

1 ENGROSSED SENATE
2 BILL NO. 2163

By: Leftwich, Adelson, Eason
McIntyre, Williamson and
Wilson of the Senate

3
4 and

5 Peters, Hamilton, Denney,
6 Sullivan, Joyner and Tibbs
7 of the House

8
9 [criminal procedure - protective orders - GPS
10 monitoring -

11 effective date]
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14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

15 SECTION 1. AMENDATORY 22 O.S. 2001, Section 60.6, as
16 last amended by Section 5, Chapter 156, O.S.L. 2007 (22 O.S. Supp.
17 2007, Section 60.6), is amended to read as follows:

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

- 20 1. Has been served with an ex parte or final protective order
21 or foreign protective order and is in violation of such protective
22 order, upon conviction, shall be guilty of a misdemeanor and shall
23 be punished by a fine of not more than One Thousand Dollars
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1 (\$1,000.00) or by a term of imprisonment in the county jail of not
2 more than one (1) year, or both such fine and imprisonment; and

3 2. After a previous conviction of a violation of a protective
4 order, is convicted of a second or subsequent offense pursuant to
5 the provisions of this section shall, upon conviction, be guilty of
6 a felony and shall be punished by a term of imprisonment in the
7 custody of the Department of Corrections for not less than one (1)
8 year nor more than three (3) years, or by a fine of not less than
9 Two Thousand Dollars (\$2,000.00) nor more than Ten Thousand Dollars
10 (\$10,000.00), or by both such fine and imprisonment.

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

20 2. Any person who is convicted of a second or subsequent
21 violation of a protective order which causes physical injury or
22 physical impairment to a plaintiff or to any other person named in
23 the protective order shall be guilty of a felony and shall be
24 punished by a term of imprisonment in the custody of the Department

1 of Corrections of not less than one (1) year nor more than five (5)
2 years, or by a fine of not less than Three Thousand Dollars
3 (\$3,000.00) nor more than Ten Thousand Dollars (\$10,000.00), or by
4 both such fine and imprisonment.

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

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

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

18 D. In addition to any other penalty specified by this section,
19 the court shall require a defendant to undergo the treatment or
20 participate in the counseling services necessary to bring about the
21 cessation of domestic abuse against the victim or to bring about the
22 cessation of stalking or harassment of the victim. For every
23 conviction of violation of a protective order:
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1 1. The court shall specifically order as a condition of a
2 suspended sentence or probation that a defendant participate in
3 counseling or undergo treatment to bring about the cessation of
4 domestic abuse as specified in paragraph 2 of this subsection;

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

16 b. A program for anger management, couples counseling, or
17 family and marital counseling shall not solely qualify
18 for the counseling or treatment requirement for
19 domestic abuse pursuant to this subsection. The
20 counseling may be ordered in addition to counseling
21 specifically for the treatment of domestic abuse or
22 per evaluation as set forth below. If, after
23 sufficient evaluation and attendance at required
24 counseling sessions, the domestic violence treatment

1 program or licensed professional determines that the
2 defendant does not evaluate as a perpetrator of
3 domestic violence or does evaluate as a perpetrator of
4 domestic violence and should complete other programs
5 of treatment simultaneously or prior to domestic
6 violence treatment, including but not limited to
7 programs related to the mental health, apparent
8 substance or alcohol abuse or inability or refusal to
9 manage anger, the defendant shall be ordered to
10 complete the counseling as per the recommendations of
11 the domestic violence treatment program or licensed
12 professional;

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

20 b. The court shall set a second review hearing after the
21 completion of the counseling or treatment to assure
22 the attendance and compliance of the defendant with
23 the provisions of this subsection and the domestic
24 abuse counseling or treatment requirements. The court

1 shall retain continuing jurisdiction over the
2 defendant during the course of ordered counseling
3 through the final review hearing;

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

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

18 6. At the first review hearing, the court shall require the
19 defendant to appear in court. Thereafter, for any subsequent review
20 hearings, the court may accept a report on the progress of the
21 defendant from individual counseling, domestic abuse counseling, or
22 the treatment program. There shall be no requirement for the victim
23 to attend review hearings; and
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1 7. If funding is available, a referee may be appointed and
2 assigned by the presiding judge of the district court to hear
3 designated cases set for review under this subsection. Reasonable
4 compensation for the referees shall be fixed by the presiding judge.
5 The referee shall meet the requirements and perform all duties in
6 the same manner and procedure as set forth in Sections 7003-8.6 and
7 7303-7.5 of Title 10 of the Oklahoma Statutes pertaining to referees
8 appointed in juvenile proceedings.

