

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1667

By: Vaughn

AS INTRODUCED

An Act relating to criminal procedure; amending 22 O.S. 2001, Sections 60.1, 60.2, 60.3, 60.4 and 60.8, as amended by Section 2, Chapter 443, O.S.L. 2001 (22 O.S. Supp. 2002, Section 60.8), which relate to the Protection from Domestic Abuse Act; modifying definitions; modifying scope; providing for filings in certain circumstances; eliminating statutory forms; providing for development of standard forms; authorizing court to waive certain fees; prohibiting certain persons from filing petition without permission of the court; requiring the court to find sufficient grounds to hold hearings; modifying procedure for service of process; modifying time for scheduling hearings; authorizing the court to grant protective orders to both plaintiff and defendant; requiring counseling services to be court-approved; modifying conditions under which peace officer must seize weapon or instrument; requiring the Criminal Justice Resource Center to collect certain data; providing recipients of the data; repealing 22 O.S. 2001, Section 60.11 and Section 2, Chapter 113, O.S.L. 2002 (22 O.S. Supp. 2002, Section 60.13), which relate to statutory forms and required language for protective orders; providing for codification; and providing an effective date.

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~~ a family or household member or an individual who is or has been involved in a dating relationship with the person, 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~~ a family or household member or an individual who is or has been involved in a dating relationship with the person, 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; and

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.~~

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~~ If a petition has been filed in an action for divorce or separate maintenance and either party to the action files a petition for a protective order in the same county where the action for divorce or

separate maintenance is filed, the petition for the protective order shall be filed with the court hearing the divorce or separate maintenance action. If the defendant is a minor child, the petition shall be filed with the court having jurisdiction over juvenile matters.

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:)~~

- ~~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 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 by the defendant or a threat to violate a custody order by the 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~~

The Administrative Office of the Courts shall develop a standard form for the petition.

C. No filing fee or service of process fee shall be charged the plaintiff or victim at the time the petition is filed. The court shall assess court costs, service of process fees, and filing fees against the defendant at the hearing on the petition, if the

petition is granted, or against either party if the petition is denied; provided, the court shall have authority to waive the costs and fees if the court finds that the party does not have the ability to pay the costs and fees. A person who has previously been assessed court costs, service of process fees and filing fees pursuant to this subsection and who has not paid those costs and fees shall not file a petition for a protective order without permission of the court. 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 or the victim-witness coordinator shall prepare or assist the plaintiff in preparing the same.

SECTION 3. AMENDATORY 22 O.S. 2001, 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, if the court finds sufficient grounds within the scope of the Protection from Domestic Abuse Act stated in the petition to hold such a hearing. 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

more or 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 _____;~~
 - ~~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; or~~
 - ~~9. An order granting other relief as requested by the victim~~
- The Administrative Office of the Courts shall develop a standard form for emergency ex parte protective orders.

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.

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~~ bench warrant. In addition, if the service is to be in another county, the court clerk may issue service to the sheriff by facsimile or other electronic transmission for service by the sheriff. 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 or private process server 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)~~ twenty (20) days of the filing of the petition for a protective order, the court shall schedule a full hearing on the petition, if the court finds sufficient grounds within the scope of the Protection from Domestic Abuse Act stated in the petition to hold such a hearing, 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)~~ twenty (20) 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. The court may grant protective orders to both the plaintiff and the defendant, whether or not both parties filed for protective orders. 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. If more than one protective order is sought against a defendant or if parties are seeking protective orders against each other, the court may consolidate the multiple filings and proceed with one hearing.

E. 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 shall be on a standard form developed by the Administrative Office of the Courts.~~

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 court-approved 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.

SECTION 5. AMENDATORY 22 O.S. 2001, Section 60.8, as amended by Section 2, Chapter 443, O.S.L. 2002 (22 O.S. Supp. 2002, Section 60.8), is amended to read as follows:

Section 60.8 A. Each peace officer of this state shall seize any weapon or instrument when such officer has probable cause to believe such weapon or instrument is in the possession of a person who has been served with an ex parte or final protective order or foreign protective order or has been used to commit an act of domestic abuse as defined by Section 60.1 of this title, provided an arrest is made, if possible, at the same time.

B. After any such seizure, the District Attorney shall file a notice of seizure and forfeiture as provided in this section within ten (10) days of such seizure, or any weapon or instrument seized pursuant to this section shall be returned to the owner.

C. The seizure and forfeiture provisions of Section 991a-19 of this title shall be followed for any seizure and forfeiture of property pursuant to this section. No weapon or instrument seized pursuant to this section or monies from the sale of any such seized weapon or instrument shall be turned over to the person from whom such property was seized if a forfeiture action has been filed within the time required by subsection B of this section, unless authorized by this section. Provided further, the owner may prove at the forfeiture hearing that the conduct giving rise to the seizure was justified, and if the owner proves justification, the seized property shall be returned to the owner. Any proceeds gained from this seizure shall be placed in the Crime Victims Compensation Revolving Fund.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1603 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. The Criminal Justice Resource Center annually shall collect data on the number of victim protective orders issued in each county and the number of violations of victim protective orders in each county.

B. The Center shall provide this information to the Domestic Violence Fatality Review Board and the Administrative Office of the Courts.

SECTION 7. REPEALER 22 O.S. 2001, Section 60.11 and Section 2, Chapter 113, O.S.L. 2002 (22 O.S. Supp. 2002, Section 60.13), are hereby repealed.

SECTION 8. This act shall become effective November 1, 2003.

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