ENGROSSED HOUSE AMENDMENT
TO
ENGROSSED SENATE BILL NO. 1104

By: Mickle, Haney and Weedn of the Senate

and

Benson of the House

(domestic violence - requiring certain actions within certain time - modifying language - emergency)

AUTHORS: Add the following House Coauthors: Boyd (Laura) and Vaughn

AMENDMENT NO. 1. Strike the stricken title, enacting clause and entire bill and insert

An Act relating to domestic violence; amending 22 O.S. 1991, Section 40, which relates to reports of domestic abuse; adding definition; amending 22 O.S. 1991, Sections 60.1, as last amended by Section 29, Chapter 247, O.S.L. 1996, 60.2, as last amended by Section 7, Chapter 403, O.S.L. 1997, 60.4, as last amended by Section 32, Chapter 247, O.S.L. 1996, 60.5, as last amended by Section 2, Chapter 368, O.S.L. 1997 (22 O.S. Supp. 1997, Sections 60.1, 60.2, 60.4 and 60.5), which relate to the Protection from Domestic Abuse Act; requiring priority service of certain orders; modifying contents of petitions and protective orders; requiring assessment of certain costs; authorizing

private process servers to serve protective orders; requiring law enforcement officers to make certain reports; requiring district attorney to make charging decision within certain time period; authorizing requirement of performance bond; modifying provisions regarding service of protective orders; amending 21 O.S. 1991, Section 1376, which relates to order to leave institution of higher learning; modifying circumstances in which order can be issued; modifying time period; defining term; authorizing grievance procedure; amending Section 1, Chapter 107, O.S.L. 1992, as last amended by Section 307, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1997, Section 1173), which relates to stalking; specifying crime of harassment; establishing penalty; establishing procedure and forms for obtaining protective order against harassment; authorizing hearing and service of notice within certain time periods; authorizing seizure of weapons under certain circumstances; authorizing warrantless arrest under certain circumstances; requiring certain information be included on protective order; defining terms; providing for codification; and declaring an emergency.

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

SECTION 1. 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~~ Section 886 ~~and 887~~ or 888 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)~~ thirteen (13) years or older against another adult, emancipated minor or minor child who are family or household members or who were in a dating relationship as defined in paragraph 5 of this section; ~~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 Sections 40 through 40.4 of this title, 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 60.1, as last amended by Section 29, Chapter 247, O.S.L. 1996 (22 O.S. Supp. 1997, Section 60.1), is amended to read as follows:

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

Reporting Act, Sections 40.5 through 40.7 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~~ who is a member of the family or a household member of the victim or a person who has a dating relationship with the victim in a manner that:

a. would cause a reasonable person or a member of the family or household of that person to feel frightened, intimidated, threatened, harassed, or molested, and

b. actually causes the person being followed to feel terrorized, frightened, intimidated, threatened, harassed, or molested;

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 who is a member of the family or a household member of the victim or a person who has a dating relationship with the victim in a manner that:

a. would cause a reasonable person or a member of the family or household of that person to feel frightened, intimidated, threatened, or molested, and

b. actually causes the person being harassed to feel terrorized, frightened, intimidated, threatened, harassed, or molested,

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;

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, 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 3. AMENDATORY 22 O.S. 1991, Section 60.2, as last amended by Section 7, Chapter 403, O.S.L. 1997 (22 O.S. Supp. 1997, Section 60.2), is amended to read as follows:

Section 60.2 A. ~~A~~ Any adult, emancipated minor, or child sixteen (16) or seventeen (17) years of age, who is a victim of, or is acting on behalf of any minor child or incompetent family or household member as defined in Section 60 of this title who is 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~~ or any crime involving physical harm or the threat of imminent physical harm may seek relief under the provisions of the Protection from Domestic Abuse Act.

1. ~~Such~~ The person ~~may seek~~ seeking relief ~~by filing~~ shall file a petition for a protective order with the district court in either

the county in which the victim resides or the county in which the defendant resides and such petition shall be given priority for service and consideration for criminal prosecution.

2. ~~When the abuse~~ The person seeking relief may request an emergency temporary protective order from the peace officer making the preliminary investigation of the offense or attempted offense as provided in Section 40.3 of this title, if the offense occurs when the court is not open for business~~, such person may request an~~. Any request for an emergency temporary order of protection as provided by Section 40.3 of this title shall be processed immediately.

