

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

CONFERENCE COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
HOUSE BILL NO. 2246

By: Peters of the House

and

Coffee of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to domestic abuse; amending 21 O.S. 2001, Section 644, which relates to assault and battery; authorizing court to order participation by defendants in treatment programs; specifying when review hearings will be held; authorizing revocation of probation under certain circumstances; modifying definition; prohibiting domestic abuse by strangulation; setting penalty; defining term; setting minimum sentences for second and subsequent offenses of certain crimes; providing immunity from liability or prosecution for judges and treatment programs; prohibiting charging victim of domestic abuse with court fees; requiring certain conviction records to be presented to and considered by the court prior to a plea agreement or sentencing; amending 22 O.S. 2001, Sections 60.1, 60.2, 60.4, 60.6 and 60.11, which relate to the Protection from Domestic Abuse Act; adding definition; prohibiting collection of costs from victim; authorizing court to order treatment; authorizing court to proceed with sentencing for violation of protective order under certain circumstances; allowing plaintiff to be accompanied by victim or court advocate during all proceedings; prohibiting court from issuing mutual protective orders; modifying penalties for violation of protective order; specifying punishment for third or subsequent offense; adding information to be printed on protective order regarding penalties for violations of law; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 21 O.S. 2001, 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 person convicted of domestic abuse 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 shall be a felony. Any person convicted of a second or subsequent domestic abuse 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 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 court may require the defendant to seek counseling or treatment by an individual practitioner or a treatment program, or both. Any order that a defendant attend a treatment program as part of any suspended

or deferred sentence or probation shall require the defendant to seek treatment. If the defendant is ordered to seek treatment for domestic abuse, the order shall require the defendant to attend, finish and be evaluated before and after attendance by a treatment program or a private counselor. Counseling or treatment for anger management shall not qualify as a treatment program for treatment of domestic abuse. The court shall set a review hearing no more than one hundred twenty (120) days after the defendant is ordered to attend a certified treatment program for batterers to assure the attendance and compliance of the defendant with program requirements. The court shall set a second review hearing by the completion of the program to assure the attendance and compliance of the defendant with the program requirements and may set subsequent or other review hearings as the court determines is necessary to assure the defendant attends and complies with the program requirements of the treatment program. If the defendant is not satisfactorily attending the treatment program or is not in compliance with the requirements of the program at any review hearing, the court may revoke all or any part of any suspended sentence, deferred sentence or probation immediately and subject the defendant to any or all remaining portions of the original sentence. Review hearings may require the defendant to appear in court or a report to the court on the progress of the defendant from the treatment program may suffice for the purposes of the review. 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 or is present within the same residence and may or could see or hear an act of domestic violence. For purposes of this subsection, a child may be any child whether or not related to the victim or the defendant. 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.

D. Any person who commits any assault and battery with intent to cause great bodily harm by strangulation or attempted strangulation of 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 by strangulation, which shall be a felony, and, upon conviction, the defendant shall be punished by imprisonment of not less than six (6) months nor more than one (1) year in the county jail or not less than six (6) months and not exceeding three (3) years in the State Penitentiary. In addition, a fine of not more than Three Thousand Dollars (\$3,000.00) may be imposed. Upon any second or subsequent conviction, the defendant

shall be punished by imprisonment in the State Penitentiary for a period of not less than three (3) years and not exceeding ten (10) years. In addition, a fine of not more than Ten Thousand Dollars (\$10,000.00) may be imposed. As used in this subsection, "strangulation" means a form of asphyxia (lack of oxygen) characterized by closure of the blood vessels or air passages of the neck as a result of external pressure on the neck.

E. Any district court of the State of Oklahoma and any judge thereof who requires a defendant to attend a treatment program for batterers, certified by the Department of Mental Health and Substance Abuse Services, and makes any order that a defendant attend counseling or treatment services ordered as part of any suspended or deferred sentence or probation and who requires the defendant to attend, finish and be evaluated before and after attendance by a treatment program for batterers, certified by the Department of Mental Health and Substance Abuse Services, shall be immune from any liability or prosecution for issuing such order.

F. Any treatment program for batterers, certified by the Department of Mental Health and Substance Abuse Services and operating within the established standards and criteria of a certified treatment program for batterers as established by the Department of Mental Health and Substance Abuse Services, shall be immune from any liability or prosecution for providing treatment or counseling services to any court-ordered or court-referred defendant pursuant to subsection C of this section or any self-referred individual who voluntarily attends a certified treatment program for batterers.

G. There shall be no charge of fees or costs to any victim of domestic violence, stalking or sexual assault in connection with the prosecution of domestic violence, stalking or sexual assault offense in the State of Oklahoma.

