

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2583

By: Boyd (Laura)

COMMITTEE SUBSTITUTE

An Act relating to criminal procedure; amending 22 O.S. 1991, Section 60.1, as amended by Section 1, Chapter 42, O.S.L. 1992, 60.2, as last amended by Section 15, Chapter 325, O.S.L. 1993, 60.3, as last amended by Section 16, Chapter 325, O.S.L. 1993, 60.4, as last amended by Section 1, Chapter 379, O.S.L. 1992, 60.5, 60.6, as amended by Section 5, Chapter 42, O.S.L. 1992, 60.7, 40 and 40.3, as amended by Section 14, Chapter 325, O.S.L. 1993 (22 O.S. Supp. 1993, Sections 60.1, 60.2, 60.3, 60.4, 60.6 and 40.3), which relate to Domestic Abuse and Sexual Assault; modifying definition; modifying procedures; expanding venue for filing of petitions; modifying and adding to petition forms; directing and adding to authority of court certain emergency protective orders; modifying content; requiring certain communications; providing for determination of custody, visitation and support; providing certain separate filings; modifying certain service and filing requirements; authorizing facsimile copies; specifying responsibility for service; adding to contents of certain protective orders; requiring, modifying and increasing certain punishments and fines; requiring certain payments; removing conflicting language; providing for minimum sentencing; modifying certain petitions and procedures; providing for specific finding of fact for denials of certain orders; providing for codification; 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, as amended by Section 1, Chapter 42, O.S.L. 1992 (22 O.S. Supp. 1993, Section 60.1), is amended to read as follows:

Section 60.1 As used in ~~Section 60 et seq. of this title~~ the Protection from Domestic Abuse Act 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;

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 or persons who are or were in a dating, courtship or engagement relationship. This shall include the elderly and handicapped.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 60.2, as last amended by Section 15, Chapter 325, O.S.L. 1993 (22 O.S. Supp. 1993, 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~~ the Protection from Domestic Abuse 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 or the county where the abuse occurred.

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~~ 60.3 of this title.

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

persons who are or were in a dating, courtship or engagement relationship

not related (for stalking violations only)

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

persons who are or were in a dating, courtship or engagement relationship

5. (Check A or B)

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 not to contact or communicate with the victim, specified family or household members or any employers or other associates of the victim.
- / order the defendant not to destroy, transfer, or dissipate the property of either party or of the family or household members.
- / order the defendant to pay child support or spousal support.
- / _____ grant temporary custody of
_____ to the victim.
(child or children's names)
- / authorize supervised visitation to
_____ (child or children's
names)
by the defendant.
- / order the defendant to ~~leave~~ vacate the home or
residence
of the victim 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.

/___/ Abuse occurred in the county wherein this petition is filed.

8. Only the district court having jurisdiction issuing the emergency order can modify or terminate the order prior to its expiration date.

9. 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, as last amended by Section 16, Chapter 325, O.S.L. 1993 (22 O.S. Supp. 1993, 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~~ not to contact or communicate with the victim, specified family or household members or any employers or other associates of the victim;

7. An order to the defendant not to destroy, transfer or dissipate the property of either party or of the family or household members; or

8. An order to the defendant to vacate the home or residence of the victim.

B. The ex parte order shall also include specific language informing the victim and the defendant that only the district court having jurisdiction issuing the emergency protective order can modify or terminate the order prior to its expiration date. The judge shall orally explain to the victim that the emergency protective order remains in effect even:

1. If permissive contact or communication occurs between the victim and the defendant in violation of such order; or

2. The victim and the defendant agree to terminate the order.

C. The judge shall also reasonably ensure that the victim understands the process for obtaining a final protective order and any victim rights pursuant to law.

D. If requested by the plaintiff and determined to be necessary by the court to protect the victim, or the victim and any child of the victim or in the custody of the victim from immediate and present danger of domestic abuse, the ex parte order issued by the court may include an assignment of temporary custody and determination of any temporary visitation rights. Such temporary assignment and determination shall be effective until a

full hearing on the petition is held pursuant to Section 60.4 of this title.

