

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

HOUSE BILL NO. 1361

By: Boyd (Laura)

AS INTRODUCED

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; removing time restriction on warrantless arrest; amending 22 O.S. 1991, Sections 60.2, as last amended by Section 30, Chapter 247, O.S.L. 1996 and 60.5, as amended by Section 58, Chapter 290, O.S.L. 1994 (22 O.S. Supp. 1996, Sections 60.2 and 60.5), which relate to victim protective orders; removing residency requirement for filing of petition; restricting access to certain information about victim; modifying time period for transmission of certain documents to law enforcement; 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 domestic abuse; providing certain convictions shall constitute basis for felony charge; 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) 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 60.2, as last amended by Section 30, Chapter 247, O.S.L. 1996 (22 O.S. Supp. 1996, 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, 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 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 _____.

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)

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

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 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 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 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 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 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

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. Any information regarding the address or telephone number of the plaintiff maintained by the clerk of the court shall be confidential and shall not be subject to the Oklahoma Open Records Act.

SECTION 3. 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)~~ twelve (12) 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 4. 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, an individual with whom the defendant has had a child, 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, an individual with whom the defendant has had a child, or any person living in the same household as the defendant, including a conviction in any municipal court, shall be deemed a first or prior conviction of domestic abuse and shall constitute a sufficient basis for a felony charge.

SECTION 5. This act shall become effective November 1, 1997.

46-1-6330

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