STATE OF OKLAHOMA

1st Session of the 51st Legislature (2007)

HOUSE BILL 1740 By: DeWitt

AS INTRODUCED

An Act relating to schools; creating the Protection for School Employees Act; defining terms; allowing certain person to seek relief under act; prohibiting school employee from obtaining a protective order against certain persons; providing procedures to file for protective order; providing for emergency temporary order of protection under certain circumstance; requiring forms be provided by court clerk; requiring certain entity to develop form; prohibiting assessment of certain fees and costs; authorizing assessment of certain fees and costs under certain circumstance; providing waiver; authorizing assessment of fees and costs upon certain finding; providing procedure for issuance of emergency temporary order of protection; requiring certain entity to develop form; requiring inclusion of certain information in order; providing procedures for service of certain documents; providing for statewide validity and transfer; requiring submission of return of service; requiring hearing within certain period of time upon certain finding; providing for continuance; providing for automatic renewal; prohibiting expiration of order; requiring court order for dismissal; authorizing court to impose certain terms and conditions; requiring certain entity to develop form; authorizing service of protective orders by certain persons; providing time limitation requirements; providing procedures for modifying, extending, or vacating a protective order; authorizing victim support at court proceedings; providing procedures for sending orders to certain agencies; requiring access to certain information; providing penalties for violating protective order; authorizing certain counseling; providing for statewide validity of orders; providing

for seizure of weapons under certain circumstances; providing procedures for seizure and forfeiture of weapons; providing for arrest without warrant under certain circumstance; requiring inclusion of certain information on orders; authorizing issuance of emergency temporary order of protection and restraining order upon certain considerations; providing for expungement of protective orders; setting eligibility criteria for expungement; providing procedures for expungement; defining terms; requiring petition, notice, answer, and hearing within certain time periods; requiring no objection or certain court findings; construing effects of sealing certain records; directing sealing of certain records; allowing certain persons access to sealed records; prohibiting denial of application by employers for failure to disclose sealed information; construing application of act; allowing destruction of certain records after certain time period; allowing certain evidence from sealed records for certain purpose; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-100.11 of Title 70, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Protection for School Employees Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-100.12 of Title 70, unless there is created a duplication in numbering, reads as follows:

As used in the Protection for School Employees Act:

1. "Abuse" means any act of physical harm or the threat of imminent physical harm, which is committed by an adult against a school employee;

2. “School employee” includes each officer or employee in the service of a school district or career technology center who is employed, appointed, or elected by popular vote;

3. "Stalking" means the willful, malicious, and repeated following of a school employee by an adult with the intent of placing the school employee in reasonable fear of death or great bodily injury; and

4. "Harassment" means a knowing and willful course or pattern of conduct which seriously alarms or annoys the school employee 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 school employee. "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.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-100.13 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. A school employee who is a victim of abuse, stalking, or harassment may seek relief under the provisions of the Protection

for School Employees Act. A school employee shall not be allowed to obtain a protective order against a student in the district receiving services in compliance with the Individuals with Disabilities in Education Act.

1. The school employee seeking relief may file a petition for a protective order with the district court in the county in which the school employee resides, the county in which the defendant resides, or the county in which the abuse occurred. Prior to filing a petition for a protective order with the district court, the school employee seeking relief must file a complaint against the defendant with the proper law enforcement agency. The school employee seeking relief shall provide a copy of the complaint that was filed with the law enforcement agency when filing the petition for a protective order. The filing of a petition for a protective order shall not require jurisdiction or venue of the criminal offense if either the school employee or defendant resides in the county.

2. When the abuse occurs when the court is not open for business, the school employee may request an emergency temporary order of protection.