B. The petition forms for a protective order 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

[ ] 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

[ ] not related

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. 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 telephone, visit, assault, molest or otherwise interfere with the victim.

[ ] order suspension of child visitation orders due to alleged abuse or threat of abuse to the child by the defendant.

[ ] 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 leave the residence located at _____ on or before _____.

[ ] order the defendant who is a minor child to leave the residence located at _____ by immediately placing the defendant in any type of care authorized for children taken into custody pursuant to subsection A of Section 7303-1.1 of Title 10 of the Oklahoma Statutes.
Circle age of defendant: Thirteen (13), fourteen (14), fifteen (15), sixteen (16), or seventeen (17) years.

[ ] _____ (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 telephone, visit, assault, molest or otherwise interfere with the victim.

[ ] order suspension of child visitation orders due to alleged abuse or threat of abuse to the child by the defendant.

[ ] 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 leave the residence located at _____ on or before _____.

[ ] order the defendant who is a minor child to leave the residence located at _____ by immediately placing the defendant in any type of care authorized for children taken into custody pursuant to subsection A of Section 7303-1.1 of Title 10 of the Oklahoma Statutes.

Circle age of defendant: Thirteen (13), fourteen (14), fifteen (15), sixteen (16), or seventeen (17) years.

[ ] _____ (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 and costs of service of process 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. WARNING: Whoever makes a statement or allegation in this Petition for Protective Order but does not believe that the statement or allegation is true, or knows that it is not true, or intends thereby to avoid or obstruct the ascertainment of the truth,

may be found guilty of perjury. Pursuant to Sections 500 and 504 of Title 21 of the Oklahoma Statutes, the penalty for perjury, or subornation of perjury, is ~~imprisonment for not more than five (5) years~~ a felony.

9. Plaintiff, being first duly sworn on oath states: That I have read the above and foregoing document, understand the meaning thereof, and declare, under penalty of perjury, that the facts and statements contained herein are believed to the best of my knowledge to be the truth, and nothing but the truth.

_____

Plaintiff

Witness my hand and seal, affixed on the ___ day of _____, 19__.

_____

Court Clerk, Deputy Court Clerk,

or Notary Public

C. No filing fee or service of process fee shall be charged the plaintiff at the time the petition is filed. The court ~~may~~ shall assess court costs, service of process fees, and filing fees to either party at the hearing on the petition. No peace officer shall require payment of service fees in advance of service of the petition nor shall any peace officer deny service of a Petition For A Protective Order or any ex parte, temporary or final protective order due to nonpayment of service fee. If a private process server accepts responsibility for serving a petition or ex parte, temporary or final protective order, the private process server shall not thereafter refuse to serve said documents for nonpayment of fees in advance. The court clerk shall keep records of fees payable to peace officers and private process servers for service of petitions and orders under this section. The court clerk shall pay the applicable service fees to the peace officers and private process servers immediately upon collection of the fee. Every reasonable

effort shall be made to serve the petition for a protective order immediately.

D. The ~~plaintiff~~ person seeking relief shall prepare the petition as set forth above or~~, at the request of the plaintiff,~~ the court clerk ~~of the court or~~, the victim-witness coordinator or a person designated by the court or the district attorney's office shall prepare or assist the plaintiff in preparing the same.

E. When a report of abuse is made to a law enforcement officer, the law enforcement officer shall make an immediate preliminary investigation of the offense unless such offense has been previously investigated and reported to the district attorney. Within seventy-two (72) hours of the filing of a petition for a protective order or the issuance of an emergency protective order or the report of abuse, the law enforcement officer shall notify the district attorney's office in writing of the results of the preliminary investigation.

F. Within seventy-two (72) hours of receiving a report on a preliminary investigation of alleged abuse, the district attorney shall review the report and shall either file criminal charges against the defendant or notify the victim and the law enforcement officer in writing that the district attorney declines to prosecute at this time. The district attorney may state the reason for a decision not to prosecute.

SECTION 4. AMENDATORY 22 O.S. 1991, Section 60.4, as last amended by Section 32, Chapter 247, O.S.L. 1996 (22 O.S. Supp. 1997, Section 60.4), is amended to read as follows:

Section 60.4 A. A copy of the petition for a protective order, 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, except that a service of process fee shall not be required to be paid by the plaintiff in advance of the service. Ex parte orders shall be given priority for service ~~by the sheriff's office~~

and ~~can~~ shall be served twenty-four (24) hours a day by either a peace officer or any private process server who is certified by the Council on Law Enforcement Education and Training (CLEET). 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 pursuant to Section 7303-1.1 of Title 10 of the Oklahoma Statutes.