E. If a plaintiff requests an emergency temporary ex parte order of protection as provided by Section ~~40.3~~ 60.3 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.

F. When the order is issued verbally the judge shall direct the officer to complete and sign a statement attesting to the order. The officer shall 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; provided:

1. For reasonable and sufficient cause, the officer may file the copy of the petition prior to the close of business on the next day the court is open for business. The reason for the delay shall be stated in writing and attached to the copy of the petition; or

2. In lieu of filing a copy of the petition, the officer may transmit by a facsimile device a copy of the petition and the statement of the officer with the district court prior to the opening of the court on the next day the court is open for business if a copy of the petition and statement is either delivered personally or mailed by certified mail, return receipt requested, to the court within twenty four (24) hours of such transmission to the court for filing. For purposes of this paragraph, "facsimile device" means a machine capable of receiving and reproducing facsimiles of text or images transmitted electronically or telephonically through telecommunication lines connecting to the machine.

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.

H. When a petition is upheld, the court shall not assess any fees or other court costs for filing a petition for or issuing an emergency protective order against the victim. Any such fees or costs shall be assessed against the defendant if the petition is upheld.

SECTION 4. AMENDATORY 22 O.S. 1991, Section 60.4, as last amended by Section 1, Chapter 379, O.S.L. 1992 (22 O.S. Supp. 1993, 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. Any peace officer in this state is authorized to serve a copy of the petition, notice of hearing and copy of any ex parte order. The officer providing the victim with a petition or, as directed by the court issuing the emergency ex parte order or protective order, a state or local law enforcement agency shall provide that the copy of the petition, notice of hearing or a copy of the ex parte order is served on the defendant. 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~~ not to contact or communicate with the victim, specified family or household members or any specified employers or other associates of the victim;

7. An order to the defendant not to destroy, transfer or dissipate the property of either party or of the family or household members;

8. An order to the defendant to vacate the home or residence of the victim;

9. An order awarding attorney fees; and

~~8.~~ 10. An order awarding court costs.

E. The protective order shall also include specific language informing the victim and the defendant that only the district court having jurisdiction issuing the protective order can modify or terminate the protective order prior to its expiration date. The court shall orally explain to the victim and defendant, if present, that the protective order shall remain in effect even if:

1. Permissive contact or communication occurs between the victim and the defendant in violation of such order; or

2. The victim and the defendant agree to terminate.

F. The court shall make reasonable efforts to ensure that the order for protection and the consequences for violations thereof are understood by the victim and by the defendant, if present.

G. If requested by the plaintiff or defendant the court may make a temporary assignment of custody and make a temporary determination of visitation rights and of child support and spousal support. A final assignment of child custody and final determination of visitation and of child support and spousal support shall be obtained in an action before a district court with proper jurisdiction over the matter.

H. Whenever the petition is upheld, the court shall not assess any fees or other court costs for filing a petition for or issuing a protective order against the victim. Any such fees or

costs shall be assessed against the defendant if petition is upheld.

J. After notice and hearing, protective orders authorized by this section may require the plaintiff or the defendant or both to undergo treatment or participate in the counseling services necessary to bring about cessation of domestic abuse against the victim. Either party or both may be required to pay all or any part of the cost of such treatment or counseling services. The court shall not be responsible for such cost.

~~F.~~ K. 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.

~~G.~~ L. 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.

~~H.~~ M. No order issued under the Protection from Domestic Abuse Act, ~~Section 60 et seq. of this title,~~ shall in any manner affect title to real property, or 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 60.5, is amended to read as follows:

Section 60.5 Within twenty-four (24) hours of the return of service of any ex parte or ~~final~~ protective order, the clerk of the issuing court shall send certified copies thereof to all appropriate law enforcement agencies designated by the plaintiff.

