ten (10) days of the filing of the petition the court shall schedule a full hearing on the petition, regardless of whether an emergency ex parte order has been previously issued, requested or denied.

C. At the hearing, the court may grant any protective order to bring about the cessation of domestic abuse against the victim or stalking or harassment of the victim.

D. Protective orders authorized by this section may include the following:

1. An order to the defendant not to abuse or injure the victim;

2. An order to the defendant not to visit, assault, molest, harass or otherwise interfere with the victim;

3. An order to the defendant not to threaten the victim;

4. An order to the defendant to cease stalking the victim;

5. An order to the defendant to cease harassment of the victim;

6. An order to the defendant to leave the residence;

~~5.~~ 7. An order awarding attorney fees; and

~~6.~~ 8. An order awarding court costs.

E. When necessary to protect the victim and when authorized by the court, protective orders granted pursuant to the provisions of this section may be served upon the defendant by a peace officer, sheriff, constable, or policeman or other officer whose duty it is to preserve the peace, as defined by Section 99 of Title 21 of the Oklahoma Statutes.

F. Any protective order issued pursuant to subsection C of this section shall not be for a fixed period but shall be continuous until modified or rescinded upon motion by either party or if the court approves any consent agreement entered into by the plaintiff and defendant.

G. No order issued under the Protection from Domestic Abuse Act shall in any manner affect title to real property, purport to grant to the parties a divorce or otherwise purport to determine the issues between the parties as to child custody, visitation, child support or division of property or any other like relief obtainable under Sections 101 et seq. of Title 43 of the Oklahoma Statutes.

SECTION 5. AMENDATORY 22 O.S. 1991, Section 60.6, is amended to read as follows:

Section 60.6 A. Except as otherwise provided by this section any person who has been served with an ex parte or final protective order and is in violation of such protective order, upon conviction, shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by a term of imprisonment in the county jail of not more than one (1) year, or both.

B. Any person who after a previous conviction of a violation of a protective order is convicted of a second or subsequent offense pursuant to the provisions of this section shall be deemed guilty of a misdemeanor and shall be punished by a term of imprisonment in the county jail of not less than ten (10) days and not more than one (1) year. In addition to the term of imprisonment, the person may be punished by a fine of not less than Five Hundred Dollars ($500.00) and not more than One Thousand Dollars ($1,000.00).

C. 1. Any person who has been served with an ex parte or final protective order who violates said protective order and without justifiable excuse causes physical injury or physical impairment to the plaintiff or to any other person named in said protective order shall upon conviction be guilty of a misdemeanor and shall be punished by a term of imprisonment in the county jail for not less than ten (10) days nor more than one (1) year. In addition to the term of imprisonment, the person may be punished by a fine not to exceed Five Thousand Dollars ($5,000.00).

2. In determining the term of imprisonment required by this section, the jury or sentencing judge shall consider the degree of physical injury or physical impairment to the victim.

3. The provisions of this subsection shall not affect the applicability of Sections 644, 645, 647 and 652 of Title 21 of the Oklahoma Statutes.

D. The minimum sentence of imprisonment issued pursuant to the provisions of subsections B and C of this section shall not be subject to statutory provisions for suspended sentences, deferred sentences or probation, provided the court may subject any remaining penalty under the jurisdiction of the court to the statutory provisions for suspended sentences, deferred sentences or probation.

E. In addition to any other penalty specified by this section, the court may require a defendant to undergo the treatment or participate in the counseling services necessary to bring about the cessation of domestic abuse against the victim <u>or to bring about the cessation of stalking or harassment of the victim</u>.

F. Ex parte and final protective orders shall include notice of these penalties.

SECTION 6. This act shall become effective September 1, 1992.

Passed the House of Representatives the 3rd day of March, 1992.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1992.

President of the Senate