

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 1575

6 By: Peters

7 COMMITTEE SUBSTITUTE

8 An Act relating to domestic violence; amending 22
9 O.S. 2001, Sections 60.1, as last amended by Section
10 14, Chapter 348, O.S.L. 2005, 60.2, as last amended
11 by Section 1, Chapter 302, O.S.L. 2006, 60.3, as
12 amended by Section 3, Chapter 407, O.S.L. 2003, 60.4,
13 as last amended by Section 1, Chapter 34, O.S.L. 2006
14 and Section 6, Chapter 466, O.S.L. 2002, as amended
15 by Section 3, Chapter 516, O.S.L. 2004 (22 O.S. Supp.
16 2006, Sections 60.1, 60.2, 60.3, 60.4 and 60.16),
17 which relate to Protection from Domestic Abuse Act;
18 expanding scope of certain definition; authorizing
19 request for emergency temporary order of protection
20 pursuant to certain procedures; modifying statutory
21 reference; clarifying certain procedure for issuing
22 emergency temporary ex parte orders of protection;
23 modifying service of process and hearing
24 requirements; providing for certain assessment;
expanding list of persons authorized to serve
protective orders; providing automatic renewal of
protective order; prohibiting issuance of temporary
protective orders; modifying procedures for emergency
temporary order of protection; requiring certain
entity to annually update certain forms; providing
for codification; and providing an effective date.

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

1 SECTION 1. AMENDATORY 22 O.S. 2001, Section 60.1, as
2 last amended by Section 14, Chapter 348, O.S.L. 2005 (22 O.S. Supp.
3 2006, Section 60.1), is amended to read as follows:

4 Section 60.1 As used in the Protection from Domestic Abuse Act
5 and in the Domestic Abuse Reporting Act, Sections 40.5 through 40.7
6 of this title and Section 150.12B of Title 74 of the Oklahoma
7 Statutes:

8 1. "Domestic abuse" means any act of physical harm, or the
9 threat of imminent physical harm which is committed by an adult,
10 emancipated minor, or minor child thirteen (13) years of age or
11 older against another adult, emancipated minor or minor child who
12 are family or household members or who are or were in a dating
13 relationship;

14 2. "Stalking" means the willful, malicious, and repeated
15 following or harassing of a person by an adult, emancipated minor,
16 or minor thirteen (13) years of age or older, ~~with the intent of~~
17 ~~placing the person in that would cause a reasonable fear of death or~~
18 ~~great bodily injury~~ person to feel frightened, intimidated,
19 harassed, or molested and that actually causes the person being
20 followed or harassed to feel terrorized, frightened, intimidated,
21 threatened, harassed, or molested;

22 3. "Harassment" means a knowing and willful course or pattern
23 of conduct by a family or household member or an individual who is
24 or has been involved in a dating relationship with the person,

1 directed at a specific person which seriously alarms or annoys the
2 person, and which serves no legitimate purpose. The course of
3 conduct must be such as would cause a reasonable person to suffer
4 substantial emotional distress, and must actually cause substantial
5 distress to the person. "Harassment" shall include, but not be
6 limited to, harassing or obscene telephone calls in violation of
7 Section 1172 of Title 21 of the Oklahoma Statutes and fear of death
8 or bodily injury;

9 4. "Family or household members" means:

- 10 a. spouses,
- 11 b. ex-spouses,
- 12 c. present spouses of ex-spouses,
- 13 d. parents, including grandparents, stepparents, adoptive
14 parents and foster parents,
- 15 e. children, including grandchildren, stepchildren,
16 adopted children and foster children,
- 17 f. persons otherwise related by blood or marriage,
- 18 g. persons living in the same household or who formerly
19 lived in the same household, and
- 20 h. persons who are the biological parents of the same
21 child, regardless of their marital status, or whether
22 they have lived together at any time. This shall
23 include the elderly and handicapped;

24

1 5. "Dating relationship" means a courtship or engagement
2 relationship. For purposes of this act, a casual acquaintance or
3 ordinary fraternization between persons in a business or social
4 context shall not constitute a dating relationship;

5 6. "Foreign protective order" means any valid order of
6 protection issued by a court of another state or a tribal court;

7 7. "Rape" means rape and rape by instrumentation in violation
8 of Sections 1111 and 1111.1 of Title 21 of the Oklahoma Statutes;

