THE HOUSE OF REPRESENTATIVES
Thursday, March 8, 2007

Committee Substitute for

House Bill No. 1575

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1575 - By: PETERS of the House and CRAIN of the Senate.

An Act relating to domestic violence; amending 22 O.S. 2001, Sections 60.1, as last amended by Section 14, Chapter 348, O.S.L. 2005, 60.2, as last amended by Section 1, Chapter 302, O.S.L. 2006, 60.3, as amended by Section 3, Chapter 407, O.S.L. 2003, 60.4, as last amended by Section 1, Chapter 34, O.S.L. 2006 and Section 6, Chapter 466, O.S.L. 2002, as amended by Section 3, Chapter 516, O.S.L. 2004 (22 O.S. Supp. 2006, Sections 60.1, 60.2, 60.3, 60.4 and 60.16), which relate to Protection from Domestic Abuse Act; expanding scope of certain definition; authorizing request for emergency temporary order of protection pursuant to certain procedures; modifying statutory reference; clarifying certain procedure for issuing emergency temporary ex parte orders of protection; modifying service of process and hearing 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 last amended by
2 Section 14, Chapter 348, O.S.L. 2005 (22 O.S. Supp. 2006, Section 60.1), is amended to
3 read as follows:

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

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

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

3. "Harassment" means a knowing and willful course or pattern of conduct by a family or household member or an individual who is or has been involved in a dating relationship with the person, directed at a specific person which seriously alarms or annoys the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial distress to the person. "Harassment" shall include, but not be limited to, harassing or obscene telephone calls in violation of Section 1172 of Title 21 of the Oklahoma Statutes and fear of death or bodily injury;

4. "Family or household members" means:

<u>UNDERLINED</u> language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

a. spouses,

b. ex-spouses,

c. present spouses of ex-spouses,

d. parents, including grandparents, stepparents, adoptive parents and foster parents,

e. children, including grandchildren, stepchildren, adopted children and foster children,

f. persons otherwise related by blood or marriage,

g. persons living in the same household or who formerly lived in the same household, and

h. persons who are the biological parents of the same child, regardless of their marital status, or whether they have lived together at any time. This shall include the elderly and handicapped;

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

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

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

8. "Victim support person" means a person affiliated with a certified domestic violence or sexual assault program, certified by the Attorney General or certified by a

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

recognized Native American Tribe if operating mainly within tribal lands, who provides support and assistance for a person who files a petition under the Protection from Domestic Violence Act; and

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

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

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

1. The person seeking relief may file a petition for a protective order with the district court in the county in which the victim resides, the county in which the defendant resides, or the county in which the domestic violence occurred. If the person seeking relief is a victim of stalking but is not a family or household member or an individual who is or has been in a dating relationship with the defendant, the person

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

seeking relief must file a complaint against the defendant with the proper law enforcement agency before filing a petition for a protective order with the district court. The person seeking relief shall provide a copy of the complaint that was filed with the law enforcement agency at the full hearing if the complaint is not available from the law enforcement agency. Failure to provide a copy of the complaint filed with the law enforcement agency shall constitute a frivolous filing and the court may assess attorney fees and court costs against the plaintiff pursuant to paragraph 2 of subsection C of ~~Section 60.2 of~~ this ~~title~~ section. The filing of a petition for a protective order shall not require jurisdiction or venue of the criminal offense if either the plaintiff or defendant resides in the county. If a petition has been filed in an action for divorce or separate maintenance and either party to the action files a petition for a protective order in the same county where the action for divorce or separate maintenance is filed, the petition for the protective order shall be heard by the court hearing the divorce or separate maintenance action. If the defendant is a minor child, the petition shall be filed with the court having jurisdiction over juvenile matters.

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

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

C. 1. Except as otherwise provided by this section, no filing fee, service of process fee, attorney fees or any other fee or costs shall be charged the plaintiff or victim at any

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

time for filing a petition for a protective order whether a protective order is granted or not granted. The court may assess court costs, service of process fees, attorney fees, other fees and filing fees against the defendant at the hearing on the petition, if a protective order is granted against the defendant; provided, the court shall have authority to waive the costs and fees if the court finds that the party does not have the ability to pay the costs and fees.

