ENROLLED HOUSE
BILL NO. 1612

By: Vaughn of the House

and

Williamson of the Senate

An Act relating to criminal procedure; amending 22 O.S. 1991, Sections 60.4, as last amended by Section 32, Chapter 247, O.S.L. 1996, and 60.5, as last amended by Section 2, Chapter 368, O.S.L. 1997, and Section 3, Chapter 297, O.S.L. 1995 (22 O.S. Supp. 1998, Sections 60.4, 60.5 and 60.11), which relate to victims protective orders; limiting duration of certain protective orders; establishing procedure for vacation of order; requiring notice of duration and the vacation of order; requiring certain information be written on protective order; amending Section 11, Chapter 272, O.S.L. 1995, as last amended by Section 3, Chapter 358, O.S.L. 1997 (21 O.S. Supp. 1998, Section 1290.11), which relates to preclusions to obtaining an Oklahoma Self-Defense Act license; modifying provisions regarding victims protective orders; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 60.4, as last amended by Section 32, Chapter 247, O.S.L. 1996 (22 O.S. Supp. 1998, 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 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. 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 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.

C. At the hearing, the court may grant any protective order to bring about the cessation of domestic abuse against the victim or 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 visit, 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 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. 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 on or after November 1, 1999, pursuant to subsection C of this section shall ~~not~~ be for a fixed period ~~but shall be continuous until~~ 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. 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 should be allowed to return to the residence.

H. No order issued under the Protection from Domestic Abuse Act, Section 60 et seq. of this title, shall 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, child support or division of property or any other like relief obtainable under Sections 101 et seq. of Title 43 of the Oklahoma Statutes.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 60.5, as last amended by Section 2, Chapter 368, O.S.L. 1997 (22 O.S. Supp. 1998, 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 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 Section 3, Chapter 297, O.S.L. 1995 (22 O.S. Supp. 1998, Section 60.11), is amended to read as follows:

Section 60.11 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. THIS ORDER SHALL BE IN EFFECT FOR THREE (3) YEARS UNLESS EXTENDED, MODIFIED, VACATED OR RESCINDED BY THE COURT. A VIOLATION OF THIS ORDER IS PUNISHABLE BY A FINE OF UP TO ONE THOUSAND DOLLARS ($1,000.00) OR UP TO ONE (1) YEAR IN THE COUNTY JAIL, OR BY BOTH SUCH FINE AND IMPRISONMENT. A VIOLATION OF THIS ORDER WHICH CAUSES INJURY SHALL BE PUNISHABLE BY TWENTY (20) DAYS TO ONE (1) YEAR IN THE COUNTY JAIL OR A FINE OF UP TO FIVE THOUSAND DOLLARS ($5,000.00), OR BY BOTH SUCH FINE AND IMPRISONMENT."

SECTION 4. AMENDATORY Section 11, Chapter 272, O.S.L. 1995, as last amended by Section 3, Chapter 358, O.S.L. 1997 (21 O.S. Supp. 1998, Section 1290.11), is amended to read as follows:

Section 1290.11

OTHER PRECLUSIONS

A. The following conditions shall preclude a person from being eligible for a concealed handgun license pursuant to the provisions of the Oklahoma Self-Defense Act, Section 1290.1 et seq. of this title, for a period of time as prescribed in each of the following paragraphs:

1. An arrest for an alleged commission of a felony offense or a felony charge pending in this state, another state or pursuant to the United States Code. The preclusive period shall be three (3) years and shall begin upon the final determination of the matter;

2. The person is subject to the provisions of a deferred sentence or deferred prosecution in this state or another state or pursuant to federal authority for the commission of a felony offense. The preclusive period shall be three (3) years and shall begin upon the final determination of the matter;

3. Any involuntary commitment for a mental illness, condition, or disorder pursuant to the provisions of Section 5-401 of Title 43A of the Oklahoma Statutes or any involuntary commitment in another state pursuant to any provisions of law of that state. The preclusive period shall be three (3) years from the last date of treatment or discharge from commitment, whichever is longer, or upon presentation of a certified statement from a licensed physician stating that the person is no longer disabled by any mental or psychiatric illness, condition, or disorder;

4. The person has previously undergone treatment for a mental illness, condition, or disorder which required medication or supervision as defined by paragraph 7 of Section 1290.10 of this title. The preclusive period shall be three (3) years from the last date of treatment or upon presentation of a certified statement from a licensed physician stating that the person is either no longer disabled by any mental or psychiatric illness, condition, or disorder or that the person has been stabilized on medication for ten (10) years or more;

5. Inpatient treatment for substance abuse. The preclusive period shall be three (3) years from the last date of treatment or upon presentation of a certified statement from a licensed physician stating that the person has been free from substance use for twelve (12) months or more preceding the filing of an application for a handgun license;

6. Two or more convictions of public intoxication pursuant to Section 8 of Title 37 of the Oklahoma Statutes, or a similar law of another state. The preclusive period shall be three (3) years from the date of the completion of the last sentence;

7. Two or more misdemeanor convictions relating to intoxication or driving under the influence of an intoxicating substance or alcohol. The preclusive period shall be three (3) years from the date of the completion of the last sentence and shall require a certified statement from a licensed physician stating that the person is not in need of substance abuse treatment;

8. A court order for a final Victim Protection Order against the applicant, as authorized by Section 60 et seq. of Title 22 of the Oklahoma Statutes, or any court order granting a final victim protection order against the applicant from another state. The preclusive period shall be three (3) years from the date of the entry of the final court order, ~~if the order does not have an expiration date, or one (1) year from the expiration date of the order, or one (1) year~~ or sixty (60) days from the date an order was ~~dropped, dismissed~~ vacated, cancelled or withdrawn;

9. An adjudicated delinquent or convicted felon residing in the residence of the applicant which may be a violation of Section 1283 of this title. The preclusive period shall be thirty (30) days from the date the person no longer resides in the same residence as the applicant; or

10. An arrest for an alleged commission of, a charge pending for, or the person is subject to the provisions of a deferred sentence or a deferred prosecution for any one or more of the following misdemeanor offenses in this state or another state:

a. any assault and battery which caused serious physical injury to the victim or any second or subsequent assault and battery,

b. any aggravated assault and battery,

c. any stalking pursuant to Section 1173 of this title, or a similar law of another state,

d. any violation of the Protection from Domestic Abuse Act, Section 60 et seq. of Title 22 of the Oklahoma Statutes, or any violation of a victim protection order of another state, or

e. any violation relating to illegal drug use or possession.

The preclusive period for this paragraph shall be three (3) years and shall begin upon the final determination of the matter.

B. Nothing in this section shall be construed to require a full investigation of the applicant by the Oklahoma State Bureau of Investigation.

SECTION 5. This act shall become effective November 1, 1999.

Passed the House of Representatives the 12th day of April, 1999.

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Speaker of the House of Representatives

Passed the Senate the 5th day of April, 1999.

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President of the Senate