

EHB 2609

THE STATE SENATE
Tuesday, April 11, 2006

ENGROSSED

House Bill No. 2609

As Amended

ENGROSSED HOUSE BILL NO. 2609 - By: CASE, ASKINS, INGMIRE, BRADDOCK,
NANCE and HARRISON of the House and LASTER of the Senate.

[criminal procedures - Protection from Domestic Abuse Act -
collection of fee - effective date]

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

SECTION 1. AMENDATORY 22 O.S. 2001, Section 60.4, as
last amended by Section 15, Chapter 348, O.S.L. 2005 (22 O.S. Supp.
2005, 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 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. 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, if charged, shall be
the same as the ~~sheriff's~~ service fee of the sheriff plus mileage
expenses.

1 2. Emergency ex parte orders shall be given priority for
2 service and can be served twenty-four (24) hours a day when the
3 location of the defendant is known. When service cannot be made
4 upon the defendant by the sheriff, the sheriff may contact another
5 law enforcement officer or a private investigator or private process
6 server to serve the defendant.

7 3. An emergency ex parte order, a petition for protective
8 order, and a notice of hearing shall have statewide validity and may
9 be transferred to any law enforcement jurisdiction to effect service
10 upon the defendant.

11 4. The return of service shall be submitted to the ~~sheriff's~~
12 office of the sheriff in the court where the petition, notice of
13 hearing or order was issued.

14 5. When the defendant is a minor child who is ordered removed
15 from the residence of the victim, in addition to those documents
16 served upon the defendant, a copy of the petition, notice of hearing
17 and a copy of any ex parte order issued by the court shall be
18 delivered with the child to the caretaker of the place where ~~such~~
19 the child is taken pursuant to Section 7303-1.1 of Title 10 of the
20 Oklahoma Statutes.

21 B. 1. Within twenty (20) days of the filing of the petition
22 for a protective order, the court shall schedule a full hearing on
23 the petition, if the court finds sufficient grounds within the scope

1 of the Protection from Domestic Abuse Act stated in the petition to
2 hold such a hearing, regardless of whether an emergency ex parte
3 order has been previously issued, requested or denied. Provided,
4 however, when the defendant is a minor child who has been removed
5 from the residence pursuant to Section 7303-1.1 of Title 10 of the
6 Oklahoma Statutes, the court shall schedule a full hearing on the
7 petition within seventy-two (72) hours, regardless of whether an
8 emergency ex parte order has been previously issued, requested or
9 denied.

10 2. The court may schedule a full hearing on the petition for a
11 protective order within seventy-two (72) hours when the court issues
12 an emergency ex parte order suspending child visitation rights due
13 to physical violence or threat of abuse.

14 3. If service has not been made on the defendant at the time of
15 the hearing, the court shall continue the hearing.

16 4. A petition for a protective order shall automatically renew
17 every twenty (20) days until the defendant is served. A petition
18 for a protective order shall not expire and must be dismissed by
19 court order.

20 5. Failure to serve the defendant shall not be grounds for
21 dismissal of a petition or an ex parte order unless the victim
22 requests dismissal.

1 C. 1. At the hearing, the court may impose any terms and
2 conditions in the protective order that the court reasonably
3 believes are necessary to bring about the cessation of domestic
4 abuse against the victim or stalking or harassment of the victim or
5 the ~~victim's~~ immediate family of the victim and may order the
6 defendant to obtain domestic abuse counseling or treatment in a
7 program certified by the Attorney General at the ~~defendant's~~ expense
8 of the defendant pursuant to Section 644 of Title 21 of the Oklahoma
9 Statutes.

10 2. If the court grants a protective order and the defendant is
11 a minor child, the court shall order a preliminary inquiry in a
12 juvenile proceeding to determine whether further court action
13 pursuant to the Oklahoma Juvenile Code should be taken against a
14 juvenile defendant.

15 D. Final protective orders authorized by this section shall be
16 on a standard form developed by the Administrative Office of the
17 Courts.

18 E. 1. After notice and hearing, protective orders authorized
19 by this section may require the plaintiff or the defendant or both
20 to undergo treatment or participate in the court-approved counseling
21 services necessary to bring about cessation of domestic abuse
22 against the victim pursuant to Section 644 of Title 21 of the
23 Oklahoma Statutes.

1 2. Either party or both may be required to pay all or any part
2 of the cost of such treatment or counseling services. The court
3 shall not be responsible for such cost.