B. The petition forms shall be provided by the clerk of the court. The Administrative Director 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 fee, or any other fee or cost

shall be charged the school employee at any 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. The court shall have authority to waive the costs and fees if the court finds that the defendant 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, the court may assess attorney fees and court costs against the school employee.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-100.14 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. If a school employee requests an emergency temporary order of protection pursuant to paragraph 2 of subsection A of Section 3 of this act, 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 for School Employees Act stated in the petition to hold such a hearing. The court may, for good cause shown at the hearing, issue any emergency temporary order of protection that it finds necessary to protect the school employee from immediate and present danger of abuse, stalking, or harassment. The emergency temporary order of protection shall be in effect until

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

B. The Administrative Director of the Courts shall develop a standard form for emergency temporary orders of protection.

C. An emergency temporary order of protection 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.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-100.15 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. 1. A copy of the petition, notice of hearing and a copy of any emergency temporary order of protection issued by the court shall be served upon the defendant in the same manner as a bench warrant. 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. Any fee for service of an emergency temporary order of protection, petition

for protective order, and notice of hearing shall only be charged pursuant to subsection C of Section 3 of this act and, if charged, shall be the same as the service fee of the sheriff plus mileage expenses.

2. An emergency temporary order of protection 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, a private investigator, or private process server to serve the defendant.

3. An emergency temporary order of protection, 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 office of the sheriff in the court where the petition, notice of hearing, or order was issued.

B. 1. Within twenty (20) days of filing 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 for School Employees Act stated in the petition to hold such a hearing, regardless of whether an emergency temporary order of protection has been previously issued, requested, or denied.

2. If service has not been made on the defendant at the time of the hearing, the court shall continue the hearing.

3. A petition for a protective order shall automatically renew every twenty (20) days until the defendant is served. A petition for a protective order shall not expire and must be dismissed by court order.

4. Failure to serve the defendant shall not be grounds for dismissal of a petition or an ex parte order unless the school employee requests dismissal.

C. 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 the abuse, stalking, or harassment of the school employee, and may order the defendant to obtain abuse counseling or treatment in a program at the expense of the defendant.

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

E. When necessary to protect the school employee and when authorized by the court, protective orders granted pursuant to the provisions of this section may be served upon the defendant by a peace officer, sheriff, constable, or policeman or other officer whose duty it is to preserve the peace, as defined by Section 99 of Title 21 of the Oklahoma Statutes.

F. 1. Any protective order issued on or after the effective date of this act, pursuant to subsection C of this section shall be for a fixed period not to exceed a period of three (3) years unless extended, modified, vacated, or rescinded upon motion by either party or if the court approves any consent agreement entered into by the school employee and defendant.

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

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

G. The court may allow the school employee 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 school employee comfort or support and may remain in close proximity to the school employee.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-100.16 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. Within twenty-four (24) hours of the return of service of any emergency temporary order of protection or final protective

order, the clerk of the issuing court shall send certified copies of the order to all appropriate law enforcement agencies designated by the school employee. A certified copy of any extension, modification, vacation, cancellation, or consent agreement concerning a final protective order shall be sent within twenty-four (24) hours by the clerk of the issuing court to those law enforcement agencies receiving the original orders pursuant to this section and to any law enforcement agencies designated by the court.

B. Any law enforcement agency receiving copies of the documents listed in subsection A of this section shall be required to ensure that other law enforcement agencies have access twenty-four (24) hours a day to the information contained in the documents which may include entry of information about the emergency temporary order of protection or final protective order in the National Crime Information Center database.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-100.17 of Title 70, unless there is created a duplication in numbering, reads as follows:

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

1. Has been served with an emergency temporary order of protection or final protective order and is in violation of the protective order shall, upon conviction, be guilty of a misdemeanor punishable 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 by both such fine and imprisonment;

2. After a previous conviction of a violation of a protective order, is convicted of a second offense pursuant to the provisions of this section shall be guilty of a misdemeanor punishable by a fine of not less than One Thousand Dollars ($1,000.00) nor more than Five Thousand Dollars ($5,000.00), or by a term of imprisonment in the county jail of not less than ten (10) days nor more than one (1) year, or by both such fine and imprisonment; and

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

B. 1. Any person who has been served with an emergency temporary order of protection or final protective order who violates the protective order and causes physical injury or physical impairment to the school employee shall, upon conviction, be guilty of a misdemeanor punishable by a fine of not more than Five Thousand Dollars ($5,000.00), or by a term of imprisonment in the county jail

of not less than twenty (20) days nor more than one (1) year, or by both such fine and imprisonment.