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

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

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

Section 60.3 A. If a plaintiff requests an emergency ex parte order pursuant to Section 60.2 of this title, the court shall hold an ex parte hearing on the same day the petition is filed, if the court finds sufficient grounds within the scope of the Protection from Domestic Abuse Act stated in the petition to hold such a hearing. The court may, for good cause shown at the hearing, issue any emergency ex parte order that it finds necessary to protect the victim from immediate and present danger of domestic abuse, stalking, or harassment. The emergency ex parte order shall be in effect until after the

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

full hearing is conducted. Provided, if the defendant, after having been served, does not appear at the hearing, the emergency ex parte order shall remain in effect until the defendant is served with the permanent order. If the terms of the permanent order are the same as those in the emergency order, or are less restrictive, then it is not necessary to serve the defendant with the permanent order.

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

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

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

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

<u>UNDERLINED</u> language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

Section 60.4 A. 1. A copy of a petition for a protective order, 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~~ summons. 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 or other person authorized to effectuate service. Any fee for service of a petition for protective order, notice of hearing, and emergency ex parte order 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 plus mileage expenses.

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

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

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

5. When the defendant is a minor child who is ordered removed from the residence of the victim, in addition to those documents served upon the defendant, a copy of the petition, notice of hearing and a copy of any ex parte order issued by the court shall be

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

delivered with the child to the caretaker of the place where such child is taken pursuant to Section 7303-1.1 of Title 10 of the Oklahoma Statutes.

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

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

3. If service has not been made on the defendant at the time of the hearing, the court shall~~, at the request of the petitioner,~~ issue a new emergency order reflecting a new hearing date and direct service to issue.

4. A petition for a protective order shall~~, upon the petitioner's request,~~ renew every twenty (20) days with a new hearing date assigned until the defendant is served. A petition for a protective order shall not expire unless the petitioner fails to appear at the hearing ~~or fails to request a new order~~. A petitioner may move to dismiss the petition

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

and emergency or final order at any time, however, a protective order must be dismissed by court order.

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

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

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 require a danger or domestic violence assessment performed by a mental health
2 professional.
3 2. Either party or both may be required to pay all or any part of the cost of such
4 treatment or counseling services. The court shall not be responsible for such cost.
5 F. When necessary to protect the victim and when authorized by the court,
6 protective orders granted pursuant to the provisions of this section may be served upon
7 the defendant by a peace officer, sheriff, constable, ~~or~~ policeman, licensed process server
8 or other ~~officer whose duty it is to preserve the peace, as defined by Section 99 of Title 21~~
9 ~~of the Oklahoma Statutes~~ person authorized by the court.
10 G. 1. Any protective order issued on or after November 1, 1999, pursuant to
11 subsection C of this section shall be for a fixed period ~~not to exceed a period~~ of three (3)
12 years which shall automatically renew unless extended, modified, vacated or rescinded
13 upon motion by either party or if the court approves any consent agreement entered into
14 by the plaintiff and defendant.
15 2. The court shall notify the parties at the time of the issuance of the protective
16 order of the duration of the protective order.
17 3. Upon the filing of a motion by either party to modify, extend, or vacate a
18 protective order, a hearing shall be scheduled and notice given to the parties. At the
19 hearing, the issuing court may take such action as is necessary under the circumstances.
20 4. If a child has been removed from the residence of a parent or custodial adult
21 because of domestic abuse committed by the child, the parent or custodial adult may
22 refuse the return of such child to the residence, unless upon further consideration by the

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

court in a juvenile proceeding, it is determined that the child is no longer a threat and should be allowed to return to the residence.

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

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

J. 1. A court shall not issue any mutual protective orders <u>or temporary orders except as provided for an emergency ex parte protective order</u>.

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

3. The court may only consolidate a hearing if:

a. the court makes specific findings that:

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

(2) each party acted primarily as aggressors, and

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

B. 1. A peace officer may arrest without a warrant a person anywhere, including a place of residence, if the peace officer has probable cause to believe the person within the preceding seventy-two (72) hours has committed an act of domestic abuse as defined by Section 60.1 of this title, although the assault did not take place in the presence of the peace officer. A peace officer may not arrest a person pursuant to this section without first observing a recent physical injury to, or an impairment of the physical condition of, the alleged victim.

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

2. Immediately notify, by telephone or otherwise, a judge of the district court of the request for an emergency temporary order of protection and describe the circumstances. The judge shall inform the peace officer of the decision to approve or disapprove the emergency temporary order;

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

4. Notify the person subject to the emergency temporary protection order of the issuance and conditions of the order. Notification pursuant to this paragraph may be

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

made personally by the officer or in writing. A copy of the petition and the statement of the officer attesting to the order of the judge shall be made available to such person; and

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

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

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

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

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

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND PUBLIC SAFETY, dated 03-07-07 - DO PASS, As Amended and Coauthored.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.