9 8. "Victim support person" means a person affiliated with a
10 certified domestic violence or sexual assault program, certified by
11 the Attorney General or certified by a recognized Native American
12 Tribe if operating mainly within tribal lands, who provides support
13 and assistance for a person who files a petition under the
14 Protection from Domestic Violence Act; and

15 9. "Mutual protective order" means a final protective order or
16 orders issued to both a plaintiff who has filed a petition for a
17 protective order and a defendant included as the defendant in the
18 plaintiff's petition restraining the parties from committing
19 domestic violence, stalking, harassment or rape against each other.
20 If both parties allege domestic abuse, violence, stalking,
21 harassment or rape against each other, the parties shall do so by
22 separate petition pursuant to Section 60.4 of this title.

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1 SECTION 2. AMENDATORY 22 O.S. 2001, Section 60.2, as
2 last amended by Section 1, Chapter 302, O.S.L. 2006 (22 O.S. Supp.
3 2006, Section 60.2), is amended to read as follows:

4 Section 60.2 A. A victim of domestic abuse, a victim of
5 stalking, a victim of harassment, a victim of rape, any adult or
6 emancipated minor household member on behalf of any other family or
7 household member who is a minor or incompetent, or any minor age
8 sixteen (16) or seventeen (17) years may seek relief under the
9 provisions of the Protection from Domestic Abuse Act.

10 1. The person seeking relief may file a petition for a
11 protective order with the district court in the county in which the
12 victim resides, the county in which the defendant resides, or the
13 county in which the domestic violence occurred. If the person
14 seeking relief is a victim of stalking but is not a family or
15 household member or an individual who is or has been in a dating
16 relationship with the defendant, the person seeking relief must file
17 a complaint against the defendant with the proper law enforcement
18 agency before filing a petition for a protective order with the
19 district court. The person seeking relief shall provide a copy of
20 the complaint that was filed with the law enforcement agency at the
21 full hearing if the complaint is not available from the law
22 enforcement agency. Failure to provide a copy of the complaint
23 filed with the law enforcement agency shall constitute a frivolous
24 filing and the court may assess attorney fees and court costs

1 against the plaintiff pursuant to paragraph 2 of subsection C of
2 ~~Section 60.2 of this title~~ section. The filing of a petition for a
3 protective order shall not require jurisdiction or venue of the
4 criminal offense if either the plaintiff or defendant resides in the
5 county. If a petition has been filed in an action for divorce or
6 separate maintenance and either party to the action files a petition
7 for a protective order in the same county where the action for
8 divorce or separate maintenance is filed, the petition for the
9 protective order shall be heard by the court hearing the divorce or
10 separate maintenance action. If the defendant is a minor child, the
11 petition shall be filed with the court having jurisdiction over
12 juvenile matters.

13 2. When the abuse occurs when the court is not open for
14 business, such person ~~may request~~ shall be advised that an emergency
15 temporary order of protection ~~as authorized by Section 40.3 of~~ may
16 be requested according to the procedures set out in this title act.

17 B. The petition forms shall be provided by the clerk of the
18 court. The Administrative Office of the Courts shall develop a
19 standard form for the petition.

20 C. 1. Except as otherwise provided by this section, no filing
21 fee, service of process fee, attorney fees or any other fee or
22 costs shall be charged the plaintiff or victim at any time for
23 filing a petition for a protective order whether a protective order
24 is granted or not granted. The court may assess court costs,

1 service of process fees, attorney fees, other fees and filing fees
2 against the defendant at the hearing on the petition, if a
3 protective order is granted against the defendant; provided, the
4 court shall have authority to waive the costs and fees if the court
5 finds that the party does not have the ability to pay the costs and
6 fees.

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

11 D. The person seeking relief shall prepare the petition or, at
12 the request of the plaintiff, the court clerk or the victim-witness
13 coordinator, victim support person, and court case manager shall
14 prepare or assist the plaintiff in preparing the petition.