4 3. The court may require the defendant to be placed on an
5 active global position system monitoring device and may impose
6 payment of a supervision fee. The court clerk shall collect the
7 supervision fees.

8 F. When necessary to protect the victim and when authorized by
9 the court, protective orders granted pursuant to the provisions of
10 this section may be served upon the defendant by a peace officer,
11 sheriff, constable, or policeman or other officer whose duty it is
12 to preserve the peace, as defined by Section 99 of Title 21 of the
13 Oklahoma Statutes.

14 G. 1. Any protective order issued on or after November 1,
15 1999, pursuant to subsection C of this section shall be for a fixed
16 period not to exceed a period of three (3) years unless extended,
17 modified, vacated or rescinded upon motion by either party or if the
18 court approves any consent agreement entered into by the plaintiff
19 and defendant.

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

1 3. Upon the filing of a motion by either party to modify,
2 extend, or vacate a protective order, a hearing shall be scheduled
3 and notice given to the parties. At the hearing, the issuing court
4 may take such action as is necessary under the circumstances.

5 4. If a child has been removed from the residence of a parent
6 or custodial adult because of domestic abuse committed by the child,
7 the parent or custodial adult may refuse the return of ~~such~~ the
8 child to the residence, unless upon further consideration by the
9 court in a juvenile proceeding, it is determined that the child is
10 no longer a threat and should be allowed to return to the residence.

11 H. 1. It shall be unlawful for any person to knowingly and
12 willfully seek a protective order against a spouse or ex-spouse
13 pursuant to the Protection from Domestic Abuse Act for purposes of
14 harassment, undue advantage, intimidation, or limitation of child
15 visitation rights in any divorce proceeding or separation action
16 without justifiable cause.

17 2. The violator shall, upon conviction thereof, be guilty of a
18 misdemeanor punishable by imprisonment in the county jail for a
19 period not exceeding one (1) year or by a fine not to exceed Five
20 Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

21 3. A second or subsequent conviction under this subsection
22 shall be a felony punishable by imprisonment in the custody of the
23 Department of Corrections for a period not to exceed two (2) years,

1 or by a fine not to exceed Ten Thousand Dollars (\$10,000.00), or by
2 both such fine and imprisonment.

3 I. 1. A protective order issued under the Protection from
4 Domestic Abuse Act shall not in any manner affect title to real
5 property, purport to grant to the parties a divorce or otherwise
6 purport to determine the issues between the parties as to child
7 custody, visitation or visitation schedules, child support or
8 division of property or any other like relief obtainable pursuant to
9 Title 43 of the Oklahoma Statutes, except child visitation orders
10 may be temporarily suspended or modified to protect from threats of
11 abuse or physical violence by the defendant or a threat to violate a
12 custody order.

13 2. When granting any protective order for the protection of a
14 minor child from violence or threats of abuse, the court shall allow
15 visitation only under conditions that provide adequate supervision
16 and protection to the child while maintaining the integrity of a
17 divorce decree or temporary order.

18 J. 1. A court shall not issue any mutual protective orders.

19 2. If both parties allege domestic abuse by the other party,
20 the parties shall do so by separate petitions. The court shall
21 review each petition separately, in an individual or a consolidated
22 hearing and grant or deny each petition on its individual merits.
23 If the court finds cause to grant both motions, the court shall do

1 so by separate orders and with specific findings justifying the
2 issuance of each order.

3 3. The court may only consolidate a hearing if:

4 a. the court makes specific findings that:

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

8 (2) each party acted primarily as aggressors, and

9 b. the defendant filed a petition with the court for a
10 protective order no less than three (3) days, not
11 including weekends or holidays, prior to the first
12 scheduled full hearing on the petition filed by the
13 plaintiff, and

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

17 K. The court may allow a plaintiff or victim to be accompanied
18 by a victim support person at court proceedings. A victim support
19 person shall not make legal arguments, however, a victim support
20 person who is not a licensed attorney may offer the plaintiff or
21 victim comfort or support and may remain in close proximity to the
22 plaintiff or victim.