B. Within fifteen (15) days of the filing of the petition for a protective order 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 the defendant is a minor child who has been removed from the residence pursuant to Section 7303-1.1 of Title 10 of the Oklahoma Statutes, 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. The court shall also schedule a full hearing on the petition within seventy-two (72) hours when the court issues an emergency ex parte order suspending visitation rights.

C. At the hearing, the court may grant any terms and conditions necessary for the protective order that are intended to bring about the cessation of ~~domestic abuse against the victim or stalking or harassment of the victim~~ threats to the victim, physical abuse or interference to the victim or to the victim's immediate family. The court may require a performance bond to be posted by the defendant which shall be forfeited upon any violation of the terms and conditions of the protective order by the defendant. If the court grants a protective order and the defendant is a minor child, the court shall order a preliminary inquiry in a juvenile proceeding to

determine whether further court action pursuant to the Oklahoma Juvenile Code should be taken against a juvenile defendant.

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 telephone, visit, assault, molest, harass or otherwise interfere with the victim;

3. An order suspending child visitation rights due to alleged abuse or threat of abuse to the child by the defendant or an order requiring supervised visitation with the child in a neutral setting;

4. An order to the defendant not to threaten the victim;

~~4.~~ 5. An order to the defendant to cease stalking the victim;

~~5.~~ 6. An order to the defendant to cease harassment of the victim;

~~6.~~ 7. An order to the defendant to leave the residence;

~~7.~~ 8. An order awarding attorney fees;

~~8.~~ 9. An order ~~awarding~~ requiring payment of court costs and service of process fees; and

~~9.~~ 10. An order requiring a preliminary inquiry in a juvenile proceeding pursuant to the Oklahoma Juvenile Code.

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~~ threats and 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~~ A Petition For A Protective Order and ex parte protective orders granted pursuant to the provisions of this section ~~may~~ shall be served upon the defendant by a private process server who is certified by the Council on Law Enforcement Education and

Training (CLEET), 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. Service of any petition or protective order by a peace officer shall not be denied due to nonpayment of the service fee in advance. If a private process server accepts responsibility for serving a petition or protective order, the private process server shall not thereafter refuse to serve said documents for nonpayment of fees in advance. The fee shall be paid after the full hearing by the party designated by the court. The court clerk shall have authority to collect the fee as provided by court order and remit such service fees to the party performing the service of process.

G. Any final protective order ~~issued~~ granted pursuant to subsection C of this section shall not be for a fixed period but shall be continuous until the protective order is modified or rescinded ~~upon~~ by the court after a hearing on a motion by either party or by order of the court if the court approves any written consent agreement entered into by the plaintiff and defendant. Any modification or cancellation of a protective order shall be delivered to the victim, the defendant, the sheriff and other law enforcement agencies in the county where the victim and defendant reside within twenty-four (24) hours of issuance. If a child has been removed from the residence of a parent or custodial adult because of domestic abuse committed by the child, the parent or custodial adult may refuse the return of such child to the residence, unless upon further consideration by the court~~,~~ in a juvenile proceeding, it is determined that the child is no longer a threat and should be allowed to return to the residence.

H. ~~No~~ A protective order ~~issued~~ granted under the Protection from Domestic Abuse Act, Section 60 et seq. of this title, shall not 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 schedules, child support or division of property or any other like relief obtainable under Sections 101 et seq. of Title 43 of the Oklahoma Statutes, except child visitation orders may be temporarily suspended or modified to protect a minor child from threats of abuse or physical abuse by the defendant. When granting any protective order for the protection of a minor child from threats of abuse or physical abuse the court shall only allow visitation under conditions that provide adequate supervision and protection to the child.

SECTION 5. AMENDATORY 22 O.S. 1991, Section 60.5, as last amended by Section 2, Chapter 368, O.S.L. 1997 (22 O.S. Supp. 1997, Section 60.5), is amended to read as follows:

Section 60.5 A. 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~~ deliver certified copies thereof to all appropriate law enforcement agencies designated by the plaintiff. A certified copy of any modification, cancellation or consent agreement concerning a final protective order shall be ~~sent~~ delivered within twenty-four (24) hours by the clerk of the issuing court to those law enforcement agencies receiving the original orders pursuant to this section and to those law enforcement agencies in the county where the plaintiff and defendant reside.

