

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

HOUSE BILL NO. 1142

By: Settle

AS INTRODUCED

An Act relating to criminal procedure; amending 22 O.S. 1991, Sections 60.3 and 60.4, as last amended by Sections 56 and 57, Chapter 290, O.S.L. 1994 (22 O.S. Supp. 1994, Sections 60.3 and 60.4), which relate to ex parte orders; requiring certain instructions to be given to plaintiff at conclusion of ex parte proceedings; requiring certain notice to plaintiff; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 60.3, as last amended by Section 56, Chapter 290, O.S.L. 1994 (22 O.S. Supp. 1994, 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;
6. An order to the defendant to leave the residence; or
7. An order removing the defendant who is a minor child from the residence by immediately placing the child in the temporary custody of the Department of Human Services.

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.

C. Any plaintiff to whom an emergency ex parte order is granted pursuant to subsection A or B of this section shall be instructed by the court, verbally or by written instructions accompanying the ex parte order, that the plaintiff shall not engage in conduct which would have the effect of causing the defendant to violate the terms of the order, including, but not limited to:

1. Intentionally coming into physical proximity to the defendant;
2. Communicating with the defendant in a manner prohibited to the defendant;
3. Threatening the defendant;

4. Stalking the defendant;

5. Harassing the defendant; or

6. Otherwise engaging in any conduct or behavior, whether verbal or nonverbal, which if committed by the defendant would constitute a violation of the terms of the ex parte order.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 60.4, as last amended by Section 57, Chapter 290, O.S.L. 1994 (22 O.S. Supp. 1994, 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. A copy of the ex parte order shall also be provided to the plaintiff, either at the conclusion of the proceeding which results in the issuance of the ex parte order or by mail. Ex parte orders shall be given priority for service by the sheriff's office and can be served twenty-four (24) hours a day. When the defendant is a minor child who is ordered removed from the residence of the victim, in addition to those documents served upon the defendant, a copy of the petition, notice of hearing and a copy of any ex parte order issued by the court shall be delivered with the child to the caretaker of the place where such child is taken into custody by the Department of Human Services.

B. Within fifteen (15) 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. Provided, however, when a minor child has been removed from the residence and placed in the temporary custody of the Department of Human Services, the court shall schedule a full hearing on the petition within seventy-two (72) hours, 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, including committing any minor child into the custody of the Department of Human Services.

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;
7. An order awarding attorney fees;
8. An order awarding court costs; and
9. An order placing any minor child in the custody of the Department of Human Services.

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. If a child has been removed from the residence of a parent or custodial adult because of repeated domestic abuse committed by the child and is placed in the custody of the Department of Human Services, the parent or custodial adult may refuse the return of such child to the residence, until the child demonstrates a cessation of abusive behavior.

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 3. This act shall become effective November 1, 1995.

45-1-5278

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