1 SECTION 2. AMENDATORY 22 O.S. 2001, Section 60.6, as
2 last amended by Section 16, Chapter 348, O.S.L. 2005 (22 O.S. Supp.
3 2005, Section 60.6), is amended to read as follows:

4 Section 60.6 A. Except as otherwise provided by this section,
5 any person who:

6 1. Has been served with an ex parte or final protective order
7 or foreign protective order and is in violation of ~~such~~ the
8 protective order, upon conviction, shall be guilty of a misdemeanor
9 and shall be punished by a fine of not more than One Thousand
10 Dollars (\$1,000.00) or by a term of imprisonment in the county jail
11 of not more than one (1) year, or both such fine and imprisonment;

12 2. After a previous conviction of a violation of a protective
13 order, is convicted of a second offense pursuant to the provisions
14 of this section shall, upon conviction, be deemed guilty of a
15 misdemeanor and shall be punished by a term of imprisonment in the
16 county jail of not less than ten (10) days and not more than one (1)
17 year. In addition to the term of imprisonment, the person may be
18 punished by a fine of not less than One Thousand Dollars (\$1,000.00)
19 and not more than Five Thousand Dollars (\$5,000.00); and

20 3. Except as provided for in paragraphs 1 and 2 of subsection B
21 of this section, after previous conviction of a violation of any
22 protective order, is convicted of a third or subsequent offense
23 pursuant to the provisions of this section shall be guilty of a

1 felony and shall be punished by a term of imprisonment in the
2 custody of the Department of Corrections for not less than one (1)
3 year nor more than three (3) years, or by a fine of not less than
4 Two Thousand Dollars (\$2,000.00) nor more than Ten Thousand Dollars
5 (\$10,000.00), or by both such fine and imprisonment.

6 B. 1. Any person who has been served with an ex parte or final
7 protective order or foreign protective order who violates the
8 protective order and causes physical injury or physical impairment
9 to the plaintiff or to any other person named in said protective
10 order shall, upon conviction, be guilty of a misdemeanor and shall
11 be punished by a term of imprisonment in the county jail for not
12 less than twenty (20) days nor more than one (1) year. In addition
13 to the term of imprisonment, the person may be punished by a fine
14 not to exceed Five Thousand Dollars (\$5,000.00).

15 2. Any person who is convicted of a second or subsequent
16 violation of a protective order which causes physical injury or
17 physical impairment to a plaintiff or to any other person named in
18 the protective order shall be guilty of a felony and shall be
19 punished by a term of imprisonment in the custody of the Department
20 of Corrections of not less than one (1) year nor more than five (5)
21 years, or by a fine of not less than Three Thousand Dollars
22 (\$3,000.00) nor more than Ten Thousand Dollars (\$10,000.00), or by
23 both such fine and imprisonment.

1 3. In determining the term of imprisonment required by this
2 section, the jury or sentencing judge shall consider the degree of
3 physical injury or physical impairment to the victim.

4 4. The provisions of this subsection shall not affect the
5 applicability of Sections 644, 645, 647 and 652 of Title 21 of the
6 Oklahoma Statutes.

7 C. The minimum sentence of imprisonment issued pursuant to the
8 provisions of paragraphs 2 and 3 of subsection A and paragraph 1 of
9 subsection B of this section shall not be subject to statutory
10 provisions for suspended sentences, deferred sentences or probation,
11 provided the court may subject any remaining penalty under the
12 jurisdiction of the court to the statutory provisions for suspended
13 sentences, deferred sentences or probation.

14 D. In addition to any other penalty specified by this section,
15 the court may require a defendant to be placed on an active global
16 position system monitoring device and may impose payment of a
17 supervision fee. The court clerk shall collect the supervision
18 fees.

19 E. In addition to any other penalty specified by this section,
20 the court shall require a defendant to undergo the treatment or
21 participate in the counseling services necessary to bring about the
22 cessation of domestic abuse against the victim or to bring about the

1 cessation of stalking or harassment of the victim. For every
2 conviction of violation of a protective order:

3 1. The court shall specifically order as a condition of a
4 suspended sentence or probation that a defendant participate in
5 counseling or undergo treatment to bring about the cessation of
6 domestic abuse as specified in paragraph 2 of this subsection;

7 2. a. The court shall require the defendant to participate
8 in counseling or undergo treatment for domestic abuse
9 by an individual licensed practitioner or a domestic
10 abuse counseling program approved by the court or a
11 domestic abuse treatment program certified by the
12 Attorney General. If the defendant is ordered to
13 participate in a domestic abuse counseling or
14 treatment program, the order shall require the
15 defendant to attend the program for a minimum of
16 fifty-two (52) weeks, complete the program, and be
17 evaluated before and after attendance of the program
18 by a program counselor or a private counselor.