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 school employee shall be guilty of a felony punishable by a fine of not less than Three Thousand Dollars ($3,000.00) nor more than Ten Thousand Dollars ($10,000.00), or 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 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 school employee.

C. The minimum sentence of imprisonment issued pursuant to the provisions of paragraphs 2 and 3 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 anger management training.

E. At no time, under any proceeding, may a school employee 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.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-100.18 of Title 70, unless there is created a duplication in numbering, reads as follows:

All orders issued pursuant to the provisions of the Protection for School Employees Act shall have statewide validity, unless specifically modified or terminated by a judge of the district court.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-100.19 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. Each peace officer of this state shall seize any weapon or instrument when the peace officer has probable cause to believe the weapon or instrument has been used to commit an act of abuse as defined by Section 2 of this act, provided an arrest is made, if possible, at the same time.

B. After any such seizure, the district attorney shall file a notice of seizure and forfeiture as provided in this section within ten (10) days of the seizure, or any weapon or instrument seized pursuant to this section shall be returned to the owner.

C. The seizure and forfeiture provisions of Section 991a-19 of Title 22 of the Oklahoma Statutes shall be followed for any seizure and forfeiture of property pursuant to this section. No weapon or instrument seized pursuant to this section or monies from the sale of any seized weapon or instrument shall be turned over to the person from whom the property was seized if a forfeiture action has been filed within the time required by subsection B of this section, unless authorized by this section. Provided further, the owner may prove at the forfeiture hearing that the conduct giving rise to the seizure was justified, and if the owner proves justification, the seized property shall be returned to the owner. Any proceeds gained from this seizure shall be placed in the Crime Victims Compensation Revolving Fund.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-100.20 of Title 70, unless there is created a duplication in numbering, reads as follows:

A peace officer, without a warrant, may arrest and take into custody a person if the peace officer has reasonable cause to believe that:

1. An emergency temporary order of protection or final protective order has been issued and served upon the person, pursuant to the provisions of the Protection for School Employees Act;

2. A true copy and proof of service of the order has been filed with the law enforcement agency having jurisdiction of the area in which the school employee resides or a certified copy of the order and proof of service is presented to the peace officer;

3. The person named in the order has received notice of the order and has had a reasonable time to comply with the order; and

4. The person named in the order has violated the order or is then acting in violation of the order.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-100.21 of Title 70, unless there is created a duplication in numbering, reads as follows:

In addition to any other provisions required by the Protection for School Employees Act, or otherwise required by law, each emergency temporary order of protection or final protective order issued pursuant to the Protection for School Employees Act shall have a statement printed in bold-faced type or in capital letters containing the following information:

1. The filing or nonfiling of criminal charges and the prosecution of the case shall not be determined by a person who is protected by the protective order, but shall be determined by the prosecutor;

2. No person, including a person who is protected by the order, may give permission to anyone to ignore or violate any provision of the order. During the time in which the order is valid, every

provision of the order shall be in full force and effect unless a court changes the order;

3. The order will be in effect for three (3) years unless extended, modified, vacated, or rescinded by the court;

4. A violation of the order is punishable by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment of not more than one (1) year in the county jail, or by both such fine and imprisonment. A violation of the order which causes injury is punishable by imprisonment of not less than twenty (20) days nor more than one (1) year in the county jail, or by a fine of not more than Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment; and

5. Possession of a firearm or ammunition by a defendant while an order is in effect may subject the defendant to prosecution for a violation of federal law even if the order does not specifically prohibit the defendant from possession of a firearm or ammunition.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-100.22 of Title 70, unless there is created a duplication in numbering, reads as follows:

The court shall consider the safety of the school employees where the defendant is alleged to have violated a protective order, committed assault and battery, or stalked the school employee prior to the release of the alleged defendant from custody on bond. The court, after consideration and to ensure the safety of the school

employee, may issue an emergency temporary order of protection pursuant to the Protection for School Employees Act. The court may also issue to the school employee an order restraining the alleged defendant from any activity or action from which they may be restrained under the Protection for School Employees 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.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-100.23 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. Persons authorized to file a motion for expungement of protective order, issued pursuant to the Protection for School Employees Act, must be within one of the following categories:

1. An emergency temporary order of protection was issued to the school employee but later terminated due to dismissal of the petition before the full hearing, or denial of the petition upon full hearing, or failure of the school employee to appear for full hearing, and at least ninety (90) days have passed since the date set for full hearing;

2. The school employee filed a petition for a protective order and failed to appear for the full hearing and at least ninety (90) days have passed since the date last set by the court for the full

hearing, including the last date set for any continuance, postponement, or rescheduling of the hearing;

3. The school employee or defendant has had the protective order vacated and three (3) years have passed since the order to vacate was entered; or

4. The defendant is deceased.

B. For purposes of this section:

1. "Expungement" means the sealing of protective order court records from public inspection, but not from law enforcement agencies, the court, or the district attorney;

2. "School employee" means the person who sought the protective order for cause; and

3. "Defendant" means the person to whom the protective order was directed.

C. 1. Any defendant qualified under subsection A of this section may petition the district court of the district in which the protective order pertaining to the defendant is located for the expungement and sealing of the court records from public inspection. The face of the petition shall state whether the defendant in the protective order has been convicted of any violation of the protective order and whether any prosecution or complaint is pending in this state or any other state for a violation or alleged violation of the protective order that is sought to be expunged. The petition shall further state the authority pursuant to

subsection A of this section for eligibility for requesting the expungement. The school employee shall be mailed a copy of the petition by certified mail within ten (10) days of filing the petition. A written answer or objection may be filed by the school employee within thirty (30) days of receiving the notice and petition.

2. Upon the filing of a petition, the court shall set a date for a hearing and shall provide at least a thirty-day notice of the hearing to all parties to the protective order, the district attorney, and any other person or agency whom the court has reason to believe may have relevant information related to the sealing of the protective order court record.

3. Without objection from the school employee or upon a finding that the harm to the privacy of the defendant or dangers of unwarranted adverse consequences outweigh the public safety interests in retaining the records, the court may order the court record, or any part thereof, to be sealed from public inspection. Any order entered pursuant to this section shall not limit or restrict any law enforcement agency, the district attorney or the court from accessing said records without the necessity of a court order. Any order entered pursuant to this subsection may be appealed by any party to the protective order or by the district attorney to the Oklahoma Supreme Court in accordance with the rules of the Oklahoma Supreme Court.

4. Upon the entry of an order to expunge and seal from public inspection a protective order court record, or any part thereof, the subject official actions shall be deemed never to have occurred, and the defendant and public may properly reply, upon any inquiry in the matter, that no such action ever occurred and that no such record exists with respect to the defendant.

5. Inspection of the protective order court records included in the expungement order issued pursuant to this section may thereafter be permitted only upon petition by the defendant or school employee, or without petition by the district attorney or a law enforcement agency in the due course of investigation of a crime.

6. Employers, educational institutions, state and local government agencies, officials, and employees shall not require, in any application or interview or otherwise, an applicant to disclose any information contained in sealed protective order court records. An applicant need not, in answer to any question concerning the records, provide information that has been sealed, including any reference to or information concerning the sealed information, and may state that no such action has ever occurred. The application may not be denied solely because of the refusal of the applicant to disclose protective order court records information that has been sealed.

7. The provisions of this section shall apply to all protective order court records existing in the district courts of this state on, before and after the effective date of this section.

8. Nothing in this section shall be construed to authorize the physical destruction of any court records, except as otherwise provided by law for records no longer required to be maintained by the court.

9. For the purposes of this section, sealed materials which are recorded in the same document as unsealed material may be recorded in a separate document, and sealed, then obliterated in the original document.

10. For the purposes of this act, the district court index reference of sealed material shall be destroyed, removed, or obliterated.

11. Any record ordered to be sealed pursuant to this section may be obliterated or destroyed after a period of ten (10) years.

12. Nothing herein shall prohibit the introduction of evidence regarding actions sealed pursuant to the provisions of this section at any hearing or trial for purposes of impeaching the credibility of a witness or as evidence of character testimony pursuant to Section 2608 of Title 12 of the Oklahoma Statutes.

SECTION 14. This act shall become effective November 1, 2007.

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