

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 1650

By: Smith

AS INTRODUCED

An Act relating to criminal procedure; amending 22 O.S. 2001, Sections 40, 40.1, 40.2 and 40.3, which relate to definitions for victims of rape or forcible sodomy, notice of victim rights, and emergency orders of protection; deleting certain definitions; deleting language; authorizing victim protection order for victims of rape and forcible sodomy; directing peace officer to not discourage victim from pressing charges; deleting language relating to duty of peace officer to notify victim of domestic abuse; deleting language directing peace officer to make warrantless arrest in domestic abuse circumstance; clarifying duty for emergency order for victims of rape and forcible sodomy; providing for notice of ex parte emergency order of protection when assailant is known or not identified; providing duties of peace officers in domestic abuse circumstance; directing notification of certain rights in domestic abuse circumstance; prohibiting peace officer from discouraging victim of domestic abuse from pressing charges; providing for emergency temporary order for domestic abuse circumstance; providing for notice to assailant in domestic abuse circumstance; requiring certain copy of emergency order to be filed; providing for certain forms; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 22 O.S. 2001, Section 40, is amended to read as follows:

Section 40. As used in Sections 40 through 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; and

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, 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. 2001, 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 3-314 of 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 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 available to victims, including information on how to apply for the assistance and services;

4. The right to a free medical examination for the procurement of evidence to aid in the prosecution of your assailant; 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 3-314 of Title 43A of the Oklahoma Statutes.

SECTION 3. AMENDATORY 22 O.S. 2001, Section 40.2, is amended to read as follows:

Section 40.2 A victim protection order for any victim of rape or forcible sodomy shall be substantially similar to a protective order in domestic abuse cases pursuant to Section 60 et seq. of this title. No peace officer shall discourage a victim of rape or forcible sodomy from pressing charges against any assailant of the victim.

~~Upon the preliminary investigation of any crime involving domestic abuse, it shall be the duty of the first peace officer who interviews the victim of the domestic abuse to inform the victim of the twenty-four-hour statewide telephone communication service established by Section 3-314 of Title 43A of the Oklahoma Statutes and to give notice to the victim of certain rights. The notice shall consist of handing such victim the following statement:~~

~~"As a victim of domestic abuse, 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 available as a result of being a victim, including information on how to apply for the assistance and services; and~~

~~4. The right to file a petition for a protective order or, when the domestic abuse occurs when the court is not open for business, to request an emergency temporary protective order."~~

SECTION 4. AMENDATORY 22 O.S. 2001, 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 the court is not open for business, the victim of ~~domestic abuse~~ rape or forcible sodomy 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 in domestic abuse cases;

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~~ the decision to approve or disapprove the emergency temporary order;

3. Inform the victim whether the judge has approved or disapproved 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 if known. Notification pursuant to this paragraph may be made personally by the officer ~~or in writing~~ upon arrest, or upon identification of the assailant notice shall be given by any law

enforcement officer. A copy of the petition and the statement of the officer attesting to the order of the judge shall be made available to ~~said~~ the 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 this title.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 60.13 of Title 22, unless there is created a duplication in numbering, reads as follows:

Upon the preliminary investigation of any crime involving domestic abuse, it shall be the duty of the first peace officer who interviews the victim of the domestic abuse to inform the victim of the twenty-four-hour statewide telephone communication service established by Section 3-314 of Title 43A of the Oklahoma Statutes and to give notice to the victim of certain rights. The notice shall consist of handing such victim the following statement:

"As a victim of domestic abuse, 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 available as a result of being a victim, including information on how to apply for the assistance and services; and

4. The right to file a petition for a protective order or, when the domestic abuse occurs when the court is not open for business, to request an emergency temporary protective order."

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 60.14 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. A peace officer shall not discourage a victim of domestic abuse from pressing charges against the assailant of the victim.

B. A peace officer may arrest without a warrant a person anywhere, including a 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 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 Title 22 of the Oklahoma Statutes 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 the decision to approve or disapprove the emergency temporary order;

3. Inform the victim whether the judge has approved or disapproved 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 the 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 such 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.

SECTION 7. 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.

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