ENGROSSED HOUSE
BILL NO. 2038

By: Askins of the House

and

Morgan and Wilkerson of the Senate

An Act relating to criminal procedure; amending 22 O.S. 1991, Sections 60.1, as last amended by Section 29, Chapter 247, O.S.L. 1996, 60.6, as last amended by Section 33, Chapter 247, O.S.L. 1996, 60.7 and Section 1, Chapter 316, O.S.L. 1994 (22 O.S. Supp. 1999, Sections 60.1, 60.6 and 60.9), which relate to the Protection from Domestic Abuse Act; adding definition; prohibiting violation of foreign protective orders; stating that Oklahoma-issued protective orders shall have nationwide validity; authorizing warrantless arrest for violation of foreign protective order under certain circumstances; establishing rebuttable presumption of validity for foreign protective orders; providing immunity from liability for peace officers enforcing foreign protective orders; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 60.1, 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 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;

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 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; and

6. "Foreign protective order" means any valid order of protection issued by a court of another state or a tribal court.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 60.6, as last amended by Section 33, Chapter 247, O.S.L. 1996 (22 O.S. Supp. 1999, Section 60.6), is amended to read as follows:

Section 60.6 A. Except as otherwise provided by this section, any person who:

1. Has been served with an ex parte or final protective order or foreign protective order and is in violation of such protective order, upon conviction, shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by a term of imprisonment in the county jail of not more than one (1) year, or both such fine and imprisonment; and

2. After a previous conviction of a violation of a protective order, is convicted of a second or subsequent offense pursuant to the provisions of this section shall, upon conviction, be deemed guilty of a misdemeanor and shall be punished by a term of imprisonment in the county jail of not less than ten (10) days and not more than one (1) year. In addition to the term of imprisonment, the person may be punished by a fine of not less than One Thousand Dollars ($1,000.00) and not more than Five Thousand Dollars ($5,000.00).

B. 1. Any person who has been served with an ex parte or final protective order or foreign protective order who violates the protective order and without justifiable excuse causes physical injury or physical impairment to the plaintiff or to any other person named in said protective order shall, upon conviction, be guilty of a misdemeanor and shall be punished by a term of imprisonment in the county jail for not less than twenty (20) days nor more than one (1) year. In addition to the term of imprisonment, the person may be punished by a fine not to exceed Five Thousand Dollars ($5,000.00).

2. In determining the term of imprisonment required by this section, the jury or sentencing judge shall consider the degree of physical injury or physical impairment to the victim.

3. The provisions of this subsection shall not affect the applicability of Sections 644, 645, 647 and 652 of Title 21 of the Oklahoma Statutes.

C. The minimum sentence of imprisonment issued pursuant to the provisions of paragraph 2 of subsection A and subsection B of this section shall not be subject to statutory provisions for suspended sentences, deferred sentences or probation, provided the court may subject any remaining penalty under the jurisdiction of the court to the statutory provisions for suspended sentences, deferred sentences or probation.

D. In addition to any other penalty specified by this section, the court may require a defendant to undergo the treatment or participate in the counseling services necessary to bring about the cessation of domestic abuse against the victim or to bring about the cessation of stalking or harassment of the victim.

E. Ex parte and final protective orders shall include notice of these penalties.

F. When a minor child violates the provisions of any protective order, the violation shall be heard in a juvenile proceeding and the court may order the child and the parent or parents of the child to participate in family counseling services necessary to bring about the cessation of domestic abuse against the victim and may order community service hours to be performed in lieu of any fine or imprisonment authorized by this section.

SECTION 3. AMENDATORY 22 O.S. 1991, Section 60.7, is amended to read as follows:

Section 60.7 All orders issued pursuant to the provisions of the Protection from Domestic Abuse Act, Section 60 et seq. of this title, shall have statewide <u>and nationwide</u> validity, unless specifically modified or terminated by a judge of the district courts.

SECTION 4. 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~~ 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;

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 peace officer, without a warrant, may arrest and take into custody a person if the following conditions have been met:

1. The peace officer has reasonable cause to believe that a foreign protective order has been issued, pursuant to the law of the state or tribal court where the foreign protective order was issued;

2. A certified copy of the foreign protective order has been presented to the peace officer that appears valid on its face; and

3. The peace officer has reasonable cause to believe the person named in the order has violated the order or is then acting in violation of the order.

C. 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 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 60.12 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. It is the intent of the Legislature that all foreign protective orders shall have the rebuttable presumption of validity, even if the foreign protective order contains provisions which could not be contained in a protective order issued by an Oklahoma court. The validity of a foreign protective order shall only be determined by a court of competent jurisdiction. Until a foreign protective order is declared invalid by a court of competent jurisdiction it shall be given full faith and credit by all peace officers and courts in the State of Oklahoma.

B. A peace officer of this state shall be immune from liability for enforcing provisions of a foreign protective order.

SECTION 6. This act shall become effective November 1, 2000.

Passed the House of Representatives the 1st day of March, 2000.

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Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 2000.

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President of the Senate