

ENROLLED HOUSE
BILL NO. 1064

By: Voskuhl, Boyd (Laura),
Breckinridge, Bryant and
Matlock of the House

and

Williams (Penny), Henry
and Horner of the Senate

An Act relating to criminal procedure; amending 22 O.S. 1991, Sections 60.1 and 60.6, as last amended by Sections 54 and 59, Chapter 290, O.S.L. 1994 (22 O.S. Supp. 1994, Sections 60.1 and 60.6), which relate to domestic abuse and sexual assault; modifying and adding definitions; modifying penalties; providing for certain statement; amending 22 O.S. 1991, Section 1105, which relates to discharge upon giving bail; establishing certain procedures upon arrest for certain offenses; 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 last amended by Section 54, Chapter 290, O.S.L. 1994 (22 O.S. Supp. 1994, 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 thirteen (13) years or older against another adult, emancipated minor or minor child who are family or household members or who are or were in a dating relationship;

2. "Stalking" means the willful, malicious, and repeated following of a person by an adult, emancipated minor, or minor thirteen (13) 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 thirteen (13) 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 fear of death or bodily injury; and

4. "Family or household members" means spouses, ex-spouses, present spouses of ex-spouses, parents, foster 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; and

5. "Dating relationship" means a courtship or engagement relationship. For purposes of this act, a casual acquaintance or ordinary fraternization between persons in a business or social context shall not constitute a dating relationship.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 60.6, as last amended by Section 59, Chapter 290, O.S.L. 1994 (22 O.S. Supp. 1994, 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 such fine and imprisonment.

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, upon conviction, 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)~~ 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)~~ twenty (20) 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 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.

G. When a minor child violates the provisions of any protective order, the court may, if the violation is to be heard in a juvenile proceeding, order the child to participate in counseling services necessary to bring about the cessation of domestic abuse against the victim and order community service hours to be performed in lieu of any fine or imprisonment authorized by this section.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 60.11 of Title 22, unless there is created a duplication in numbering, reads as follows:

In addition to any other provisions required by the Protection from Domestic Abuse Act, or otherwise required by law, each ex parte or final protective order issued pursuant to the Protection from Domestic Abuse Act shall have the following statement printed in bold-faced type or in capital letters:

"THE FILING OR NONFILING OF CRIMINAL CHARGES AND THE PROSECUTION OF THE CASE SHALL NOT BE DETERMINED BY A PERSON WHO IS PROTECTED BY THIS ORDER, BUT SHALL BE DETERMINED BY THE PROSECUTOR. NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER."

SECTION 4. AMENDATORY 22 O.S. 1991, Section 1105, is amended to read as follows:

Section 1105. ~~Upon~~ A. Except as otherwise provided by this section, upon the allowance of bail and the execution of the requisite recognizance, bond or undertaking, to the state, the magistrate, judge or court, ~~must shall~~, if the defendant is in custody, make and sign an order for his discharge of the defendant and, upon the delivery of ~~which~~ the order to the proper officer, the defendant must be discharged.

B. No police officer or sheriff may release a person arrested for a violation of an ex parte or final protective order as provided in Sections 60.2 and 60.3 of this title, or arrested for an act constituting domestic abuse, stalking or harassment as defined by Section 60.1 of this title without the violator appearing before a magistrate, judge or court. The magistrate, judge or court shall determine bond and other conditions of release as necessary for the protection of the alleged victim.

SECTION 5. This act shall become effective November 1, 1995.

Passed the House of Representatives the 18th day of May, 1995.

Speaker of the House of
Representatives

Passed the Senate the 18th day of May, 1995.

President of the Senate