

CS for SB 2163

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**THE STATE SENATE**  
**Thursday, February 21, 2008**

**Committee Substitute for**  
**Senate Bill No. 2163**

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 2163 - By: LEFTWICH and  
ADELSON of the Senate and PETERS and HAMILTON of the House.

[ criminal procedure - protective orders - GPS monitoring -  
effective date ]

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

1 custody of the Department of Corrections for not less than one (1)  
2 year nor more than three (3) years, or by a fine of not less than  
3 Two Thousand Dollars (\$2,000.00) nor more than Ten Thousand Dollars  
4 (\$10,000.00), or by both such fine and imprisonment.

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

14 2. Any person who is convicted of a second or subsequent  
15 violation of a protective order which causes physical injury or  
16 physical impairment to a plaintiff or to any other person named in  
17 the protective order shall be guilty of a felony and shall be  
18 punished by a term of imprisonment in the custody of the Department  
19 of Corrections of not less than one (1) year nor more than five (5)  
20 years, or by a fine of not less than Three Thousand Dollars  
21 (\$3,000.00) nor more than Ten Thousand Dollars (\$10,000.00), or by  
22 both such fine and imprisonment.

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

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

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

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

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

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

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

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

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

17 b. The court shall set a second review hearing after the  
18 completion of the counseling or treatment to assure  
19 the attendance and compliance of the defendant with  
20 the provisions of this subsection and the domestic  
21 abuse counseling or treatment requirements. The court  
22 shall retain continuing jurisdiction over the

1                   defendant during the course of ordered counseling  
2                   through the final review hearing;

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

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

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

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;

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

1 alleged victim or victims prior to the release of the alleged  
2 defendant from custody on bond. The court, after consideration and  
3 to ensure the safety of the alleged victim or victims, may issue an  
4 emergency protective order pursuant to the Protection from Domestic  
5 Abuse Act. The court may also issue to the alleged victim or  
6 victims, an order restraining the alleged defendant from any  
7 activity or action from which they may be restrained under the  
8 Protection from Domestic Abuse Act. The protective order shall  
9 remain in effect until either a plea has been accepted, sentencing  
10 has occurred in the case, the case has been dismissed, or until  
11 further order of the court dismissing the protective order. In  
12 conjunction with any protective order or restraining order  
13 authorized by this section, the court may order the defendant to use  
14 an active, real-time, twenty-four-hour Global Positioning Monitoring  
15 System (GPS) device for such term as the court deems appropriate.  
16 The court may further order the defendant to pay costs and expenses  
17 related to the GPS device and monitoring.

18 SECTION 3. AMENDATORY Section 3, Chapter 125, O.S.L.  
19 2002 (22 O.S. Supp. 2007, Section 1105.3), is amended to read as  
20 follows:

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

1           B. When a pretrial release program is established pursuant to  
2 this act and private bail has not been furnished, the judge may  
3 order a person to be evaluated through the pretrial program. After  
4 conducting an evaluation of the person applying for pretrial  
5 release, the pretrial program shall make a recommendation to the  
6 court. The recommendation shall indicate any special supervisory  
7 conditions for pretrial release. The judge shall consider the  
8 recommendations and may grant or deny pretrial release. The  
9 presiding judge of the judicial district may issue a standing order  
10 outlining criteria for cases that may automatically be evaluated for  
11 pretrial release by a pretrial program operating in the  
12 jurisdiction. The standing order may include amounts for bail and  
13 types of bonds deemed appropriate for certain offenses. In addition  
14 to any other special supervisory conditions recommended by the  
15 pretrial program, the court may order the defendant to use an  
16 active, real-time, twenty-four-hour Global Position Monitoring  
17 System (GPS) device as a condition of pretrial release. The court  
18 may further order the defendant to pay costs and expenses related to  
19 the GPS device and monitoring.

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:

- 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;

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

- 1           32. Rape in the first degree, including attempts to commit rape  
2 in the first degree;
- 3           33. Rape in the second degree, including attempts to commit  
4 rape in the second degree;
- 5           34. Robbery by force or fear;
- 6           35. Robbery with a firearm or dangerous weapon, including  
7 attempts to commit robbery with a firearm or dangerous weapon;
- 8           36. Sexual assault or violent offenses against children;
- 9           37. Shooting with intent to kill;
- 10          38. Stalking or violation of a Victim Protection Order;
- 11          39. Two or more prior felony convictions; or
- 12          40. Unauthorized use of a motor vehicle.

13          D. A person not eligible for pretrial release pursuant to the  
14 provisions of subsection C of this section may be released upon  
15 order of a district judge or associate district judge under  
16 conditions prescribed by the judge.

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

- 19           1. The program shall establish a procedure for screening and  
20 evaluating persons who are detained or have been arrested for the  
21 alleged commission of a crime. The program shall obtain criminal  
22 history records on detained persons through the National Crime  
23 Information Center (NCIC). The information obtained from the

1 screening and evaluation process must be submitted in a written  
2 report without unnecessary delay to the judge who is assigned to  
3 hear pretrial release applications when the person is eligible for  
4 pretrial release;

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

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

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

21       G. Each pretrial program established pursuant to this act shall  
22 provide a quarterly report to the presiding judge of the judicial  
23 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 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-19-08 - DO  
17 PASS, As Amended and Coauthored.