

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2395

By: Larason

AS INTRODUCED

An Act relating to criminal procedure; amending 22 O.S. 1991, Sections 60.1, as amended by Section 1, Chapter 42, O.S.L. 1992, 60.2 and 60.3, as last amended by Sections 15 and 16, Chapter 325, O.S.L. 1993, and 60.4, as last amended by Section 1, Chapter 379, O.S.L. 1992 (22 O.S. Supp. 1993, Sections 60.1, 60.2, 60.3 and 60.4), which relate to the Protection from Domestic Abuse Act; adding definitions; authorizing additional persons relating to the filing of certain petitions; authorizing additional orders by the court; specifying such orders; 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 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. "Sexual abuse" means sexual abuse as defined in Section 845 of Title 21 of the Oklahoma Statutes;

5. "Sexual battery" means sexual battery as defined in Section 1123 of Title 21 of the Oklahoma Statutes; and

6. "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, 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, a victim of sexual abuse, a victim of sexual battery, 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.

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 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 \_\_\_\_\_.

/ The defendant has sexually abused or sexually battered \_\_\_\_\_.

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
- legal representative or counselor of the victim
- law enforcement officer or other person protecting the victim, if the victim is a 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, sexual abuse or sexual battery. 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 cease sexually abusing or sexually battering the victim.

   /    / order the defendant to leave the residence located at \_\_\_\_\_ on or before \_\_\_\_\_.

   /    / order the defendant, if the defendant is ordered to leave the residence, to pay support to the victim in the amount of \_\_\_\_\_ until the date of \_\_\_\_\_.

   /    / \_\_\_\_\_  
(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 cease sexually abusing or sexually battering the victim.

   /    / order the defendant to leave the residence located at \_\_\_\_\_ on or before \_\_\_\_\_.

   /    / order the defendant, if the defendant is ordered to leave the residence, to pay support to the victim in the amount \_\_\_\_\_ of \_\_\_\_\_ until the date of \_\_\_\_\_.

/  / \_\_\_\_\_  
(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, 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, sexual abuse or sexual battery. 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 not to sexually abuse or sexually batter the victim;
7. An order to the defendant to leave the residence; or
8. An order to the defendant, if the defendant is ordered to leave the residence, to pay a specified amount of support to the victim until a specified date.

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 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. 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 cease sexually abusing or sexually battering the victim;
7. An order to the defendant to leave the residence;
8. An order to the defendant, if the defendant is ordered to leave the residence, to pay a specified amount of support to the victim until a specified date;
9. An order awarding attorney fees; and
- ~~8.~~ 10. An order awarding court costs.

E. 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. 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. 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. 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, 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. This act shall become effective September 1, 1994.

44-2-8595

MCD