STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1102 By: Bryant (John)

COMMITTEE SUBSTITUTE

An Act relating to criminal procedure; stating legislative findings and intent relating to domestic abuse; amending 22 O.S. 1991, Sections 40.2, 40.3, 60.2, as amended by Section 2, Chapter 42, O.S.L. 1992 and 60.3, as amended by Section 3, Chapter 42, O.S.L. 1992 (22 O.S. Supp. 1992, Sections 60.2 and 60.3), which relate to domestic abuse; eliminating certain procedures for warrantless arrests; authorizing warrantless arrests in certain circumstances; providing for certain emergency temporary protective orders and requiring certain forms and procedures; requiring certain written reports; mandating review of such reports; mandating certain notification; requiring law enforcement agencies and district attorney offices to develop, adopt and implement certain policies; specifying such policies; specifying certain education and training of law enforcement agencies; authorizing the filing and approval of emergency temporary orders of protection under certain circumstances; providing for procedures; establishing certain limitations; amending 74 O.S. 1991, Section 150.12B, which relates to domestic abuse reporting; amending 22 O.S. 1991, Section 40.6, which relates to criminal procedure; requiring certain statistics for reporting domestic abuse; directing the Oklahoma State Bureau of Investigation to develop certain forms in certain manner; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 40a of Title 22, unless there is created a duplication in numbering, reads as follows:

A. The Legislature finds that societal attitudes have been reflected in policies and practices of law enforcement agencies, prosecutors and courts. Under these policies and practices, the treatment of a crime may vary widely depending on the relationship between the criminal offender and the victim of the crime. Only recently has public perception of the serious consequences of

domestic abuse to society and to individual victims led to the recognition of the necessity for early intervention by the criminal justice system.

B. It is the intent of the Oklahoma Legislature that:

1. The official response to cases of domestic abuse stress the enforcement of the law, protect the victim and communicate the attitude that violent behavior is neither excused nor tolerated;

2. Criminal laws be enforced without regard to the relationship of the persons involved;

3. Oklahoma State Bureau of Investigation document the extent of domestic abuse incidents requiring the intervention of law enforcement agencies as provided for in Section 40.6 of this title and Section 150.12B of Title 74 of the Oklahoma Statutes; and

4. Law enforcement agencies be encouraged to provide adequate training to officers handling domestic abuse.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 40.2, is amended to read as follows:

Section 40.2 Upon the preliminary investigation of any crime involving domestic abuse, it shall be the duty of the first peace officer who interviews the victim of the domestic abuse to inform the victim of the twenty-four-hour statewide telephone communication service established by Section ~~5~~ 3-314 of ~~this act~~ Title 43A of the Oklahoma Statutes and to give notice to the victim of certain rights. The notice shall consist of handing such victim the following statement:

"As a victim of domestic abuse, you have certain rights. These rights are as follows:

1. The right to request that charges be pressed against your assailant;

2. The right to request protection from any harm or threat of harm arising out of your cooperation with law enforcement and prosecution efforts as far as facilities are available and to be provided with information on the level of protection available; ~~and~~

3. The right to be informed of financial assistance and other social services available as a result of being a victim, including information on how to apply for the assistance and services; and

4. The right to file a petition for a protective order or, when the domestic abuse and report of the abuse occurs when the court is not open for business, to request an emergency temporary protective order."

SECTION 3. AMENDATORY 22 O.S. 1991, Section 40.3, is amended to read as follows:

Section 40.3 A. A peace officer shall not discourage a victim of rape, forcible sodomy or domestic abuse from pressing charges against the assailant of the victim.

B. A peace officer may arrest without a warrant a person anywhere, including his place of residence, if the peace officer has probable cause to believe the person ~~within the preceding four (4) hours~~ has ~~committed~~:

1. Committed an act of domestic abuse as defined by Section 60.1 of this title, although the ~~assault~~ domestic abuse did not take place in the presence of the peace officer~~. A peace officer may not arrest a person pursuant to this section without first observing a recent physical injury to, or an impairment of the physical condition of, the alleged victim.~~; or

2. Violated an order of protection issued pursuant to Section 60.2 of this title, even if the violation was not committed in the presence of an officer. The peace officer may verify the existence of an order of protection by telephone or radio communication with his or her law enforcement agency or by referring to the copy of the order provided by the petitioner or respondent.

C. When the act of domestic abuse or violation of the order of protection did not take place in the presence of a peace officer, the person upon whose statement the officer relies shall sign, in the presence of the officer, a written statement describing the act of domestic abuse or violation of the protective order.

1. Any false statement knowingly and intentionally given to the officer by the person upon whose statement the officer relies shall be a misdemeanor and subject to the sanctions of Title 21 of the Oklahoma Statutes.

2. Any peace officer relying in good faith upon a written statement pursuant to this subsection shall have immunity from liability, civil or criminal, that might otherwise be incurred or imposed.

