

THE HOUSE OF REPRESENTATIVES
Wednesday, February 17, 2010

House Bill No. 2827

HOUSE BILL NO. 2827 - By: PETERS of the House.

An Act relating to criminal procedure; 22 O.S. 2001, Section 40.3, as amended by Section 4, Chapter 466, O.S.L. 2002 (22 O.S. Supp. 2009, Section 40.3), which relates to emergency temporary orders of protection; authorizing victim of certain crimes to request emergency temporary order of protection; deleting certain filing requirement; 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 189, O.S.L. 2008 and Section 5, Chapter 466, O.S.L. 2002 (22 O.S. Supp. 2009, Sections 60.1, 60.2 and 60.15), which relate to the Protection from Domestic Abuse Act; modifying definition of stalking; authorizing petitioner of protective order to request custody and control of animal; modifying certain notice requirement; updating statutory reference; amending 22 O.S. 2001, Section 1105, as last amended by Section 1, Chapter 128, O.S.L. 2005 (22 O.S. Supp. 2009, Section 1105), which relates to discharging defendants on bail; directing courts to consider specified circumstances prior to determining bond and conditions of release; 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 40.3, as amended by
2 Section 4, Chapter 466, O.S.L. 2002 (22 O.S. Supp. 2009, Section 40.3), is amended to
3 read as follows:

4 Section 40.3 A. When the court is not open for business, the victim of domestic
5 violence, stalking, harassment, rape or forcible sodomy may request a petition for an
6 emergency temporary order of protection. The peace officer making the preliminary
7 investigation shall:

1 1. Provide the victim with a petition for an emergency temporary order of
2 protection and, if necessary, assist the victim in completing the petition form. The
3 petition shall be in substantially the same form as provided by Section 60.2 of this title
4 for a petition for protective order in domestic abuse cases;

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

9 3. Inform the victim whether the judge has approved or disapproved the emergency
10 temporary order. If an emergency temporary order has been approved, the officer shall
11 provide the victim, or a responsible adult if the victim is a minor child or an incompetent
12 person, with a copy of the petition and a written statement signed by the officer attesting
13 that the judge has approved the emergency temporary order of protection; and

14 4. Notify the person subject to the emergency temporary protection order of the
15 issuance and conditions of the order if known. Notification pursuant to this paragraph
16 may be made personally by the officer upon arrest, or upon identification of the assailant
17 notice shall be given by any law enforcement officer. A copy of the petition and the
18 statement of the officer attesting to the order of the judge shall be made available to the
19 person; ~~and~~

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

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

3 SECTION 2. AMENDATORY 22 O.S. 2001, Section 60.1, as last amended by
4 Section 14, Chapter 348, O.S.L. 2005 (22 O.S. Supp. 2009, Section 60.1), is amended to
5 read as follows:

6 Section 60.1 As used in the Protection from Domestic Abuse Act and in the
7 Domestic Abuse Reporting Act, Sections 40.5 through 40.7 of this title and Section
8 150.12B of Title 74 of the Oklahoma Statutes:

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

13 2. "Stalking" means the willful, malicious, and repeated following or harassment of
14 a person by an adult, emancipated minor, or minor thirteen (13) years of age or older,
15 ~~with the intent of placing the person in reasonable fear of death or great bodily injury in~~
16 a manner that would cause a reasonable person to feel frightened, intimidated,
17 threatened, harassed, or molested and actually causes the person being followed or
18 harassed to feel terrorized, frightened, intimidated, threatened, harassed or molested.
19 Stalking also means a course of conduct composed of a series of two or more separate acts
20 over a period of time, however short, evidencing a continuity of purpose or unconsented
21 contact with a person that is initiated or continued without the consent of the individual

1 or in disregard of the expressed desire of the individual that the contact be avoided or
2 discontinued. Unconsented contact or course of conduct includes, but is not limited to:

- 3 a. following or appearing within the sight of that individual,
- 4 b. approaching or confronting that individual in a public place or on
5 private property,
- 6 c. appearing at the workplace or residence of that individual,
- 7 d. entering onto or remaining on property owned, leased, or occupied by
8 that individual,
- 9 e. contacting that individual by telephone,
- 10 f. sending mail or electronic communications to that individual, or
- 11 g. placing an object on, or delivering an object to, property owned, leased
12 or occupied by that individual;

13 3. "Harassment" means a knowing and willful course or pattern of conduct by a
14 family or household member or an individual who is or has been involved in a dating
15 relationship with the person, directed at a specific person which seriously alarms or
16 annoys the person, and which serves no legitimate purpose. The course of conduct must
17 be such as would cause a reasonable person to suffer substantial emotional distress, and
18 must actually cause substantial distress to the person. "Harassment" shall include, but
19 not be limited to, harassing or obscene telephone calls in violation of Section 1172 of Title
20 21 of the Oklahoma Statutes and fear of death or bodily injury;

21 4. "Family or household members" means:

- 22 a. spouses,

- 1 b. ex-spouses,
2 c. present spouses of ex-spouses,
3 d. parents, including grandparents, stepparents, adoptive parents and
4 foster parents,
5 e. children, including grandchildren, stepchildren, adopted children and
6 foster children,
7 f. persons otherwise related by blood or marriage,
8 g. persons living in the same household or who formerly lived in the same
9 household, and
10 h. persons who are the biological parents of the same child, regardless of
11 their marital status, or whether they have lived together at any time.

