ENGROSSED HOUSE AMENDMENT
TO
ENGROSSED SENATE BILL NO. 1516 By: Shurden of the Senate

and

Braddock of the House

(domestic violence - reports of domestic abuse - victim's rights for rape or sodomy - prohibiting peace officer from discouraging victims to seek certain actions - Protection from Domestic Abuse Act - access to protection orders by law enforcement - effective date - emergency)

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

"(domestic violence - reports of domestic abuse - victim's rights for rape or sodomy - prohibiting peace officer from discouraging victims to seek certain actions - Protection from Domestic Abuse Act - access to protection orders by law enforcement - effective date - emergency)

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~~ 40.3 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 886 and 887 of Title 21 of the Oklahoma Statutes that is punishable under Section 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) years against another adult, emancipated minor or minor child who are family or household members; and

4. "Family or household members" means:

a. spouses,

b. ex-spouses,

c. present spouses of ex-spouses,

d. parents, including grandparents, stepparents, adoptive parents, and foster parents,

e. children, including grandchildren, stepchildren, adopted children, and foster children,

f. persons otherwise related by blood or marriage,

g. persons living in the same household or who formerly lived in the same household, ~~or~~ and

h. 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.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 40.1, is amended to read as follows:

Section 40.1 Upon the preliminary investigation of any rape or forcible sodomy, it shall be the duty of the officer who interviews

the victim of the rape or forcible sodomy to inform the victim, or a responsible adult if the victim is a minor child or an incompetent person, of the twenty-four-hour statewide telephone communication service established by the Department of Mental Health and Substance Abuse Services for victims of sexual assault and domestic violence pursuant to Section ~~5~~ 3-314 of ~~this act~~ Title 43A of the Oklahoma Statutes and to give notice to the victim or such responsible adult of certain rights of the victim. The notice shall consist of handing such victim ~~the following~~ or responsible adult a written statement in substantially the following form:

"As a victim of the crime of rape or forcible sodomy, you have certain rights. These rights are as follows:

1. The right to request that charges be pressed against your assailant;

2. The right to request protection from any harm or threat of harm arising out of your cooperation with law enforcement and prosecution efforts as far as facilities are available and to be provided with information on the level of protection available;

3. The right to be informed of financial assistance and other social services ~~as a result of being a victim~~ available to victims, including information on how to apply for the assistance and services; ~~and~~

4. The right to a free medical examination for the procurement of evidence to aid in the prosecution of your assailant for the crime of rape or forcible sodomy; and

5. The right to be informed by the district attorney of other victim's rights available pursuant to Section 215.33 of Title 19 of the Oklahoma Statutes."

The written notice shall also include the telephone number of the twenty-four-hour statewide telephone communication service established by the Department of Mental Health and Substance Abuse

Services in Section ~~5~~ 3-314 of ~~this act~~ Title 43A of the Oklahoma Statutes.

SECTION 3. AMENDATORY 22 O.S. 1991, Section 40.3, as last amended by Section 1, Chapter 368, O.S.L. 1997 (22 O.S. Supp. 1999, 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 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~~ the emergency temporary order. If an emergency temporary order has been approved, the officer shall provide the victim, or a responsible adult if the victim is a minor child or an incompetent person, with a copy of the petition and a written statement signed by the officer attesting 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~~ this title.

SECTION 4. AMENDATORY 22 O.S. 1991, Section 40.6, is amended to read as follows:

Section 40.6 A. It shall be the duty of every law enforcement agency to keep a record of each reported incident of domestic abuse as provided in subsection B of this section and to submit a monthly report of such incidents as provided in subsection C of this section to the Director of the Oklahoma State Bureau of Investigation.

B. The record of each reported incident of domestic abuse shall:

1. Show the type of crime involved in the domestic abuse;

2. Show the day of the week the incident occurred; ~~and~~

3. Show the time of day the incident occurred; and

4. Contain other information requested by the Oklahoma State Bureau of Investigation.

C. A monthly report of the recorded incidents of domestic abuse shall be submitted to the Director of the Oklahoma State Bureau of Investigation on forms provided by the Oklahoma State Bureau of Investigation for such purpose and in accordance with the guidelines established pursuant to Section ~~4~~ 150.12B of ~~this act~~ Title 74 of the Oklahoma Statutes.

