

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1344

By: Peters

AS INTRODUCED

An Act relating to domestic violence; amending 22 O.S. 2001, Sections 60.1, 60.2 and 60.4, which relate to the Protection from Domestic Abuse Act; adding terms; prohibiting charging of certain fees to certain persons; providing for frivolously filed petitions; requiring certain findings; authorizing certain costs; authorizing certain assistance from certain persons; prohibiting certain mutual protective orders; authorizing consolidated hearings; providing for certain reviews; providing for when a consolidated hearing may be held; and declaring an emergency.

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

SECTION 1. 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 support person" 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 a final protective order or orders issued to both a plaintiff who has filed a petition for a protective order and a defendant included as the defendant in the plaintiff's petition restraining the parties from committing domestic violence, stalking, harassment or rape against each other. If both parties allege domestic abuse, violence, stalking, harassment or rape against each other, the parties shall do so by separate petition pursuant to Section 60.4 of this title.

SECTION 2. 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 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:)

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~~ 1. Except otherwise provided by this section, no filing fee or service of process fee, attorney fees or any other fee or costs shall be charged the plaintiff or victim at the any time the for filing a petition is filed for a protective order whether a protective order is granted or is not granted. 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.~~ 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.~~

2. If the court makes specific findings that a petition for a protective order has been filed frivolously and no victim exists, the court may assess court costs against the plaintiff.

D. The person seeking relief shall prepare the petition as set forth above or, at the request of the plaintiff, the court clerk ~~or~~, the victim-witness coordinator, victim support person, and court case manager shall prepare or assist the plaintiff in preparing the ~~same~~ petition.

SECTION 3. AMENDATORY 22 O.S. 2001, Section 60.4, is amended to read as follows:

Section 60.4 A. 1. 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.

2. 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.

3. 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.

4. 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.

5. 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. 1. 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.

2. 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.

3. 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.

4. A petition for a protective order shall not expire and must be dismissed by court order.

5. 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. 1. 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,~~ but shall order the defendant to obtain domestic abuse counseling or treatment in a program certified by the Department of Mental Health and Substance Abuse Services at the defendant's expense pursuant to Section 644 of Title 21 of the Oklahoma Statutes.

2. 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;

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. 1. After notice and hearing, protective orders authorized by this section ~~may~~ shall 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 pursuant to the provisions of Section 644 of Title 21 of the Oklahoma Statutes. ~~Either party or both may~~

2. 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. 1. 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.

2. The court shall notify the parties at the time of the issuance of the protective order of the duration of the protective order.

3. 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.

4. 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. 1. 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~~ the Protection from Domestic Abuse Act for purposes of harassment, undue advantage, intimidation, or limitation of child visitation rights in any divorce proceeding or separation action without justifiable cause.

2. The violator shall, upon conviction thereof, 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.

3. 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. 1. A protective order issued under the Protection from Domestic Abuse Act, ~~Section 60 et seq. of this title~~, shall not in any manner:

a. affect title to real property,

- b. purport to grant to the parties a divorce, or otherwise
- c. 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~~ pursuant to 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.

2. 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. 1. A court shall not issue any mutual protective orders.

2. If both parties allege domestic abuse by the other party, the parties shall do so by separate petitions. The court shall review each petition separately, in an individual or a consolidated hearing and grant or deny each petition on its individual merits. If the court finds cause to grant both motions, the court shall do so by separate orders and with specific findings justifying the issuance of each order.

3. The court may only consolidate a hearing if:

a. the court makes specific findings that:

- (1) sufficient evidence exists of domestic abuse, stalking, harassment or rape against each party,
and

(2) each party acted primarily as aggressors, and

b. the defendant filed a petition with the court for a protective order no less than three (3) days, not

including weekends or holidays, prior to the first scheduled full hearing on the petition filed by the plaintiff, and

c. the defendant had no less than forty-eight (48) hours prior to the full hearing on the petition filed by the plaintiff.

L. The court may allow a plaintiff or victim to be accompanied by a victim support person at court proceedings. A victim support person shall not make legal arguments, however, a victim support person 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 4. 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.

49-1-6078

KSM

01/19/03