19 b. A program for anger management, couples counseling, or
20 family and marital counseling shall not solely qualify
21 for the counseling or treatment requirement for
22 domestic abuse pursuant to this subsection. The
23 counseling may be ordered in addition to counseling

1 specifically for the treatment of domestic abuse or
2 per evaluation as set forth below. If, after
3 sufficient evaluation and attendance at required
4 counseling sessions, the domestic violence treatment
5 program or licensed professional determines that the
6 defendant does not evaluate as a perpetrator of
7 domestic violence or does evaluate as a perpetrator of
8 domestic violence and should complete other programs
9 of treatment simultaneously or prior to domestic
10 violence treatment, including but not limited to
11 programs related to the mental health, apparent
12 substance or alcohol abuse or inability or refusal to
13 manage anger, the defendant shall be ordered to
14 complete the counseling as per the recommendations of
15 the domestic violence treatment program or licensed
16 professional;

17 3. a. The court shall set a review hearing no more than one
18 hundred twenty (120) days after the defendant is
19 ordered to participate in a domestic abuse counseling
20 program or undergo treatment for domestic abuse to
21 assure the attendance and compliance of the defendant
22 with the provisions of this subsection and the
23 domestic abuse counseling or treatment requirements.

1 b. The court shall set a second review hearing after the
2 completion of the counseling or treatment to assure
3 the attendance and compliance of the defendant with
4 the provisions of this subsection and the domestic
5 abuse counseling or treatment requirements. The court
6 shall retain continuing jurisdiction over the
7 defendant during the course of ordered counseling
8 through the final review hearing;

9 4. The court may set subsequent or other review hearings as the
10 court determines necessary to assure the defendant attends and fully
11 complies with the provisions of this subsection and the domestic
12 abuse counseling or treatment requirements;

13 5. At any review hearing, if the defendant is not
14 satisfactorily attending individual counseling or a domestic abuse
15 counseling or treatment program or is not in compliance with any
16 domestic abuse counseling or treatment requirements, the court may
17 order the defendant to further or continue counseling, treatment, or
18 other necessary services. The court may revoke all or any part of a
19 suspended sentence, deferred sentence, or probation pursuant to
20 Section 991b of Title 22 of the Oklahoma Statutes and subject the
21 defendant to any or all remaining portions of the original sentence;

22 6. At the first review hearing, the court shall require the
23 defendant to appear in court. Thereafter, for any subsequent review

1 hearings, the court may accept a report on the progress of the
2 defendant from individual counseling, domestic abuse counseling, or
3 the treatment program. There shall be no requirement for the victim
4 to attend review hearings; and

5 7. If funding is available, a referee may be appointed and
6 assigned by the presiding judge of the district court to hear
7 designated cases set for review under this subsection. Reasonable
8 compensation for the referees shall be fixed by the presiding judge.
9 The referee shall meet the requirements and perform all duties in
10 the same manner and procedure as set forth in Sections 7003-8.6 and
11 7303-7.5 of Title 10 of the Oklahoma Statutes pertaining to referees
12 appointed in juvenile proceedings.

13 ~~E.~~ F. Ex parte and final protective orders shall include notice
14 of these penalties.

15 ~~F.~~ G. When a minor child violates the provisions of any
16 protective order, the violation shall be heard in a juvenile
17 proceeding and the court may order the child and the parent or
18 parents of the child to participate in family counseling services
19 necessary to bring about the cessation of domestic abuse against the
20 victim and may order community service hours to be performed in lieu
21 of any fine or imprisonment authorized by this section.

1 ~~G.~~ H. Any district court of this state and any judge thereof
2 shall be immune from any liability or prosecution for issuing an
3 order that requires a defendant to:

4 1. Attend a treatment program for domestic abusers certified by
5 the Attorney General;

6 2. Attend counseling or treatment services ordered as part of
7 any final protective order or for any violation of a protective
8 order; ~~and~~

9 3. Attend, complete, and be evaluated before and after
10 attendance by a treatment program for domestic abusers certified by
11 the Attorney General; and

12 4. Be placed on an active global position system monitoring
13 device.

14 ~~H.~~ I. At no time, under any proceeding, may a person protected
15 by a protective order be held to be in violation of that protective
16 order. Only a defendant against whom a protective order has been
17 issued may be held to have violated the order.

18 SECTION 3. This act shall become effective November 1, 2006.

19 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 4-5-06 - DO
20 PASS, As Amended.