SECTION 5. AMENDATORY 22 O.S. 1991, Section 60.1, as last amended by Section 29, Chapter 247, O.S.L. 1996 (22 O.S. Supp. 1999, Section 60.1), is amended to read as follows:

Section 60.1 As used in the Protection from Domestic Abuse Act and in 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~~ child thirteen (13) years of age 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;

4. "Family or household members" means:

a. spouses,

b. ex-spouses,

c. present spouses of ex-spouses,

d. parents, including grandparents, stepparents, adoptive parents, and foster parents,

e. children, including grandchildren, stepchildren, adopted children, and foster children,

f. persons otherwise related by blood or marriage,

g. persons living in the same household or who formerly lived in the same household, and

h. 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 6. AMENDATORY 22 O.S. 1991, Section 60.2, as last amended by Section 7, Chapter 403, O.S.L. 1997 (22 O.S. Supp. 1999, 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~~ 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, or the county in which the domestic violence occurred. The filing of a petition for a protective order shall not require jurisdiction or venue of the criminal offense if either the plaintiff or defendant resides in the county. A petition for a protective order filed by a victim that is a family or household member of the defendant shall be given priority for service over other protective orders.

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~~ authorized 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

[ ] persons in a dating relationship

[ ] persons in a previous dating relationship

[ ] 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

[ ] persons in a dating relationship

[ ] persons in a previous dating relationship

[ ] 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, stalk or otherwise interfere with the victim.

[ ] order suspension of child visitation orders due to physical violence or threat of abuse by the defendant or a threat to violate a custody order 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, stalk or otherwise interfere with the victim.

[ ] order suspension of child visitation orders due to physical violence or threat of abuse by the defendant or a threat to violate a custody order 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.

[ ] The domestic abuse occurred in the county where this petition is filed, but neither the victim nor defendant are residents of this county.

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 a felony punishable by imprisonment for not more than five (5) years.

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 or victim at the time the petition is filed. The court ~~may~~ shall assess court costs, service of process fees, and filing fees ~~to either party~~ against the defendant at the hearing on the petition, if the petition is granted, or against either party if the petition is denied. No peace officer shall require payment of service of process fees in advance of service of any petition or order nor shall any peace officer deny service of a petition for a protective order or any ex parte, emergency or final protective order due to nonpayment of a process service fee in advance.

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 shall prepare or assist the plaintiff in preparing the same.

SECTION 7. AMENDATORY 22 O.S. 1991, Section 60.3, as last amended by Section 1, Chapter 34, O.S.L. 1999 (22 O.S. Supp. 1999, 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. Provided, if the defendant, after having been served, does not appear at the hearing, the emergency ex parte order shall remain in effect until the defendant is served with the permanent order. If the terms of the permanent order are the same as those in the emergency order, or are less restrictive, then it is not necessary to serve the defendant with the permanent order. Any emergency ex parte order entered shall state: "IF YOU FAIL TO APPEAR AT THE HEARING, A PERMANENT ORDER MAY

BE ISSUED WITHOUT FURTHER NOTICE TO YOU." 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 telephone, visit, assault, molest, stalk, harass or otherwise interfere with the victim;

3. An order suspending child visitation due to physical violence or threat of abuse by the defendant or a threat to violate a custody order 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 not to stalk the victim;

~~5.~~ 6. An order to the defendant not to harass the victim;

~~6.~~ 7. An order to the defendant to leave the residence located at _____ on or before _____; or

~~7.~~ 8. An order removing the defendant who is a minor child from the residence by immediately placing the child 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.

B. An emergency ex parte protective order authorized by this section shall include the name, sex, race, date of birth of the defendant, and the dates of issue and expiration of the protective order.

C. 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.

SECTION 8. AMENDATORY 22 O.S. 1991, Section 60.4, as last amended by Section 1, Chapter 97, O.S.L. 1999 (22 O.S. Supp. 1999, 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 emergency ex parte order issued by the court shall be served upon the defendant in the same manner as a summons. The fee for service of an emergency ex parte order, petition for protective order, and notice of hearing shall be the same as the sheriff's service fee plus mileage expenses. ~~Ex~~ Emergency 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 location of the defendant is known. When service cannot be made upon the defendant by the sheriff within three (3) days following the filing of a petition for a protective order or the issuance of an emergency ex parte order, the sheriff may contact another law enforcement officer or a private investigator to serve the defendant. An emergency ex parte order, a petition for protective order, and a notice of hearing shall have statewide validity and may be transferred to any law enforcement jurisdiction to effect service upon the defendant. The return of service shall be submitted to the sheriff's office in the court where the petition, notice of hearing or order was issued. 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 may schedule a full hearing on the petition for a protective order within seventy-two (72) hours when the court issues an emergency ex parte order suspending child visitation rights due to physical violence or threat of abuse. If service has not been made on the defendant at the time of the hearing, the court shall continue the hearing. A petition for a protective order shall automatically renew every fifteen (15) days until the defendant is served. A petition for a protective order shall not expire and must be dismissed by court order. Failure to serve the defendant shall not be grounds for dismissal of a petition or an ex parte order unless the victim requests dismissal. All information on protective orders, whether pending service upon the defendant or served upon the defendant pending hearing, shall be available to all law enforcement agencies and other persons as provided pursuant to subsection B of Section 60.5 of this title and Section 150.12B of Title 74 of the Oklahoma Statutes.