B. Any law enforcement agency receiving copies of the documents listed in subsection A of this section shall be required to ensure that other law enforcement agencies have access twenty-four (24) hours a day to the information contained in the documents.

C. Any law enforcement officer investigating a report by a plaintiff of a violation of an ex parte or final protective order by a defendant may arrest the defendant without a warrant anywhere, including the defendant's residence, for a bond violation if an appearance or performance bond is a condition of the order; provided, the plaintiff presents the peace officer with a certified

copy of the original protective order designating a bond requirement and there is probable cause to believe the defendant has within the preceding six (6) hours committed a violation of the protective order. The plaintiff shall be required to sign a written complaint that has a warning as follows:

WARNING: Whoever makes a statement or allegation in this Complaint of a Violation of a Protective Order but does not believe that the statement or allegation is true, or knows that it is not true, or intends thereby to avoid or obstruct the ascertainment of the truth, may be found guilty of perjury. Pursuant to Sections 500 and 504 of Title 21 of the Oklahoma Statutes, the penalty for perjury, or subornation of perjury, is a felony. In addition, whoever falsely reports a crime is guilty of a criminal offense.

Plaintiff, being first duly sworn on oath states: That I have read the above and foregoing Complaint of a Violation of a Protective Order, understand the meaning thereof, and declare, under penalty of perjury and criminal prosecution, that the facts and statements contained herein are believed to the best of my knowledge to be the truth, and nothing but the truth.

_____

Plaintiff

SECTION 6. AMENDATORY 21 O.S. 1991, Section 1376, is amended to read as follows:

Section 1376. A. The chief administrative officer or anyone designated by ~~him~~ the chief administrative officer to maintain order at an institution of learning shall have the authority and power to direct any person to leave the institution of learning who is not a student, officer or employee thereof, and who:

1. Interferes with the peaceful conduct of ~~activities~~ any activity at an institution of learning; ~~or~~

2. Commits an act which interferes with the peaceful conduct of ~~activities~~ any activity at an institution of learning; ~~or~~

3. Enters the institution of learning for the purpose of committing an act which may interfere with the peaceful conduct of ~~activities~~ any activity at an institution of learning; or

4. Enters the institution of learning without having any purpose reasonably connected with any activity conducted at the institution, if the chief administrative officer or a designee determines in good faith that the intruding person substantially interferes with, or poses a reasonably foreseeable threat to, the regular activities and purposes of the institution of learning, to the proper maintenance of buildings and grounds, or to the safety of persons lawfully present at the institution of learning.

B. Any person to whom this section applies, who fails to leave the institution of learning as directed or returns within ~~thirty (30) days~~ one (1) year thereafter, without first obtaining written permission from the chief administrative officer, shall be guilty of a misdemeanor.

C. For purposes of this section, the term "institution of learning" includes any and all buildings and grounds held by or in the name of the institution, its governing board, or by any other entity, including a governmental entity, dedicated or reserved for use by the institution.

D. The chief administrative officer of each institution of learning shall establish a grievance or appeal procedure, and an opportunity for a fair hearing to all persons required to leave the institution pursuant to this section. Any person removed from the institution pursuant to this section shall be given written notice informing that person of the procedure to be followed for requesting a hearing and filing a grievance or appeal.

SECTION 7. AMENDATORY Section 1, Chapter 107, O.S.L. 1992, as last amended by Section 307, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1997, Section 1173), is amended to read as follows:

Section 1173. A. Any ~~person~~ adult, emancipated minor or minor thirteen (13) years of age or older who willfully, maliciously, and repeatedly follows ~~or harasses~~ another person in a manner that:

1. Would cause a reasonable person or a member of the immediate family of that person as defined in subsection F of this section to feel frightened, intimidated, threatened, harassed, or molested; and

2. Actually causes the person being followed or harassed to feel terrorized, frightened, intimidated, threatened, harassed, or molested,

upon conviction, shall be guilty of the crime of stalking, which is a misdemeanor punishable by imprisonment in a county jail for not more than one (1) year or by a fine of not more than One Thousand Dollars ($1,000.00), or by both such fine and imprisonment.

B. 1. Any adult, emancipated minor or minor thirteen (13) years of age or older who knowingly and willfully engages in a course of conduct directed at a specific person which seriously alarms or annoys the person, or a member of the immediate family of that person, and which serves no legitimate purpose, upon conviction, shall be guilty of the crime of harassment, which is a misdemeanor punishable by imprisonment in a county jail for not more than one (1) year or by a fine of not more than One Thousand Dollars ($1,000.00), or by both such fine and imprisonment.