12 This shall include the elderly and handicapped;

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

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

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

20 8. "Victim support person" means a person affiliated with a certified domestic
21 violence or sexual assault program, certified by the Attorney General or certified by a
22 recognized Native American Tribe if operating mainly within tribal lands, who provides

1 support and assistance for a person who files a petition under the Protection from
2 Domestic Violence Act; and

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

9 SECTION 3. AMENDATORY 22 O.S. 2001, Section 60.2, as last amended by
10 Section 1, Chapter 189, O.S.L. 2008 (22 O.S. Supp. 2009, Section 60.2), is amended to
11 read as follows:

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

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

1 enforcement agency before filing a petition for a protective order with the district court.
2 The person seeking relief shall provide a copy of the complaint that was filed with the
3 law enforcement agency at the full hearing if the complaint is not available from the law
4 enforcement agency. Failure to provide a copy of the complaint filed with the law
5 enforcement agency shall constitute a frivolous filing and the court may assess attorney
6 fees and court costs against the plaintiff pursuant to paragraph 2 of subsection C of this
7 section. The filing of a petition for a protective order shall not require jurisdiction or
8 venue of the criminal offense if either the plaintiff or defendant resides in the county. If
9 a petition has been filed in an action for divorce or separate maintenance and either
10 party to the action files a petition for a protective order in the same county where the
11 action for divorce or separate maintenance is filed, the petition for the protective order
12 may be heard by the court hearing the divorce or separate maintenance action if:
13 a. there is no established protective order docket in such court, or
14 b. the court finds that, in the interest of judicial economy, both actions
15 may be heard together; provided, however, the petition for a protective
16 order, including, but not limited to, a petition in which children are
17 named as petitioners, shall remain a separate action and a separate
18 order shall be entered in the protective order action. Protective orders
19 may be dismissed in favor of restraining orders in the divorce or
20 separate maintenance action if the court specifically finds, upon
21 hearing, that such dismissal is in the best interests of the parties and
22 does not compromise the safety of any petitioner.

1 If the defendant is a minor child, the petition shall be filed with the court having
2 jurisdiction over juvenile matters.

3 2. When the abuse occurs when the court is not open for business, such person may
4 request an emergency temporary order of protection as authorized by Section 40.3 of this
5 title.

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

8 C. 1. Except as otherwise provided by this section, no filing fee, service of process
9 fee, attorney fees or any other fee or costs shall be charged the plaintiff or victim at any
10 time for filing a petition for a protective order whether a protective order is granted or
11 not granted. The court may assess court costs, service of process fees, attorney fees,
12 other fees and filing fees against the defendant at the hearing on the petition, if a
13 protective order is granted against the defendant; provided, the court shall have
14 authority to waive the costs and fees if the court finds that the party does not have the
15 ability to pay the costs and fees.

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

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

1 E. The person seeking a protective order may further request the exclusive care,
2 possession, or control of any animal owned, possessed, leased, kept, or held by either the
3 petitioner, defendant or minor child residing in the residence of the petitioner or
4 defendant. The court may order the defendant to make no contact with the animal and
5 forbid the defendant from taking, transferring, encumbering, concealing, molesting,
6 attacking, striking, threatening, harming, or otherwise disposing of the animal.

7 SECTION 4. AMENDATORY Section 5, Chapter 466, O.S.L. 2002 (22 O.S.
8 Supp. 2009, Section 60.15), is amended to read as follows:

9 Section 60.15 Upon the preliminary investigation of any crime involving domestic
10 abuse, rape, forcible sodomy or stalking, it shall be the duty of the first peace officer who
11 interviews the victim of the domestic abuse, rape, forcible sodomy or stalking to inform
12 the victim of the twenty-four-hour statewide telephone communication service
13 established by Section ~~3-314 of Title 43A~~ 18p-5 of Title 74 of the Oklahoma Statutes and
14 to give notice to the victim of certain rights. The notice shall consist of handing such
15 victim the following statement:

16 "As a victim of domestic abuse, rape, forcible sodomy or stalking you have certain
17 rights. These rights are as follows:

- 18 1. The right to request that charges be pressed against your assailant;
- 19 2. The right to request protection from any harm or threat of harm arising out of
20 your cooperation with law enforcement and prosecution efforts as far as facilities are
21 available and to be provided with information on the level of protection available;

1 3. The right to be informed of financial assistance and other social services
2 available as a result of being a victim, including information on how to apply for the
3 assistance and services; and

4 4. The right to file a petition for a protective order or, when the domestic abuse
5 occurs when the court is not open for business, to request an emergency temporary
6 protective order."