15 SECTION 3. AMENDATORY 22 O.S. 2001, Section 60.3, as
16 amended by Section 3, Chapter 407, O.S.L. 2003 (22 O.S. Supp. 2006,
17 Section 60.3), is amended to read as follows:

18 Section 60.3 A. If a plaintiff requests an emergency ex parte
19 order pursuant to Section 60.2 of this title, the court shall hold
20 an ex parte hearing on the same day the petition is filed, if the
21 court finds sufficient grounds within the scope of the Protection
22 from Domestic Abuse Act stated in the petition to hold such a
23 hearing. The court may, for good cause shown at the hearing, issue
24 any emergency ex parte order that it finds necessary to protect the

1 victim from immediate and present danger of domestic abuse,
2 stalking, or harassment. The emergency ex parte order shall be in
3 effect until after the full hearing is conducted. Provided, if the
4 defendant, after having been served, does not appear at the hearing,
5 the emergency ex parte order shall remain in effect until the
6 defendant is served with the permanent order. If the terms of the
7 permanent order are the same as those in the emergency order, or are
8 less restrictive, then it is not necessary to serve the defendant
9 with the permanent order.

10 The Administrative Office of the Courts shall develop a standard
11 form for emergency ex parte protective orders.

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

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

1 effect until the close of business on the next day the court is open
2 for business after the order is issued.

3 SECTION 4. AMENDATORY 22 O.S. 2001, Section 60.4, as
4 last amended by Section 1, Chapter 34, O.S.L. 2006 (22 O.S. Supp.
5 2006, Section 60.4), is amended to read as follows:

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

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

23 3. An emergency ex parte order, a petition for protective
24 order, and a notice of hearing shall have statewide validity and may

1 be transferred to any law enforcement jurisdiction to effect service
2 upon the defendant.

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

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

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

9 4. A petition for a protective order shall, ~~upon the~~
10 ~~petitioner's request,~~ renew every twenty (20) days with a new
11 hearing date assigned until the defendant is served. A petition for
12 a protective order shall not expire unless the petitioner fails to
13 appear at the hearing ~~or fails to request a new order.~~ A petitioner
14 may move to dismiss the petition and emergency or final order at any
15 time, however, a protective order must be dismissed by court order.

16 5. Failure to serve the defendant shall not be grounds for
17 dismissal of a petition or an ex parte order unless the victim
18 requests dismissal or fails to appear for the hearing thereon.

19 C. 1. At the hearing, the court may impose any terms and
20 conditions in the protective order that the court reasonably
21 believes are necessary to bring about the cessation of domestic
22 abuse against the victim or stalking or harassment of the victim or
23 the victim's immediate family and may order the defendant to obtain
24 domestic abuse counseling or treatment in a program certified by the

1 Attorney General at the defendant's expense pursuant to Section 644
2 of Title 21 of the Oklahoma Statutes.

3 2. If the court grants a protective order and the defendant is
4 a minor child, the court shall order a preliminary inquiry in a
5 juvenile proceeding to determine whether further court action
6 pursuant to the Oklahoma Juvenile Code should be taken against a
7 juvenile defendant.

8 D. Final protective orders authorized by this section shall be
9 on a standard form developed by the Administrative Office of the
10 Courts.

11 E. 1. After notice and hearing, protective orders authorized
12 by this section may require the plaintiff or the defendant or both
13 to undergo treatment or participate in the court-approved counseling
14 services necessary to bring about cessation of domestic abuse
15 against the victim pursuant to Section 644 of Title 21 of the
16 Oklahoma Statutes or require a danger or domestic violence
17 assessment performed by a mental health professional.

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

21 F. When necessary to protect the victim and when authorized by
22 the court, protective orders granted pursuant to the provisions of
23 this section may be served upon the defendant by a peace officer,
24 sheriff, constable, ~~or~~ policeman, licensed process server or other

1 ~~officer whose duty it is to preserve the peace, as defined by~~
2 ~~Section 99 of Title 21 of the Oklahoma Statutes~~ person authorized by
3 the court.

4 G. 1. Any protective order issued on or after November 1,
5 1999, pursuant to subsection C of this section shall be for a fixed
6 period ~~not to exceed a period~~ of three (3) years which shall
7 automatically renew unless extended, modified, vacated or rescinded
8 upon motion by either party or if the court approves any consent
9 agreement entered into by the plaintiff and defendant.

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

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

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

23 H. 1. It shall be unlawful for any person to knowingly and
24 willfully seek a protective order against a spouse or ex-spouse

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

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

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

14 I. 1. A protective order issued under the Protection from
15 Domestic Abuse Act shall not in any manner affect title to real
16 property, purport to grant to the parties a divorce or otherwise
17 purport to determine the issues between the parties as to child
18 custody, visitation or visitation schedules, child support or
19 division of property or any other like relief obtainable pursuant to
20 Title 43 of the Oklahoma Statutes, except child visitation orders
21 may be temporarily suspended or modified to protect from threats of
22 abuse or physical violence by the defendant or a threat to violate a
23 custody order.