H. In the course of prosecuting any charge of domestic abuse, domestic abuse by strangulation, stalking, harassment, rape or violation of a protective order, it shall be the responsibility of the prosecutor to provide the court, prior to the sentencing or any plea agreement, with a local and any other available history of past convictions of the defendant within the last ten (10) years of domestic abuse, domestic abuse by strangulation, stalking, harassment, rape, violation of a protective order or other violent misdemeanors or felonies.

SECTION 2. AMENDATORY 22 O.S. 2001, 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 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;

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;

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

7. "Rape" means rape and rape by instrumentation in violation of Sections 1111 and 1111.1 of Title 21 of the Oklahoma Statutes;

8. "Victim supporter" means a person affiliated with a certified domestic violence or sexual assault program, certified by the Department of Mental Health and Substance Abuse Services or certified by a recognized Native American tribe if operating mainly within tribal lands, who provides support and assistance for a

person who files a petition under the Protection from Domestic Violence Act; and

9. "Mutual protective order" means any final protective order or orders issued to both a plaintiff who has filed a petition for a protective order and any defendant included as the defendant in a petition without the defendant having filed with the court a petition for a protective order at least three (3) days, not including weekends or holidays, prior to the first scheduled full hearing on the matter of which the defendant had notice no less than forty-eight (48) hours prior to the hearing, and the defendant having alleged facts sufficient to establish domestic violence, stalking, harassment or rape against the plaintiff who first filed and the court making specific findings that sufficient evidence exists of domestic abuse, stalking, harassment or rape against each party to grant each correctly and timely filed petition individually and that each party acted primarily as an aggressor.

SECTION 3. AMENDATORY 22 O.S. 2001, 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, a victim of rape, 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 who is a victim of domestic abuse, a victim of stalking, a victim of harassment or a victim of rape may seek relief under the provisions of the Protection from Domestic Abuse Act.

1. The person seeking relief may file a petition for a protective order with the district court in the county in which the victim resides, 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 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:)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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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 \_\_\_\_\_.

order the defendant to pay the law enforcement agency a photo evidence fee of Ten Dollars (\$10.00) for photographs taken of the victim's injury or crime scenes.

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 \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Court Clerk, Deputy Court Clerk,  
or Notary Public

C. ~~No~~ Notwithstanding any provision of law to the contrary, a rebuttable presumption shall exist that no filing fee or, service of process fee, attorney fee or any other fee or costs shall be charged the plaintiff or victim at the time the petition is filed any time for filing a petition for a protective order whether a protective order is granted or not. The court ~~shall~~ may assess court costs, service of process fees, attorney fees, other fees and filing fees against the defendant at the hearing on the petition, if ~~the petition~~ a protective order is granted, ~~or~~ against ~~either party if the petition is denied~~ the defendant. If the court determines that

a petition for a protective order has been filed frivolously and no victim exists, the court may assess court costs against the plaintiff. 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 person seeking relief shall prepare the petition as set forth above or, at the request of the plaintiff, the court clerk, victim supporter, case manager or the victim-witness coordinator shall prepare or assist the plaintiff in preparing the same.

SECTION 4. AMENDATORY 22 O.S. 2001, 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~~ Any fee for service of an emergency ex parte order, petition for protective order, and notice of hearing shall only be charged pursuant to subsection C of Section 60.2 of this title and shall, if charged, be the same as the sheriff's service fee plus mileage expenses. Emergency ex parte orders shall be given priority for service 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~~ of an ex parte order unless the victim requests dismissal.

C. At the hearing, the court may 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~~ of stalking or harassment of the victim or the victim's immediate family including, but not limited to,

ordering the defendant to obtain counseling or treatment in a program certified by the Department of Mental Health and Substance Abuse Services 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.

D. 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;
5. An order to the defendant to cease stalking the victim;
6. An order to the defendant to cease harassment of the victim;
7. An order to the defendant to leave the residence located at \_\_\_\_\_ on or before \_\_\_\_\_;
8. An order awarding attorney fees to the plaintiff;
9. An order requiring payment of court costs and service of process fees;
10. An order requiring a preliminary inquiry in a juvenile proceeding pursuant to the Oklahoma Juvenile Code; and
11. An order granting other relief as requested by the victim.

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~~ The defendant shall 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.

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.

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.

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.

K. A court shall not issue any mutual protective orders.

L. The court may allow a plaintiff or victim to be accompanied by a victim supporter at court proceedings. A victim supporter may not make legal arguments; however, a victim supporter who is not a licensed attorney may offer the plaintiff or victim comfort or

support and may remain in close proximity to the plaintiff or victim.

