

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1102

By: Bryant (John)

AS INTRODUCED

An Act relating to criminal procedure; stating legislative findings and intent relating to domestic abuse; amending 22 O.S. 1991, Section 40.3, which relates to warrantless arrests; eliminating certain procedures for warrantless arrests; requiring certain written reports; mandating review of such reports; prohibiting certain contact; authorizing certain waivers; mandating certain notification; providing for bar to certain prosecution; authorizing certain arrests; providing penalties; 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; providing for codification; providing for recodification; 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 40.3a 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. District attorneys document the extent of domestic abuse incidents requiring the intervention of law enforcement agencies; and

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

SECTION 2. AMENDATORY 22 O.S. 1991, Section 40.3, 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.~~

SECTION 3. 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:

If a law enforcement officer does not make an arrest pursuant to Section 2 of this act 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 4. 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. Unless there is a waiver executed by the victim, during the twenty-four (24) hours immediately following an arrest for a domestic abuse incident, the arrested person shall avoid the residence of the victim of the domestic abuse incident and, if applicable, any premises temporarily occupied by the victim, and avoid contacting or causing any person, other than attorneys for the arrested person and victim, to contact the victim. At any time during the twenty-four-hour period specified in this subsection, the victim may sign a written waiver waiving the contact prohibition specified in this subsection. The law enforcement agency shall have a waiver form available.

B. Unless there is a waiver executed pursuant to subsection A of this section, a law enforcement officer or other person who

releases a person arrested for a domestic abuse incident from custody less than twenty-four (24) hours after the arrest shall inform the arrested person orally and in writing of the requirements of subsection A of this section and the penalty for violating the provisions of that subsection. The arrested person shall sign an acknowledgment on the written notice that such person has received notice of, and understands the requirements and the penalty for violating the provisions of subsection A of this section.

C. If there is a waiver executed by the victim and the person is released, the law enforcement officer or other person who releases the arrested person shall inform the arrested person orally and in writing of the waiver.

D. Failure to comply with the notice requirement pursuant to subsection B of this section regarding a person who is lawfully released from custody bars a prosecution for violating the provisions of subsection A of this section but does not bar any criminal prosecution for acts of domestic abuse as specified in Section 60.1 of this title or any other criminal offense.

E. The law enforcement agency responsible for the arrest of a person for a domestic abuse incident shall notify the victim of the contact prohibition of this section and the possibility of, procedure for and effect of a waiver pursuant to this section.

F. A law enforcement officer shall arrest and take a person into custody if the officer has reasonable grounds to believe that the person has violated the provisions of subsection A of this section. Any person convicted of violating the provisions of subsection A of this section by contacting the victim prior to the end of the twenty-four-hour period following his arrest shall be guilty of a misdemeanor, punishable by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment.

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

A. Each 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 2 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 3 of this act; and

3. A procedure for notifying the alleged victim of the incident of the provisions in Section 4 of this act.

B. In the development for 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 2 of this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 40.3f 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 3 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 40.3g of Title 22, unless there is created a duplication in numbering, reads as follows:

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. RECODIFICATION 22 O.S. 1991, Section 40.3, as amended by Section 2 of this act, shall be recodified as Section 40.3b of Title 22 of the Oklahoma Statutes.

SECTION 9. This act shall become effective September 1, 1993.