D. When no order of protection has been issued and the court is not open for business, upon the request of a victim of domestic abuse who wishes to file a petition for an emergency temporary order of protection, the peace officer making the preliminary investigation shall:

1. Provide the victim with a petition for an emergency temporary order of protection and, if necessary, assist the victim in completing the petition form. The petition shall be in substantially the same form as provided by Section 60.2 of this title for a petition for protective order;

2. Immediately notify, by telephone or otherwise, a judge of the district court of the request for an emergency temporary order of protection and describe the circumstances;

3. Inform the victim whether the judge has approved or disapproved an emergency temporary order. If an emergency temporary order has been approved, the officer shall provide the victim with a copy of the petition and a statement signed by the officer that the judge has approved the emergency temporary order of protection and notify said victim that the emergency temporary order shall be effective only until the close of business on the next day that the court is open for business;

4. Notify the person subject to the emergency temporary protection order of the issuance and conditions of the order. Notification pursuant to this paragraph may be made personally by the officer or through telephone communication. A copy of the petition and the statement of the officer attesting to the order of the judge shall be made available to said person; and

5. File a copy of the petition and the statement of the officer with the district court of the county immediately upon the opening of the court on the next day the court is open for business.

E. The forms necessary to carry out the provisions of this section and Section 4 of this act shall be developed by the Oklahoma State Bureau of Investigation in consultation with local law enforcement agencies and the courts. The forms utilized by law enforcement agencies in carrying out the provisions of this section shall be substantially similar to those developed by the Oklahoma State Bureau of Investigation.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 40.3a of Title 22, unless there is created a duplication in numbering, reads as follows:

If a law enforcement officer does not make an arrest pursuant to subsection B of Section 40.3 of this title when the officer has probable cause to believe that a person is committing or has committed an act of domestic abuse and the acts of that person constitute the commission of a crime, the officer shall prepare a written report stating why the person was not arrested. The report shall be sent to the office of the district attorney, in the county where the act took place, immediately after investigation of the incident has been completed. The district attorney shall review the report to determine whether the person involved in the incident should be charged with the commission of a crime.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 40.3b of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Each county and municipal law enforcement agency shall develop, adopt and implement written policies regarding arrest procedures for domestic abuse incidents. The policies shall include, but not be limited to, the following:

1. Statements emphasizing that:

a. in most circumstances, a law enforcement officer should arrest and take a person into custody if the

officer has probable cause to believe that the person is committing or has committed an act of domestic abuse as defined by Section 60.1 of this title,

b. when the officer has probable cause to believe that persons covered under Section 40 of Title 22 of the Oklahoma Statutes are committing or have committed domestic abuse against each other, the officer does not have to arrest both persons, but should arrest the person whom the officer believes to be the primary aggressor. In determining who is the primary aggressor, an officer should consider the intent of this section to protect victims of domestic abuse, the relative degree of injury or fear inflicted on the person involved and any history of domestic abuse between these persons, if that history can be reasonably ascertained by the officer,

c. in determining which party in a domestic violence incident is the victim where both parties exhibit signs of injury, the officer should consider the comparative extent of the injuries, the history of domestic violence between the parties, if any, and other relevant factors,

d. no victim shall be denied relief or arrested or charged under this act with an offense because the victim used reasonable force in self defense against domestic violence by an attacker,

e. a decision by a law enforcement officer as to whether or not to arrest pursuant to Section 3 of this act may not be based on the consent of the victim to any subsequent prosecution or on the relationship of the persons involved in the incident, and

f. a law enforcement officer's decision not to arrest pursuant to Section 2 of this act may not be indications of injury or impairment;

2. A procedure for the written report and referral required pursuant to Section 4 of this act; and

3. A procedure for notifying a judge of the district court of a request for an emergency temporary order of protection, and for notifying the alleged perpetrator of domestic abuse when the judge approves such order.

B. In the development of these policies, each law enforcement agency is encouraged to consult with community organizations and other law enforcement agencies with expertise in the recognition and handling of domestic abuse incidents.

C. This subsection does not limit the authority of a law enforcement agency to establish policies that require arrests under more circumstances than those set forth in Section 3 of this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 40.3c of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Each office of the district attorney shall develop, adopt and implement written policies encouraging the prosecution of domestic abuse offenses. These policies shall include, but not be limited to, the following:

1. A policy indicating that a decision of a district attorney not to prosecute an act of domestic abuse as defined by Section 60.1 of this title should not be based:

a. solely upon the absence of visible indications of injury or impairment,

b. upon the consent of the victim to any subsequent prosecution of the other person involved in the incident, or

c. upon the relationship of the persons involved in the incident; and

2. A policy indicating that when any domestic abuse incident is reported to the office of the district attorney, including a

report made pursuant to Section 4 of this act, a charging decision by the district attorney should, absent extraordinary circumstances, be made no later than two (2) weeks after the district attorney has received notice of the incident.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 40.3d of Title 22, unless there is created a duplication in numbering, reads as follows:

A. County and municipal law enforcement agencies shall provide a minimum of eight (8) hours of training in domestic abuse for officers.