SECTION 6. AMENDATORY 22 O.S. 1991, Section 60.6, as amended by Section 5, Chapter 42, O.S.L. 1992 (22 O.S. Supp. 1993, Section 60.6), is amended to read as follows:

Section 60.6 A. Except as otherwise provided by this section ~~any, every~~ person who has been served with an ex parte or ~~final~~ protective order and is ~~is~~ convicted of a violation of such protective order, ~~upon conviction,~~ shall be guilty of a misdemeanor for the first offense and shall be punished by imprisonment in the county jail for not less than twenty-four (24) hours nor for more than one (1) year and 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.~~ Provided, if the violation for which a person is convicted includes a violent physical act, including but not limited to any assault and battery, that person shall be punished by imprisonment in the county jail for not less than ten (10) days nor for more than one (1) year and by a mandatory fine of not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00). Further, any person so convicted shall be ordered to pay for any and all expenses incurred by the victim, including but not limited to medical expenses, as a result of the violation of protective order. All expenses of a victim shall be reimbursed prior to satisfaction of other fines and court costs.

B. Any person who after a previous conviction pursuant to this section 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~~ felony and shall be punished by a term of imprisonment in the county jail of not less than ~~ten (10)~~ thirty (30) 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) and not more than Five Thousand Dollars (\$5,000.00).

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.~~ 2. 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. Further, the minimum sentence of imprisonment issued pursuant to the provisions of subsection A of this section shall be required to be served subsequent to the date of sentencing with the balance of any sentence imposed to be ordered served at the court's discretion.

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 or to bring about the cessation of stalking or harassment of the victim.

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

SECTION 7. AMENDATORY 22 O.S. 1991, Section 60.7, is amended to read as follows:

Section 60.7 All orders issued pursuant to the provisions of the Protection from Domestic Abuse Act, ~~Section 60 et seq. of this title,~~ shall have statewide validity, unless specifically modified or terminated by a judge of the district ~~courts~~ court.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 60.9 of Title 22, unless there is created a duplication in numbering, reads as follows:

In cases involving any action brought pursuant to the Protection from Domestic Abuse Act, if the court denies an emergency protective order or a final protective order, fails or refuses to order a batterer to receive treatment, or allows unsupervised visitation or custody to a batterer, it shall make specific findings of fact supporting such action.

SECTION 9. AMENDATORY 22 O.S. 1991, Section 40, is amended to read as follows:

Section 40. As used in Sections 40 through 40.4 of this title:

1. "Rape" means an act of sexual intercourse accomplished with a person pursuant to Sections 1111, 1111.1 and 1114 of Title 21 of the Oklahoma Statutes;

2. "Forcible sodomy" means the act of forcing another person to engage in the detestable and abominable crime against nature pursuant to Sections 886 and 887 of Title 21 of the Oklahoma Statutes;

3. "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

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 or persons who are or were in a dating, courtship or engagement relationship. This shall include the elderly and handicapped.

SECTION 10. AMENDATORY 22 O.S. 1991, Section 40.3, as amended by Section 14, Chapter 325, O.S.L. 1993 (22 O.S. Supp. 1993, 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 an act of domestic abuse as defined by Section 60.1 of this title, although the assault 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.

C. ~~When an arrest has been made pursuant to subsection B of this section and~~ the court is not open for business, the victim of domestic abuse may request a petition for an emergency temporary order of protection. ~~The~~ If requested or if the officer deems necessary, 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. The judge shall inform the peace officer of his decision to approve or disapprove the emergency temporary order;

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 in writing. 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, provided:

- a. For reasonable and sufficient cause, the officer may file the copy of the petition prior to the close of business on the next day the court is open for business. The reason for the delay shall be stated in writing and attached to the copy of the petition,
or
- b. In lieu of filing a copy of the petition, the officer may transmit by a facsimile device a copy of the petition and the statement of the officer with the district court prior to the opening of the court on the next day the court is open for business if a copy of the petition and statement is either delivered personally or mailed by certified mail, return receipt requested, to the court within twenty-four (24) hours of such transmission to the court for filing. For purposes of this subparagraph, "facsimile device" means a machine capable of receiving and reproducing facsimiles of text or images transmitted electronically or telephonically through telecommunication lines connecting to the machine.

D. The forms utilized by law enforcement agencies in carrying out the provisions of this section may be substantially similar to
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those used under Section 60.2 of Title 22 of the Oklahoma Statutes.

SECTION 11. This act shall become effective September 1, 1994.

44-2-8902

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