24

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

6 J. 1. A court shall not issue any mutual protective orders or
7 temporary orders except as provided for an emergency ex parte
8 protective order.

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

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

17 a. the court makes specific findings that:

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

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

22 b. the defendant filed a petition with the court for a
23 protective order no less than three (3) days, not
24 including weekends or holidays, prior to the first

1 scheduled full hearing on the petition filed by the
2 plaintiff, and

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

6 K. The court may allow a plaintiff or victim to be accompanied
7 by a victim support person at court proceedings. A victim support
8 person shall not make legal arguments, however, a victim support
9 person who is not a licensed attorney may offer the plaintiff or
10 victim comfort or support and may remain in close proximity to the
11 plaintiff or victim.

12 SECTION 5. AMENDATORY Section 6, Chapter 466, O.S.L.
13 2002, as amended by Section 3, Chapter 516, O.S.L. 2004 (22 O.S.
14 Supp. 2006, Section 60.16), is amended to read as follows:

15 Section 60.16 A. A peace officer shall not discourage a victim
16 of domestic abuse from pressing charges against the assailant of the
17 victim.

18 B. 1. A peace officer may arrest without a warrant a person
19 anywhere, including a place of residence, if the peace officer has
20 probable cause to believe the person within the preceding seventy-
21 two (72) hours has committed an act of domestic abuse as defined by
22 Section 60.1 of this title, although the assault did not take place
23 in the presence of the peace officer. A peace officer may not
24 arrest a person pursuant to this section without first observing a

1 recent physical injury to, or an impairment of the physical
2 condition of, the alleged victim.

3 2. An arrest, when made pursuant to this section, shall be
4 based on an investigation by the peace officer of the circumstances
5 surrounding the incident, past history of violence between the
6 parties, statements of any children present in the residence, and
7 any other relevant factors. A determination by the peace officer
8 shall be made pursuant to the investigation as to which party is the
9 dominant aggressor in the situation. A peace officer may arrest the
10 dominant aggressor.

11 C. When the court is not open for business, the victim of
12 domestic abuse, stalking, or harassing behavior may request a
13 petition for an emergency temporary order of protection. The peace
14 officer making the preliminary investigation shall:

15 1. ~~Provide~~ Inform the victim that an emergency temporary order
16 of protection is available, provide the victim with a petition for
17 an emergency temporary order of protection and, if necessary, assist
18 the victim in completing the petition form. The petition shall be
19 in substantially the same form as provided by Section 60.2 of this
20 title for a petition for protective order;

21 2. Immediately notify, by telephone or otherwise, a judge of
22 the district court of the request for an emergency temporary order
23 of protection and describe the circumstances. The judge shall
24

1 | inform the peace officer of the decision to approve or disapprove
2 | the emergency temporary order;

3 | 3. Inform the victim whether the judge has approved or
4 | disapproved the emergency temporary order. If an emergency
5 | temporary order has been approved, the officer shall provide the
6 | victim, or a responsible adult if the victim is a minor child or an
7 | incompetent person, with a copy of the petition and a written
8 | statement signed by the officer attesting that the judge has
9 | approved the emergency temporary order of protection and notify the
10 | victim that the emergency temporary order shall be effective only
11 | until the close of business on the next day that the court is open
12 | for business;

13 | 4. Notify the person subject to the emergency temporary
14 | protection order of the issuance and conditions of the order.
15 | Notification pursuant to this paragraph may be made personally by
16 | the officer or in writing. A copy of the petition and the statement
17 | of the officer attesting to the order of the judge shall be made
18 | available to such person; and

19 | 5. File a copy of the petition and the statement of the officer
20 | with the district court of the county immediately upon the opening
21 | of the court on the next day the court is open for business.

22 | D. The forms utilized by law enforcement agencies in carrying
23 | out the provisions of this section may be substantially similar to
24 | those used under Section 60.2 of this title.

1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 60.19 of Title 22, unless there
3 is created a duplication in numbering, reads as follows:

4 The Administrative Office of the Courts shall annually update
5 the forms required by the Protection from Domestic Abuse Act to
6 reflect any changes made to the act no later than July 1 of each
7 year.

8 SECTION 7. This act shall become effective November 1, 2007.

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