9 E. Ex parte and final protective orders shall include notice of
10 these penalties.

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

18 G. Any district court of this state and any judge thereof shall
19 be immune from any liability or prosecution for issuing an order
20 that requires a defendant to:

21 1. Attend a treatment program for domestic abusers certified by
22 the Attorney General;

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1 2. Attend counseling or treatment services ordered as part of
2 any final protective order or for any violation of a protective
3 order; and

4 3. Attend, complete, and be evaluated before and after
5 attendance by a treatment program for domestic abusers certified by
6 the Attorney General.

7 H. At no time, under any proceeding, may a person protected by
8 a protective order be held to be in violation of that protective
9 order. Only a defendant against whom a protective order has been
10 issued may be held to have violated the order.

11 I. In addition to any other penalty specified by this section,
12 the court may order a defendant to use an active, real-time, twenty-
13 four-hour Global Positioning Monitoring System (GPS) device as a
14 condition of a sentence. The court may further order the defendant
15 to pay costs and expenses related to the GPS device and monitoring.

16 SECTION 2. AMENDATORY Section 4, Chapter 516, O.S.L.
17 2004 (22 O.S. Supp. 2007, Section 60.17), is amended to read as
18 follows:

19 Section 60.17 The court shall consider the safety of any and
20 all alleged victims of domestic violence, stalking, harassment,
21 sexual assault, or forcible sodomy where the defendant is alleged to
22 have violated a protective order, committed domestic assault and
23 battery, stalked, sexually assaulted, or forcibly sodomized the
24 alleged victim or victims prior to the release of the alleged

1 defendant from custody on bond. The court, after consideration and
2 to ensure the safety of the alleged victim or victims, may issue an
3 emergency protective order pursuant to the Protection from Domestic
4 Abuse Act. The court may also issue to the alleged victim or
5 victims, an order restraining the alleged defendant from any
6 activity or action from which they may be restrained under the
7 Protection from Domestic Abuse Act. The protective order shall
8 remain in effect until either a plea has been accepted, sentencing
9 has occurred in the case, the case has been dismissed, or until
10 further order of the court dismissing the protective order. In
11 conjunction with any protective order or restraining order
12 authorized by this section, the court may order the defendant to use
13 an active, real-time, twenty-four-hour Global Positioning Monitoring
14 System (GPS) device for such term as the court deems appropriate.
15 Before the court orders the use of a GPS device, the court shall
16 find that the defendant has a history that demonstrates an intent to
17 commit violence against the victim, including, but not limited to,
18 prior conviction for an offense under the Protection from Domestic
19 Abuse Act or any other violent offense, or any other evidence that
20 shows by a preponderance of the evidence that the defendant is
21 likely to commit violence against the victim. The court may further
22 order the defendant to pay costs and expenses related to the GPS
23 device and monitoring.

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1 SECTION 3. AMENDATORY Section 3, Chapter 125, O.S.L.
2 2002 (22 O.S. Supp. 2007, Section 1105.3), is amended to read as
3 follows:

4 Section 1105.3 A. Any eligible county pursuant to the
5 provisions of this act may establish and fund a pretrial program to
6 be utilized by the district court in that jurisdiction.

7 B. When a pretrial release program is established pursuant to
8 this act and private bail has not been furnished, the judge may
9 order a person to be evaluated through the pretrial program. After
10 conducting an evaluation of the person applying for pretrial
11 release, the pretrial program shall make a recommendation to the
12 court. The recommendation shall indicate any special supervisory
13 conditions for pretrial release. The judge shall consider the
14 recommendations and may grant or deny pretrial release. The
15 presiding judge of the judicial district may issue a standing order
16 outlining criteria for cases that may automatically be evaluated for
17 pretrial release by a pretrial program operating in the
18 jurisdiction. The standing order may include amounts for bail and
19 types of bonds deemed appropriate for certain offenses.

20 C. Except as otherwise authorized by the provisions of this
21 subsection, persons accused of or detained for any of the following
22 offenses or conditions shall not be eligible for pretrial release by
23 any pretrial program:

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- 1 1. Aggravated driving under the influence of an intoxicating
2 substance;
- 3 2. Any felony driving under the influence of an intoxicating
4 substance;
- 5 3. Any offense prohibited by the Trafficking In Illegal Drugs
6 Act;
- 7 4. Any person having a violent felony conviction within the
8 past ten (10) years;
- 9 5. Appeal bond;
- 10 6. Arson in the first degree, including attempts to commit
11 arson in the first degree;
- 12 7. Assault and battery on a police officer;
- 13 8. Bail jumping;
- 14 9. Bribery of a public official;
- 15 10. Burglary in the first or second degree;
- 16 11. Civil contempt proceedings;
- 17 12. Distribution of a controlled dangerous substance, including
18 the sale or possession of a controlled dangerous substance with
19 intent to distribute or conspiracy to distribute;
- 20 13. Domestic abuse or domestic assault and battery;
- 21 14. Driving under the influence of intoxicating substance where
22 property damage or personal injury occurs;
- 23 15. Felony discharging a firearm from a vehicle;
- 24 16. Felony sex offenses;