B. Any education and training by the law enforcement agency relating to the handling of domestic abuse complaints shall stress enforcement of criminal laws in domestic abuse incidents and protection of the victim. It is the intent of the Legislature that law enforcement agencies and community organizations with expertise in the recognition and handling of domestic abuse incidents cooperate in all aspects of training.

SECTION 8. AMENDATORY 22 O.S. 1991, Section 60.2, as amended by Section 2, Chapter 42, O.S.L. 1992 (22 O.S. Supp. 1992, 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.

1. Such person may seek relief 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.

2. When the abuse occurs when the court is not open for business, such person may request an emergency temporary order of protection as provided by Section 40.3 of this title.

B. The petition forms for a petition pursuant to paragraph 1 of subsection A of this section 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 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 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 9. AMENDATORY 22 O.S. 1991, Section 60.3, as amended by Section 3, Chapter 42, O.S.L. 1992 (22 O.S. Supp. 1992, Section 60.3), is amended to read as follows:

Section 60.3 A. 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;

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.

B. If a plaintiff requests an emergency temporary ex parte order of protection as provided by Section 40.3 of this title, the judge who is notified of the request by a peace officer may issue such order verbally to the officer or in writing when there is reasonable cause to believe that the order is necessary to protect the victim from immediate and present danger of domestic abuse. When the order is issued verbally the judge shall direct the officer to complete and sign a statement attesting to the order. The emergency temporary ex parte order shall be in effect until

the close of business on the next day the court is open for business after the order is issued.

SECTION 10. AMENDATORY 74 O.S. 1991, Section 150.12B, is amended to read as follows:

Section 150.12B A. The Oklahoma State Bureau of Investigation shall provide forms for the reporting of domestic abuse to each person required to submit such reports pursuant to the provisions of Section 3 of this act and shall establish guidelines for the collection and reporting of domestic abuse incident information pursuant to the provisions of the Domestic Abuse Reporting Act.

B. The Director of the Oklahoma State Bureau of Investigation shall compile a monthly and annual statistical report which shall include the number of reported incidents of domestic abuse for each county and for the state as a whole, the types of crime involved in the domestic abuse, the days of the week the incidents occurred, ~~and~~ the hours of the day the incidents occurred, whether drugs or alcohol were involved, the geographic location of the crime, whether the perpetrator had a previous domestic abuse record, the number of family members involved, the familial relationship of the victim to the perpetrator, whether a protective order was issued, statistics on the arrest and outcome of the arrest and who initiated law enforcement intervention. The statistical reports shall not include the names of any of the persons involved in an incident of domestic abuse or any information which would serve to identify such persons as individuals.

C. Copies of the monthly and annual statistical reports shall be available to the public upon request.

D. The Oklahoma State Bureau of Investigation shall develop, in consultation with local law enforcement agencies and the courts, the forms necessary to carry out the provisions of Section 40.3 of Title 22 of the Oklahoma Statutes, including but not limited to forms for the statement of the person reporting an act of domestic abuse or violation of an order of protection on which a peace office is authorized to rely when the act or violation did

not occur in the presence of the officer, the petition for an emergency temporary order of protection, and the statement of the officer attesting to the approval of the petition by a judge.

SECTION 11. AMENDATORY 22 O.S. 1991, Section 40.6, is amended to read as follows:

Section 40.6 A. It shall be the duty of every county and municipal law enforcement agency to keep a record of each reported incident of domestic abuse as provided in subsection B of this section and to submit a monthly report of such incidents as provided in subsection C of this section.

B. The record of each reported incident of domestic abuse shall:

1. Show the type of crime involved in the domestic abuse;

2. Show the day of the week the incident occurred; ~~and~~

3. Show the time of day the incident occurred;

4. Show whether drugs or alcohol were involved;

5. Show the geographic location of the crime;

6. Show whether the perpetrator had a previous domestic abuse record;

7. Show the number of family members involved in the domestic abuse;

8. Show the familial relationship of the victim to the perpetrator;

9. Show whether a protective order was issued;

10. Show statistics on the arrest and the outcome of the arrest; and

11. Show who initiated law enforcement intervention.

C. A monthly report of the recorded incidents of domestic abuse shall be submitted to the Director of the Oklahoma State Bureau of Investigation on forms provided by the State Bureau of Investigation for such purpose and in accordance with the guidelines established pursuant to Section ~~4~~ 150.12B of ~~this act~~ Title 74 of the Oklahoma Statutes.

SECTION 12. This act shall become effective September 1, 1993.