C. At the hearing, the court may ~~grant~~ impose any terms and conditions in the protective order that the court reasonably believes are necessary to bring about the cessation of domestic abuse against the victim or stalking or harassment of the victim or the victim's immediate family including, but not limited to, counseling or treatment at the defendant's expense. 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. When

the court grants a final protective order, the court shall order the defendant to be fingerprinted for the purpose of entering the protective order upon the criminal history record of the defendant. The Director of the Oklahoma State Bureau of Investigation shall include final protective orders in the information contained in a person's criminal history record.

D. ~~Protective~~ Final protective orders authorized by this section may include the following, in addition to any other order specified by the court:

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, stalk, harass or otherwise interfere with the victim;

3. An order suspending child visitation rights due to physical violence or threat of abuse by the defendant, or a threat to violate a custody order, 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 located at _____ on or before _____;

~~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. A final protective order authorized by this section shall include the name, sex, race, and date of birth of the defendant and the dates of issue and expiration of the protective order.

F. 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.~~ G. 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.~~ H. Any protective order issued on or after November 1, 1999, pursuant to subsection C of this section shall be for a fixed period not to exceed a period of three (3) years unless extended, modified, vacated or rescinded upon motion by either party or if the court approves any consent agreement entered into by the plaintiff and defendant. The court shall notify the parties at the time of the issuance of the protective order of the duration of the protective order. Upon the filing of a motion by either party to modify, extend, or vacate a protective order, a hearing shall be scheduled and notice given to the parties. At the hearing, the issuing court may take such action as is necessary under the circumstances. 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.

I. It shall be unlawful for any person to knowingly and willfully seek a protective order against a spouse or ex-spouse pursuant to Section 60 et seq. of this title for purposes of harassment, undue advantage, intimidation, or limitation of child

visitation rights in any divorce proceeding or separation action without justifiable cause. The violator shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment in the county jail for a period not exceeding one (1) year or by a fine not to exceed Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment. A second or subsequent conviction under this subsection shall be a felony punishable by imprisonment in the custody of the Department of Corrections for a period not to exceed two (2) years, or by a fine not to exceed Ten Thousand Dollars ($10,000.00), or by both such fine and imprisonment.

~~H. No~~ J. A protective order issued 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 or 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 from threats of abuse or physical violence by the defendant or a threat to violate a custody order. When granting any protective order for the protection of a minor child from violence or threats of abuse, the court shall allow visitation only under conditions that provide adequate supervision and protection to the child while maintaining the integrity of a divorce decree or temporary order.

SECTION 9. AMENDATORY 22 O.S. 1991, Section 60.5, as last amended by Section 2, Chapter 97, O.S.L. 1999 (22 O.S. Supp. 1999, 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 extension, modification, vacation, cancellation or consent agreement concerning a final protective order shall be sent 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 any law enforcement agencies designated by the court.

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 which may include entry of information about the ex parte or final protective order in the National Crime Information Center database.

SECTION 10. AMENDATORY Section 1, Chapter 235, O.S.L. 1993 (22 O.S. Supp. 1999, Section 60.8), is amended to read as follows:

Section 60.8 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 domestic abuse as defined by Section 60.1 of ~~Title 22 of the Oklahoma Statutes~~ this title, provided an arrest is made, if possible, at the same time.

B. After any such seizure, the District Attorney shall file a forfeiture action as provided in this section 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~~ this title shall be followed for any seizure and forfeiture of property pursuant to this section. ~~Provided, however, no~~ 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 11. AMENDATORY Section 1, Chapter 316, O.S.L. 1994 (22 O.S. Supp. 1999, Section 60.9), is amended to read as follows:

Section 60.9 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 Section 60.1 et seq. ~~of Title 22 of the Oklahoma Statutes~~ of this title;

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 or a certified copy of the order and proof of service is presented to the peace officer as provided in subsection C of this section;

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 pursuant to Section 60.8 of this title, 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.