- 1 17. Fugitive bond or a governor's fugitive warrant;
- 2 18. Immigration charges;
- 3 19. Kidnapping;
- 4 20. Juvenile or youthful offender detention;
- 5 21. Manslaughter;
- 6 22. Manufacture of a controlled dangerous substance;
- 7 23. Murder in the first degree, including attempts or
- 8 conspiracy to commit murder in the first degree;
- 9 24. Murder in the second degree, including attempts or
- 10 conspiracy to commit murder in the second degree;
- 11 25. Negligent homicide;
- 12 26. Out-of-county holds;
- 13 27. Persons currently on pretrial release who are arrested on a
- 14 new felony offense;
- 15 28. Possession, manufacture, use, sale or delivery of an
- 16 explosive device;
- 17 29. Possession of a controlled dangerous substance on Schedule
- 18 I or II of the Controlled Dangerous Substances Act;
- 19 30. Possession of a firearm or other offensive weapon during
- 20 the commission of a felony;
- 21 31. Possession of a stolen vehicle;
- 22 32. Rape in the first degree, including attempts to commit rape
- 23 in the first degree;
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1 33. Rape in the second degree, including attempts to commit
2 rape in the second degree;

3 34. Robbery by force or fear;

4 35. Robbery with a firearm or dangerous weapon, including
5 attempts to commit robbery with a firearm or dangerous weapon;

6 36. Sexual assault or violent offenses against children;

7 37. Shooting with intent to kill;

8 38. Stalking or violation of a Victim Protection Order;

9 39. Two or more prior felony convictions; or

10 40. Unauthorized use of a motor vehicle.

11 D. A person not eligible for pretrial release pursuant to the
12 provisions of subsection C of this section may be released upon
13 order of a district judge or associate district judge under
14 conditions prescribed by the judge, which may include an order to
15 require the defendant to use an active, real-time, twenty-four-hour
16 Global Positioning Monitoring System (GPS) device as a condition of
17 pretrial release. The court may further order the defendant to pay
18 costs and expenses related to the GPS device and monitoring.

19 E. Every pretrial services program operating pursuant to the
20 provisions of this act shall meet the following minimum criteria:

21 1. The program shall establish a procedure for screening and
22 evaluating persons who are detained or have been arrested for the
23 alleged commission of a crime. The program shall obtain criminal
24 history records on detained persons through the National Crime

1 Information Center (NCIC). The information obtained from the
2 screening and evaluation process must be submitted in a written
3 report without unnecessary delay to the judge who is assigned to
4 hear pretrial release applications when the person is eligible for
5 pretrial release;

6 2. The program shall provide reliable information to the judge
7 relating to the person applying for pretrial release so a reasonable
8 decision can be made concerning the amount and type of bail
9 appropriate for pretrial release. The information provided shall be
10 based upon facts relating to the person's risk of danger to the
11 community and the risk of failure to appear for court; and

12 3. The program shall make all reasonable attempts to provide
13 the court with information appropriate to each person considered for
14 pretrial release.

15 F. A pretrial program established pursuant to this act may
16 provide different methods and levels of community-based supervision
17 to meet any court-ordered conditions of release. The program may
18 use existing supervision methods for persons who are released prior
19 to trial. Pretrial programs which employ peace officers certified
20 by the Council on Law Enforcement Education and Training (CLEET) are
21 authorized to enforce court-ordered conditions of release.

22 G. Each pretrial program established pursuant to this act shall
23 provide a quarterly report to the presiding judge of the judicial
24 district of the jurisdiction in which it operates. A copy of the

1 report shall be filed of record with the court clerk of the
2 jurisdiction. Each report shall include, but is not limited to, the
3 following information:

4 1. The total number of persons screened, evaluated or otherwise
5 considered for pretrial release;

6 2. The total number and nature of recommendations made;

7 3. The number of persons admitted to pretrial release that
8 failed to appear; and

9 4. Any other information deemed appropriate by the reporting
10 judicial district or that the program desires to report.

11 H. Every pretrial release program established pursuant to this
12 section shall utilize the services of local providers; provided,
13 however, any program in continuous existence since July 1, 1999,
14 shall be exempt from the provisions of this subsection.

15 SECTION 4. This act shall become effective November 1, 2008.

16 Passed the Senate the 11th day of March, 2008.

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Presiding Officer of the Senate

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20 Passed the House of Representatives the ____ day of _____,
21 2008.

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Presiding Officer of the House
of Representatives

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