2. The course of conduct must be such as would cause a reasonable person to suffer emotional distress, and must actually cause distress to the person or to a member of such person's immediate family.

3. The crime of harassment shall also include telephone calls in violation of Section 1172 of Title 21 of the Oklahoma Statutes. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.

C. Any person who violates the provisions of subsection A or B of this section when:

1. There is a temporary restraining order, a protective order or emergency ex parte order, or an injunction in effect prohibiting the behavior described in subsection A or B of this section against the same party, when the person violating the provisions of subsection A or B of this section has actual notice of the issuance of such order or injunction; or

2. Said person is on probation or parole, a condition of which prohibits the behavior described in subsection A or B of this section against the same party; or

3. Said person, within ten (10) years preceding the violation of subsection A or B of this section, completed the execution of sentence or conviction of a crime involving the use or threat of violence against the same party, or against a member of the immediate family of such party,

upon conviction, shall be guilty of a felony. The fine for a violation of this subsection shall not be more than Two Thousand Five Hundred Dollars ($2,500.00).

~~C.~~ D. Any person who commits a second act of stalking or harassment within ten (10) years of the completion of sentence for a prior conviction under subsection A or B of this section as appropriate, upon conviction thereof, shall be guilty of a felony. The fine for a violation of this subsection shall not be more than Two Thousand Five Hundred Dollars ($2,500.00).

~~D.~~ E. Any person who commits an act of stalking or harassment within ten (10) years of the completion of execution of sentence for a prior conviction under subsections ~~B and~~ C and D of this section, shall, upon conviction thereof, be guilty of a felony. The fine for a violation of this subsection shall not be less than Two Thousand Five Hundred Dollars ($2,500.00) nor more than Ten Thousand Dollars ($10,000.00).

~~E.~~ F. Evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the

victim after having been requested by the victim to discontinue the same or a different form of unconsented contact, and to refrain from any further unconsented contact with the victim, shall give rise to a rebuttable presumption that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

~~F.~~ G. For purposes of this section:

1. ~~"Harasses" means conduct directed toward a person that includes, but is not limited to, repeated or continuing unconsented contact, that would cause a reasonable person to suffer emotional distress, and that actually causes emotional distress to the victim. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose;~~

~~2.~~ "Course of conduct" means a pattern of ~~conduct~~ unconsented contact composed of a series of two (2) or more separate acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct";

~~3.~~ 2. "Emotional distress" means significant mental suffering or distress that may, but does not necessarily require, medical or other professional treatment or counseling;

~~4.~~ 3. "Unconsented contact" means any contact with another individual that is initiated or continued without the consent of the individual, or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Constitutionally protected activity is not included within the meaning of unconsented contact. Unconsented contact includes but is not limited to any of the following:

a. following or appearing within the sight of that individual,

b. approaching or confronting that individual in a public place or on private property,

c. appearing at the workplace or residence of that individual,

d. entering onto or remaining on property owned, leased, or occupied by that individual,

e. contacting that individual by telephone,

f. sending mail or electronic communications to that individual, and

g. placing an object on, or delivering an object to, property owned, leased, or occupied by that individual; and

~~5.~~ 4. "Member of the immediate family" means any spouse, parent, child, person related within the third degree of consanguinity or affinity or any other person who regularly resides in the household or who regularly resided in the household within the prior six (6) months.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1173.1 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided by this section, a victim of stalking, a victim of harassment, a member of the immediate family of such victim, any adult or emancipated minor who is a member of the victim's immediate family on behalf of any other member of the immediate family who is a minor or incompetent, or any minor age sixteen (16) or seventeen (17) years may seek relief from alleged stalking or harassment pursuant to this 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 stalking or harassment occurs when the court is not open for business, such person may request an emergency temporary order of protection.

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. (Answer this question only if the plaintiff is filing on behalf of someon

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

4. (Check A or B)

(A) [ ] The victim is in immediate and present danger from the defendant and an emergency ex parte order is necessary to protect the victim from serious harm. 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 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.

[ ] _____ (describe other relief that plaintiff requests)

(B) [ ] The plaintiff does not request an emergency ex parte order.

5. 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 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.

[ ] _____ (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 _____.

6. [ ] Victim is a resident of the county wherein this petition is filed.