SECTION 5. AMENDATORY 22 O.S. 2001, 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); and

3. After two previous convictions of a violation of a protective order, is convicted of a subsequent offense pursuant to the provisions of this section shall, upon conviction, be deemed guilty of a felony and shall be punished by a term of imprisonment of not less than six (6) months and not more than five (5) years. In addition to the term of imprisonment, the person may be punished by a fine of not less than Two Thousand Dollars (\$2,000.00) and not more than Ten Thousand Dollars (\$10,000.00).

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, ~~and~~ 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~~ shall 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. The court shall require the defendant to attend treatment and any order that a defendant attend counseling or a treatment services ordered as part of any suspended or deferred sentence, or probation shall require the defendant to attend, finish and be evaluated before and after attendance by a treatment program. Counseling or treatment for anger management shall not qualify as a treatment program for the treatment of domestic abuse.

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.

G. Any district court of the State of Oklahoma and any judge who requires a defendant to attend a treatment program for batterers, certified by the Department of Mental Health and Substance Abuse Services, and makes any order that a defendant attend counseling or treatment services ordered as part of any final protective order or for any violation of a protective order and who requires the defendant to attend, finish and be evaluated before and after attendance by a certified treatment program for batterers, certified by the Department of Mental Health and Substance Abuse Services, shall be immune from any liability or prosecution for requiring or ordering the same.

H. Any treatment program for batterers, certified by the Department of Mental Health and Substance Abuse Services and operating within the established standards and criteria of a certified treatment program for batterers as established by the Department of Mental Health and Substance Abuse Services, shall be immune from any liability or prosecution for providing treatment or counseling services to any court-ordered or court-referred defendant or any self-referred individual who voluntarily attends such a certified treatment program for batterers.

I. If the court orders the defendant to undergo treatment or participate in the counseling services necessary to bring about cessation of domestic abuse against the victim, as part of a

sentence for violation of a protective order, the court shall immediately schedule a review hearing of the progress of the defendant in counseling within one hundred twenty (120) days of the sentencing for the violation. There shall generally be no requirement for the victim to attend review hearings. The court shall retain continuing jurisdiction over the defendant during the course of ordered counseling through the final review hearing. At the first review hearing, if the defendant is not in compliance with the attendance policies of the treatment program, the court may determine that the defendant is in violation of the protective order or the order of the court and may proceed with sentencing under this section for a second violation of a protective order. During the first review hearing, a second review hearing shall be scheduled within two (2) months after the expected date of the completion by the defendant of counseling or treatment. If the defendant has completed counseling or treatment, a letter from the treatment program that the defendant has completed counseling or treatment may suffice to waive the second hearing. If the defendant has not satisfactorily completed counseling or treatment by the date of the second hearing, the court may determine that the defendant has committed a second or third violation of the protective order or order of the court and may proceed with sentencing under this section for violation of a protective order or may order the victim to further counseling or treatment per the recommendations of the treatment program or both.

J. At no time, under any proceeding, may a person protected by a protective order be held to be in violation of their own protective order. Only a defendant against whom a protective order has been issued may be held to have violated that order.

SECTION 6. AMENDATORY 22 O.S. 2001, 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 SECOND VIOLATION OF THIS ORDER IS PUNISHABLE BY IMPRISONMENT IN THE COUNTY JAIL FOR A MINIMUM OF TEN (10) DAYS AND UP TO ONE (1) YEAR AND A FINE OF NOT LESS THAN ONE THOUSAND DOLLARS (\$1,000.00) AND UP TO FIVE THOUSAND DOLLARS (\$5,000.00), OR BY BOTH SUCH FINE AND IMPRISONMENT. A THIRD VIOLATION OF THIS ORDER SHALL BE A FELONY AND SHALL BE PUNISHED BY A TERM OF IMPRISONMENT OF NOT LESS THAN SIX (6) MONTHS AND NOT MORE THAN FIVE (5) YEARS. IN ADDITION TO THE TERM OF IMPRISONMENT, THE PERSON MAY BE PUNISHED BY A FINE OF NOT LESS THAN TWO THOUSAND DOLLARS (\$2,000.00) AND NOT MORE THAN TEN THOUSAND DOLLARS (\$10,000.00). 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. POSSESSION OF A FIREARM OR AMMUNITION BY A DEFENDANT WHILE THIS ORDER IS IN EFFECT MAY SUBJECT THE DEFENDANT TO PROSECUTION FOR A VIOLATION OF FEDERAL LAW EVEN IF THIS

ORDER DOES NOT SPECIFICALLY PROHIBIT THE DEFENDANT FROM POSSESSING A FIREARM OR AMMUNITION."

SECTION 7. This act shall become effective July 1, 2002.

SECTION 8. 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.

48-2-9308            LAC            6/12/15