7 SECTION 5. AMENDATORY 22 O.S. 2001, Section 1105, as last amended by
8 Section 1, Chapter 128, O.S.L. 2005 (22 O.S. Supp. 2009, Section 1105), is amended to
9 read as follows:

10 Section 1105. A. Except as otherwise provided by this section, upon the allowance
11 of bail and the execution of the requisite recognizance, bond, or undertaking to the state,
12 the magistrate, judge, or court, shall, if the defendant is in custody, make and sign an
13 order for discharge. The court, in its discretion, may prescribe by court rule the
14 conditions under which the court clerk or deputy court clerk, or the sheriff or deputy
15 sheriff, may prepare and execute an order of release on behalf of the court.

16 B. No police officer or sheriff may release a person arrested for a violation of an ex
17 parte or final protective order as provided in Sections 60.2 and 60.3 of this title, or
18 arrested for an act constituting domestic abuse as specified in Section 644 of Title 21 of
19 the Oklahoma Statutes, or arrested for any act constituting domestic abuse, stalking or
20 harassment as defined by Section 60.1 of this title without the violator appearing before
21 a magistrate, judge or court. The To the extent that any of the following information is
22 available to the court, the magistrate, judge or court shall ~~determine~~ consider, in

1 addition to any other circumstances, before determining bond and other conditions of
2 release as necessary for the protection of the alleged victim, the following:

3 1. Whether the person has a history of domestic violence or a history of other
4 violent acts;

5 2. The mental health of the person;

6 3. Whether the person has a history of violating the orders of any court or
7 governmental entity;

8 4. Whether the person is potentially a threat to any other person;

9 5. Whether the person has a history of abusing alcohol or any controlled substance;

10 6. Whether the person has access to deadly weapons or a history of using deadly
11 weapons;

12 7. The severity of the alleged violence that is the basis of the alleged offense
13 including, but not limited to:

14 a. the duration of the alleged violent incident,

15 b. whether the alleged violent incident involved serious physical injury,

16 c. whether the alleged violent incident involved sexual assault,

17 d. whether the alleged violent incident involved strangulation,

18 e. whether the alleged violent incident involved abuse during the
19 pregnancy of the alleged victim,

20 f. whether the alleged violent incident involved the abuse of pets, or

21 g. whether the alleged violent incident involved forcible entry to gain
22 access to the alleged victim;

1 8. Whether a separation of the person from the alleged victim or a termination of
2 the relationship between the person and the alleged victim has recently occurred or is
3 pending;

4 9. Whether the person has exhibited obsessive or controlling behaviors toward the
5 alleged victim including, but not limited to, stalking, surveillance, or isolation of the
6 alleged victim;

7 10. Whether the person has expressed suicidal or homicidal ideations; and

8 11. Any information contained in the complaint and any police reports, affidavits,
9 or other documents accompanying the complaint.

10 C. No police officer or sheriff may release a person arrested for any violation of
11 subsection G of Section 2-401 of Title 63 of the Oklahoma Statutes, without the violator
12 appearing before a magistrate, judge, or court. In determining bond and other conditions
13 of release, the magistrate, judge, or court shall consider any evidence that the person is
14 in any manner dependent upon a controlled dangerous substance or has a pattern of
15 regular, illegal use of any controlled dangerous substance. A rebuttable presumption
16 that no conditions of release on bond would assure the safety of the community or any
17 person therein shall arise if the state shows by clear and convincing evidence:

18 1. The person was arrested for a violation of subsection G of Section 2-401 of Title
19 63 of the Oklahoma Statutes, relating to manufacturing or attempting to manufacture a
20 controlled dangerous substance, or possessing any of the substances listed in subsection
21 G of Section 2-401 of Title 63 of the Oklahoma Statutes with the intent to manufacture a
22 controlled dangerous substance; and

1 2. The person is in any manner dependent upon a controlled dangerous substance
2 or has a pattern of regular illegal use of a controlled dangerous substance, and the
3 violation referred to in paragraph 1 of this subsection was committed or attempted in
4 order to maintain or facilitate the dependence or pattern of illegal use in any manner.

5 SECTION 6. This act shall become effective November 1, 2010.

6 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02-16-10 - DO PASS.