ENROLLED HOUSE
BILL NO. 1361

By: Boyd (Laura) and Cox of the House

and

Weedn, Henry and Fair of the Senate

An Act relating to domestic abuse; amending 22 O.S. 1991, Section 40.3, as amended by Section 14, Chapter 325, O.S.L. 1993 (22 O.S. Supp. 1996, Section 40.3), which relates to rights of victims; modifying time restriction on warrantless arrest; amending 22 O.S. 1991, Section 60.5, as amended by Section 58, Chapter 290, O.S.L. 1994 (22 O.S. Supp. 1996, Section 60.5), which relates to victim protective orders; requiring law enforcement agencies to provide access twenty-four hours a day to information contained in certain documents; amending 21 O.S. 1991, Section 644, as amended by Section 2, Chapter 197, O.S.L. 1996 (21 O.S. Supp. 1996, Section 644), which relates to assault and battery; modifying circumstances constituting domestic abuse; providing certain convictions shall constitute basis for felony charge; amending 22 O.S. 1991, Section 1105, as last amended by Section 25 of Enrolled House Bill No. 1436 of the 1st Session of the 46th Oklahoma Legislature, which relates to discharge upon giving bail; adding certain offenders to list which must see magistrate prior to release; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 40.3, as amended by Section 14, Chapter 325, O.S.L. 1993 (22 O.S. Supp. 1996, 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)~~ seventy-two (72) 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.

C. When an arrest has been made pursuant to subsection B of this section and the court is not open for business, the victim of

domestic abuse may request a petition for an emergency temporary order of protection. The peace officer making the preliminary investigation shall:

1. Provide the victim with a petition for an emergency temporary order of protection and, if necessary, assist the victim in completing the petition form. The petition shall be in substantially the same form as provided by Section 60.2 of this title for a petition for protective order;

2. Immediately notify, by telephone or otherwise, a judge of the district court of the request for an emergency temporary order of protection and describe the circumstances. The judge shall inform the peace officer of his decision to approve or disapprove the emergency temporary order;

3. Inform the victim whether the judge has approved or disapproved an emergency temporary order. If an emergency temporary order has been approved, the officer shall provide the victim with a copy of the petition and a statement signed by the officer that the judge has approved the emergency temporary order of protection and notify said victim that the emergency temporary order shall be effective only until the close of business on the next day that the court is open for business;

4. Notify the person subject to the emergency temporary protection order of the issuance and conditions of the order. Notification pursuant to this paragraph may be made personally by the officer or in writing. A copy of the petition and the statement of the officer attesting to the order of the judge shall be made available to said person; and

5. File a copy of the petition and the statement of the officer with the district court of the county immediately upon the opening of the court on the next day the court is open for business.

D. The forms utilized by law enforcement agencies in carrying out the provisions of this section may be substantially similar to those used under Section 60.2 of Title 22 of the Oklahoma Statutes.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 60.5, as amended by Section 58, Chapter 290, O.S.L. 1994 (22 O.S. Supp. 1996, 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 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 3. AMENDATORY 21 O.S. 1991, Section 644, as amended by Section 2, Chapter 197, O.S.L. 1996 (21 O.S. Supp. 1996, Section 644), is amended to read as follows:

Section 644. A. Assault shall be punishable by imprisonment in a county jail not exceeding thirty (30) days, or by a fine of not more than Five Hundred Dollars ($500.00), or both such fine and imprisonment.

B. Assault and battery shall be punishable by imprisonment in a county jail not exceeding ninety (90) days, or by a fine of not more than One Thousand Dollars ($1,000.00), or by both such imprisonment and fine.

C. Any person who commits any assault and battery against a current or former spouse, a present spouse of a former spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is in a dating relationship as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant shall be guilty of domestic abuse. Upon conviction, the defendant shall be punished by imprisonment in the county jail not exceeding one (1) year, or by a fine of not more than Three Thousand Dollars ($3,000.00), or by both such fine and imprisonment. Any second or subsequent conviction of domestic abuse shall be a felony punishable by imprisonment in the custody of the Department of Corrections for not more than two (2) years, or by a fine of not more than Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment. Every conviction of domestic abuse shall require as a condition of a suspended sentence that the defendant participate in counseling or treatment to bring about the cessation of domestic abuse. The defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the court. For the purposes of this subsection, any conviction for assault and battery against a current or former spouse, a present spouse of a former spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is in a dating relationship as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or any person living in the same household as the defendant, shall constitute a sufficient basis for a felony charge:

1. If that conviction is rendered in any state, county or parish court of record of this or any other state; or

2. If that conviction is rendered in any municipal court of record of this or any other state for which any jail time was served; provided, no conviction in a municipal court of record entered prior to November 1, 1997, shall constitute a prior conviction for purposes of a felony charge.

SECTION 4. AMENDATORY 22 O.S. 1991, Section 1105, as last amended by Section 25 of Enrolled House Bill No. 1436 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 1105. 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, shall, if the defendant is in custody, make and sign an order for discharge. The court, in its discretion, may prescribe by court rule the conditions under which the court clerk or deputy court clerk, or the sheriff or deputy sheriff, may prepare and execute an order of release on behalf of the court.

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 as specified in Section 644 of Title 21 of the Oklahoma Statutes, or arrested for any 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, 1997.

Passed the House of Representatives the 14th day of May, 1997.

Speaker of the House of Representatives

Passed the Senate the 21st day of May, 1997.

President of the Senate