ENGROSSED HOUSE
BILL NO. 1285

By: Piatt of the House

and

Pruitt of the Senate

An Act relating to criminal procedure; amending 22 O.S. 1991, Sections 60.3 and 60.4, as last amended by Sections 7 and 8, Chapter 370, O.S.L. 2000 (22 O.S. Supp. 2000, Sections 60.3 and 60.4), which relate to the Protection from Domestic Abuse Act; stating order of protection shall not be issued except under certain circumstances; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 60.3, as last amended by Section 7, Chapter 370, O.S.L. 2000 (22 O.S. Supp. 2000, 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;

5. An order to the defendant not to stalk the victim;

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

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

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.

D. No emergency order of protection shall be issued to any person unless that person has made a valid request for an emergency order of protection pursuant to this section.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 60.4, as last amended by Section 8, Chapter 370, O.S.L. 2000 (22 O.S. Supp. 2000, 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. 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 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 stalking or harassment of the victim or the victim's immediate family including, but not limited to, 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;

9. An order requiring payment of court costs and service of process fees; and

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.

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. No final order of protection shall be issued to any person unless that person has made a valid request for a final order of protection pursuant to this section.

SECTION 3. This act shall become effective November 1, 2001.

Passed the House of Representatives the 13th day of February, 2001.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2001.

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Presiding Officer of the Senate