[ ] Defendant is a resident of the county wherein this petition is filed.

7. WARNING: Whoever makes a statement or allegation in this Petition for Protective Order but does not believe that the statement or allegation is true, or knows that it is not true, or intends thereby to avoid or obstruct the ascertainment of the truth, may be found guilty of perjury. Pursuant to Sections 500 and 504 of Title 21 of the Oklahoma Statutes, the penalty for perjury, or subornation of perjury, is imprisonment for not more than five (5) years.

8. Plaintiff, being first duly sworn on oath states: That I have read the above and foregoing document, understand the meaning thereof, and declare, under penalty of perjury, that the facts and statements contained herein are believed to the best of my knowledge to be the truth, and nothing but the truth.

_____

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.

E. The provisions of this section shall apply if the defendant is not a member of the immediate family or household member of the victim or is in a dating relationship with the victim.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1173.2 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. If a plaintiff requests an emergency ex parte order pursuant to Section 8 of this act, 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 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 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; or

5. An order to the defendant not to harass the victim.

B. If a plaintiff requests an emergency temporary ex parte order of protection, 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 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1173.3 of Title 21, unless there is created a duplication in numbering, reads as follows:

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 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.

C. At the hearing, the court may grant any protective order to bring about the cessation of stalking or harassment of the victim. If the court grants a protective order and the defendant is a minor child, the court shall order a preliminary inquiry in a juvenile proceeding to determine whether further court action pursuant to the Oklahoma Juvenile Code be taken against a juvenile defendant.

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 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 requiring a preliminary inquiry in a juvenile proceeding pursuant to the Oklahoma Juvenile Code.

E. After notice and hearing, protective orders authorized by this section may require the defendant to undergo treatment or participate in the counseling services necessary to bring about cessation of stalking or harassment against the victim.

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. All orders issued pursuant to the provisions of this section shall have statewide validity, unless specifically modified or terminated by a judge of the district courts.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1173.4 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. 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. A certified copy of any modification, cancellation or consent agreement concerning a final protective order shall be sent by the clerk of the issuing

court to those law enforcement agencies receiving the original orders pursuant to this section.

B. Any law enforcement agency receiving copies of the documents listed in subsection A of this section shall be required to ensure that other law enforcement agencies have access twenty-four (24) hours a day to the information contained in the documents.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1173.5 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Each peace officer of this state shall seize any weapon or instrument when such officer has probable cause to believe such weapon or instrument has been used to commit an act of stalking or harassment, provided an arrest is made, if possible, at the same time.

B. After any such seizure, the District Attorney shall file a forfeiture action within ten (10) days of such seizure, or any weapon or instrument seized pursuant to this section shall be returned to the owner.

C. The seizure and forfeiture provisions of Section 991a-11 of Title 22 of the Oklahoma Statutes shall be followed for any seizure and forfeiture of property pursuant to this section. Provided, however, no weapon or instrument seized pursuant to this section or monies from the sale of any such seized weapon or instrument shall be turned over to the person from whom such property was seized if a forfeiture action has been filed within the time required by subsection B of this section, unless authorized by this section. Provided further the owner may prove at the forfeiture hearing that the conduct giving rise to the seizure was justified, and if the owner proves justification, the seized property shall be returned to the owner. Any proceeds gained from this seizure shall be placed in the Crime Victims Compensation Revolving Fund.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1173.6 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. A peace officer, without a warrant, may arrest and take into custody a person if the peace officer has reasonable cause to believe that:

1. An emergency ex parte or final protective order has been issued and served upon the person, pursuant to this act;

2. A true copy and proof of service of the order has been filed with the law enforcement agency having jurisdiction of the area in which the plaintiff or any family or household member named in the order resides;

3. The person named in the order has received notice of the order and has had a reasonable time to comply with such order; and

4. The person named in the order has violated the order or is then acting in violation of the order.

B. A person arrested pursuant to this section shall be brought before the court within twenty-four (24) hours after arrest to answer to a charge for violation of the order, at which time the court shall do each of the following:

1. Set a time certain for a hearing on the alleged violation of the order within seventy-two (72) hours after arrest, unless extended by the court on the motion of the arrested person;

2. Set a reasonable bond pending a hearing of the alleged violation of the order; and

3. Notify the party who has procured the order and direct the party to appear at the hearing and give evidence on the charge.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1173.7 of Title 21, 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 15. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval."

Passed the House of Representatives the 16th day of April, 1998.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1998.

President of the Senate