

ENROLLED SENATE
BILL NO. 2163

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

and

Peters, Hamilton, Denney,
Sullivan, Joyner, Tibbs,
McCullough and Roan of the
House

An Act relating to criminal procedure; amending 22 O.S. 2001, Sections 60.6, as last amended by Section 5, Chapter 156, O.S.L. 2007 and Section 4, Chapter 516, O.S.L. 2004 (22 O.S. Supp. 2007, Sections 60.6 and 60.17), which relate to the Protection from Domestic Abuse Act; updating statutory reference; modifying certain penalty to include use of Global Positioning System (GPS) monitoring devices; allowing use of GPS monitoring devices in conjunction with protective orders or restraining orders; requiring certain finding be made by the court; directing defendant pay certain costs and expenses; amending Section 3, Chapter 125, O.S.L. 2002 (22 O.S. Supp. 2007, Section 1105.3), which relates to pretrial release programs; authorizing use of GPS monitoring as condition of pretrial release; directing defendant pay certain costs and expenses; repealing Section 2 of Enrolled Senate Bill No. 1435 of the 2nd Session of the 51st Oklahoma Legislature, which relates to the effective date; providing an effective date; and declaring an emergency.

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

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

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

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

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

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

2. Any person who is convicted of a second or subsequent violation of a protective order which causes physical injury or physical impairment to a plaintiff or to any other person named in the protective order shall be guilty of a felony and shall be punished by a term of imprisonment in the custody of the Department of Corrections of not less than one (1) year nor more than five (5) years, or by a fine of not less than Three Thousand Dollars

(\$3,000.00) nor more than Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment.

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

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

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

D. In addition to any other penalty specified by this section, the court shall require a defendant to undergo the treatment or participate in the counseling services necessary to bring about the cessation of domestic abuse against the victim or to bring about the cessation of stalking or harassment of the victim. For every conviction of violation of a protective order:

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

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

complies with the provisions of this subsection and the domestic abuse counseling or treatment requirements;

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

6. At the first review hearing, the court shall require the defendant to appear in court. Thereafter, for any subsequent review hearings, the court may accept a report on the progress of the defendant from individual counseling, domestic abuse counseling, or the treatment program. There shall be no requirement for the victim to attend review hearings; and

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

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

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

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

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

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

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

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

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

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

Section 60.17 The court shall consider the safety of any and all alleged victims of domestic violence, stalking, harassment, sexual assault, or forcible sodomy where the defendant is alleged to have violated a protective order, committed domestic assault and battery, stalked, sexually assaulted, or forcibly sodomized the alleged victim or victims prior to the release of the alleged defendant from custody on bond. The court, after consideration and to ensure the safety of the alleged victim or victims, may issue an emergency protective order pursuant to the Protection from Domestic Abuse Act. The court may also issue to the alleged victim or victims, an order restraining the alleged defendant from any activity or action from which they may be restrained under the

Protection from Domestic Abuse Act. The protective order shall remain in effect until either a plea has been accepted, sentencing has occurred in the case, the case has been dismissed, or until further order of the court dismissing the protective order. In conjunction with any protective order or restraining order authorized by this section, the court may order the defendant to use an active, real-time, twenty-four-hour Global Positioning System (GPS) monitoring device for such term as the court deems appropriate. Before the court orders the use of a GPS device, the court shall find that the defendant has a history that demonstrates an intent to commit violence against the victim, including, but not limited to, prior conviction for an offense under the Protection from Domestic Abuse Act or any other violent offense, or any other evidence that shows by a preponderance of the evidence that the defendant is likely to commit violence against the victim. The court may further order the defendant to pay costs and expenses related to the GPS device and monitoring.

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

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

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

C. Except as otherwise authorized by the provisions of this subsection, persons accused of or detained for any of the following

offenses or conditions shall not be eligible for pretrial release by any pretrial program:

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

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

34. Robbery by force or fear;

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

36. Sexual assault or violent offenses against children;

37. Shooting with intent to kill;

38. Stalking or violation of a Victim Protection Order;

39. Two or more prior felony convictions; or

40. Unauthorized use of a motor vehicle.

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

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

1. The program shall establish a procedure for screening and evaluating persons who are detained or have been arrested for the alleged commission of a crime. The program shall obtain criminal history records on detained persons through the National Crime Information Center (NCIC). The information obtained from the screening and evaluation process must be submitted in a written report without unnecessary delay to the judge who is assigned to hear pretrial release applications when the person is eligible for pretrial release;

2. The program shall provide reliable information to the judge relating to the person applying for pretrial release so a reasonable decision can be made concerning the amount and type of bail appropriate for pretrial release. The information provided shall be

based upon facts relating to the person's risk of danger to the community and the risk of failure to appear for court; and

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

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

G. Each pretrial program established pursuant to this act shall provide a quarterly report to the presiding judge of the judicial district of the jurisdiction in which it operates. A copy of the report shall be filed of record with the court clerk of the jurisdiction. Each report shall include, but is not limited to, the following information:

1. The total number of persons screened, evaluated or otherwise considered for pretrial release;
2. The total number and nature of recommendations made;
3. The number of persons admitted to pretrial release that failed to appear; and
4. Any other information deemed appropriate by the reporting judicial district or that the program desires to report.

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

SECTION 4. REPEALER Section 2 of Enrolled Senate Bill No. 1435 of the 2nd Session of the 51st Oklahoma Legislature is hereby repealed.

SECTION 5. Sections 1 through 3 of this act shall become effective November 1, 2008.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 28th day of April, 2008.

Presiding Officer of the Senate

Passed the House of Representatives the 22nd day of April, 2008.

Presiding Officer of the House
of Representatives