

3 Senate Bill No. 920

4 SENATE BILL NO. 920 - By: WILLIAMSON of the Senate and SULLIVAN of
5 the House.

6 An Act relating to courts; authorizing appointment of court
7 referees for certain purposes; providing for compensation of
8 court referees; establishing duties of court referees;
9 stating effect of certain orders; amending 22 O.S. 2001,
10 Sections 60.3, as amended by Section 3, Chapter 407, O.S.L.
11 2003, and 60.4, as amended by Section 4, Chapter 407, O.S.L.
12 2003 (22 O.S. Supp. 2004, Sections 60.3 and 60.4), which
13 relate to protective orders; allowing court referees to
14 enter certain orders; stating effect of certain orders;
15 repealing Section 9, Chapter 400, O.S.L. 2002 (43 O.S. Supp.
16 2004, Section 104.1), which relates to district court
17 referees; providing for codification; and declaring an
18 emergency.

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

20 SECTION 1. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 127 of Title 20, unless there is
22 created a duplication in numbering, reads as follows:

23 A. Presiding judges of the district court may appoint court
24 referees in their judicial districts to hear designated cases as
25 assigned by the presiding judge. The referee may preside over and
26 adjudicate other matters of the district court as assigned by the
27 presiding judge of the district court.

28 B. Reasonable compensation for the referees shall be fixed by
29 that presiding judge.

1 C. A referee may approve and enter orders, both final and
2 temporary, of the district court and any such order not objected to
3 within three (3) days of the date of filing of the order shall be
4 deemed confirmed by the district court. During the three (3) day
5 period, the order of the referee shall be valid and in effect until
6 confirmed, modified or vacated by the district court.

7 SECTION 2. AMENDATORY 22 O.S. 2001, Section 60.3, as
8 amended by Section 3, Chapter 407, O.S.L. 2003 (22 O.S. Supp. 2004,
9 Section 60.3), is amended to read as follows:

10 Section 60.3A. If a plaintiff requests an emergency ex parte
11 order pursuant to Section 60.2 of this title, the court shall hold
12 an ex parte hearing on the same day the petition is filed, if the
13 court finds sufficient grounds within the scope of the Protection
14 from Domestic Abuse Act stated in the petition to hold such a
15 hearing. The court may, for good cause shown at the hearing, issue
16 any emergency ex parte order that it finds necessary to protect the
17 victim from immediate and present danger of domestic abuse,
18 stalking, or harassment. The emergency ex parte order shall be in
19 effect until after the full hearing is conducted. Provided, if the
20 defendant, after having been served, does not appear at the hearing,
21 the emergency ex parte order shall remain in effect until the
22 defendant is served with the permanent order. If the terms of the
23 permanent order are the same as those in the emergency order, or are

1 less restrictive, then it is not necessary to serve the defendant
2 with the permanent order. The Administrative Office of the Courts
3 shall develop a standard form for emergency ex parte protective
4 orders. A request for an emergency ex parte protective order may be
5 heard by a district court referee as authorized pursuant to Section
6 1 of this act. If an emergency ex parte protective order is granted
7 by a district court referee, it shall be valid without the
8 confirmation of the district court.

9 B. An emergency ex parte protective order authorized by this
10 section shall include the name, sex, race, date of birth of the
11 defendant, and the dates of issue and expiration of the protective
12 order.

13 C. If a plaintiff requests an emergency temporary ex parte
14 order of protection as provided by Section 40.3 of this title, the
15 judge who is notified of the request by a peace officer may issue
16 such order verbally to the officer or in writing when there is
17 reasonable cause to believe that the order is necessary to protect
18 the victim from immediate and present danger of domestic abuse.
19 When the order is issued verbally the judge shall direct the officer
20 to complete and sign a statement attesting to the order. The
21 emergency temporary ex parte order shall be in effect until the
22 close of business on the next day the court is open for business
23 after the order is issued.

1 SECTION 3. AMENDATORY 22 O.S. 2001, Section 60.4, as
2 amended by Section 4, Chapter 407, O.S.L. 2003 (22 O.S. Supp. 2004,
3 Section 60.4), is amended to read as follows:

4 Section 60.4 A. 1. A copy of the petition, notice of hearing
5 and a copy of any emergency ex parte order issued by the court shall
6 be served upon the defendant in the same manner as a bench warrant.
7 In addition, if the service is to be in another county, the court
8 clerk may issue service to the sheriff by facsimile or other
9 electronic transmission for service by the sheriff. Any fee for
10 service of an emergency ex parte order, petition for protective
11 order, and notice of hearing shall only be charged pursuant to
12 subsection C of Section 60.2 of this title and, if charged, shall be
13 the same as the sheriff's service fee plus mileage expenses.