C. A copy of a protective order shall be prima facie evidence that such order is valid in this state when such documentation is presented to a law enforcement officer by the plaintiff, defendant, or another person on behalf of a person named in the order. Any law enforcement officer may rely on such evidence to make an arrest for a violation of such order, if there is reason to believe the defendant has violated or is then acting in violation of the order without justifiable excuse. When a law enforcement officer relies upon the evidence specified in this subsection, such officer and the employing agency shall be immune from liability for the arrest of the defendant if it is later proved that the evidence was false.

D. Any person who knowingly and willfully presents any false or materially altered protective order to any law enforcement officer to effect an arrest of any person shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a period not to exceed two (2) years, or by a fine not exceeding Five Thousand Dollars ($5,000.00) and shall, in addition, be liable for any civil damages to the defendant.

SECTION 12. AMENDATORY 22 O.S. 1991, Section 196, as amended by Section 2, Chapter 316, O.S.L. 1994 (22 O.S. Supp. 1999, Section 196), is amended to read as follows:

Section 196. A peace officer may, without a warrant, arrest a person:

1. For a public offense, committed or attempted in ~~his~~ the officer's presence;

2. When the person arrested has committed a felony, although not in ~~his~~ the officer's presence;

3. When a felony has in fact been committed, and ~~he~~ the officer has reasonable cause ~~for believing~~ to believe the person arrested to have committed it;

4. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested;

5. When ~~he~~ the officer has probable cause to believe that the party was driving or in actual physical control of a motor vehicle involved in an accident upon the public highways, streets or turnpikes and was under the influence of alcohol or intoxicating liquor or who was under the influence of any substance included in the Uniform Controlled Dangerous Substances Act, Sections 2-101 et seq. of Title 63 of the Oklahoma Statutes;

6. Anywhere, including ~~his~~ a place of residence of the person, 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; or

7. When a peace officer, in accordance with the provisions of Section ~~1~~ 60.9 of this ~~act~~ title, is acting on a violation of a protective order offense.

SECTION 13. AMENDATORY 21 O.S. 1991, Section 644, as last amended by Section 31 of Enrolled House Bill No. 2711 of the 2nd Session of the 47th Oklahoma Legislature, 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~~ assault and battery. 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 person convicted of domestic ~~abuse~~ assault and battery as defined in this subsection that was committed in the presence of a child shall be sentenced to not less than six (6) months. Any second or subsequent conviction of domestic ~~abuse~~ assault and battery shall be a felony. Any person convicted of a second or subsequent domestic ~~abuse~~ assault and battery as defined in this subsection that was committed in the presence of a child shall be sentenced to not less than one (1) year. The fine for a felony violation of this subsection shall not be more than Five Thousand Dollars ($5,000.00). Every conviction of domestic ~~abuse~~ assault and battery 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. As used in this section, "in the presence of a child" means in the physical presence of a child; or having knowledge that a child is present and may see or hear an act of domestic violence. 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 14. AMENDATORY Section 1, Chapter 107, O.S.L. 1992, as last amended by Section 205, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 1999, Section 1173), is amended to read as follows:

Section 1173. A. Any person 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. Any person who violates the provisions of subsection A of this section when:

1. There is a permanent or temporary restraining order, a protective order ~~or~~, an emergency ex parte protective order, or an injunction in effect prohibiting the behavior described in subsection A of this section against the same party, when the person violating the provisions of subsection A 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 of this section against the same party or under the conditions of a community or alternative punishment; or

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

upon conviction, shall be guilty of a felony punishable by imprisonment in the State Penitentiary for a term not exceeding five (5) years or by a fine of not more than Two Thousand Five Hundred Dollars ($2,500.00), or by both such fine and imprisonment.

C. Any person who commits a second act of stalking within ten (10) years of the completion of sentence for a prior conviction under subsection A of this section, upon conviction thereof, shall be guilty of a felony punishable by imprisonment in the State

Penitentiary for a term not exceeding five (5) years, or by a fine of not more than Two Thousand Five Hundred Dollars ($2,500.00), or by both such fine and imprisonment.

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

E. Evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact, as defined in subsection F of this section, with the victim after having been requested by the victim to discontinue the same or ~~a different~~ any other 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. For purposes of this section:

1. "Harasses" means a willful pattern or course of conduct directed toward ~~a person~~ another individual 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 shall include harassing or obscene phone calls as prohibited by Section 1172 of this title and conduct prohibited by Section 850 of this title. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose;

2. "Course of conduct" means a pattern of conduct 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. "Emotional distress" means significant mental suffering or distress that may, but does not necessarily require, medical or other professional treatment or counseling;

4. "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. "Member of the immediate family"<u>, for the purposes of this section,</u> 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 15. This act shall become effective July 1, 2000.

SECTION 16. 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 10th day of April, 2000.

_____
Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 2000.

_____
President of the Senate