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

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

1 4. The return of service shall be submitted to the sheriff's
2 office in the court where the petition, notice of hearing or order
3 was issued.

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

11 B. 1. Within twenty (20) days of the filing of the petition
12 for a protective order, the court shall schedule a full hearing on
13 the petition, if the court finds sufficient grounds within the scope
14 of the Protection from Domestic Abuse Act stated in the petition to
15 hold such a hearing, regardless of whether an emergency ex parte
16 order has been previously issued, requested or denied. Provided,
17 however, when the defendant is a minor child who has been removed
18 from the residence pursuant to Section 7303-1.1 of Title 10 of the
19 Oklahoma Statutes, the court shall schedule a full hearing on the
20 petition within seventy-two (72) hours, regardless of whether an
21 emergency ex parte order has been previously issued, requested or
22 denied.

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

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

7 4. A petition for a protective order shall automatically renew
8 every twenty (20) days until the defendant is served. A petition
9 for a protective order shall not expire and must be dismissed by
10 court order.

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

14 C. 1. At the hearing, the court may impose any terms and
15 conditions in the protective order that the court reasonably
16 believes are necessary to bring about the cessation of domestic
17 abuse against the victim or stalking or harassment of the victim or
18 the victim's immediate family and may order the defendant to obtain
19 domestic abuse counseling or treatment in a program certified by the
20 Department of Mental Health and Substance Abuse Services at the
21 defendant's expense pursuant to Section 644 of Title 21 of the
22 Oklahoma Statutes.

1 2. If the court grants a protective order and the defendant is
2 a minor child, the court shall order a preliminary inquiry in a
3 juvenile proceeding to determine whether further court action
4 pursuant to the Oklahoma Juvenile Code should be taken against a
5 juvenile defendant. The hearing for a final protective order may be
6 conducted by a district court referee authorized pursuant to Section
7 1 of this act. Protective orders entered by the referee shall serve
8 as findings of fact, conclusions of law and recommendations to the
9 court. If no objection is filed within three (3) days from the date
10 the order is filed, the order shall be deemed confirmed by the
11 district court. During the three-day period, the order of the
12 referee shall be valid and in effect until confirmed, modified or
13 vacated by the district court.

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

17 E. 1. After notice and hearing, protective orders authorized
18 by this section may require the plaintiff or the defendant or both
19 to undergo treatment or participate in the court-approved counseling
20 services necessary to bring about cessation of domestic abuse
21 against the victim pursuant to Section 644 of Title 21 of the
22 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 F. When necessary to protect the victim and when authorized by
5 the court, protective orders granted pursuant to the provisions of
6 this section may be served upon the defendant by a peace officer,
7 sheriff, constable, or policeman or other officer whose duty it is
8 to preserve the peace, as defined by Section 99 of Title 21 of the
9 Oklahoma Statutes.

10 G. 1. Any protective order issued on or after November 1,
11 1999, pursuant to subsection C of this section shall be for a fixed
12 period not to exceed a period of three (3) years unless extended,
13 modified, vacated or rescinded upon motion by either party or if the
14 court approves any consent agreement entered into by the plaintiff
15 and defendant.

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

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

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

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

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

17 3. A second or subsequent conviction under this subsection
18 shall be a felony punishable by imprisonment in the custody of the
19 Department of Corrections for a period not to exceed two (2) years,
20 or by a fine not to exceed Ten Thousand Dollars (\$10,000.00), or by
21 both such fine and imprisonment.

22 I. 1. A protective order issued under the Protection from
23 Domestic Abuse Act shall not in any manner affect title to real

1 property, purport to grant to the parties a divorce or otherwise
2 purport to determine the issues between the parties as to child
3 custody, visitation or visitation schedules, child support or
4 division of property or any other like relief obtainable pursuant to
5 Title 43 of the Oklahoma Statutes, except child visitation orders
6 may be temporarily suspended or modified to protect from threats of
7 abuse or physical violence by the defendant or a threat to violate a
8 custody order.

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

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

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

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

23 a. the court makes specific findings that:

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

4 (2) each party acted primarily as aggressors, and
5 b. the defendant filed a petition with the court for a
6 protective order no less than three (3) days, not
7 including weekends or holidays, prior to the first
8 scheduled full hearing on the petition filed by the
9 plaintiff, and

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

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

19 SECTION 4. REPEALER Section 9, Chapter 400, O.S.L. 2002
20 (43 O.S. Supp. 2004, Section 104.1), is hereby repealed.

21 SECTION 5. It being immediately necessary for the preservation
22 of the public peace, health and safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.
3 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-8-05 - DO PASS,
4 As Coauthored.