

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 2827

By: Peters

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5
6 AS INTRODUCED

7 An Act relating to criminal procedure; 22 O.S. 2001,
8 Section 40.3, as amended by Section 4, Chapter 466,
9 O.S.L. 2002 (22 O.S. Supp. 2009, Section 40.3), which
10 relates to emergency temporary orders of protection;
11 authorizing victim of certain crimes to request
12 emergency temporary order of protection; deleting
13 certain filing requirement; amending 22 O.S. 2001,
14 Sections 60.1, as last amended by Section 14, Chapter
15 348, O.S.L. 2005, 60.2, as last amended by Section 1,
16 Chapter 189, O.S.L. 2008 and Section 5, Chapter 466,
17 O.S.L. 2002 (22 O.S. Supp. 2009, Sections 60.1, 60.2
18 and 60.15), which relate to the Protection from
19 Domestic Abuse Act; modifying definition of stalking;
20 authorizing petitioner of protective order to request
21 custody and control of animal; modifying certain
22 notice requirement; updating statutory reference;
23 amending 22 O.S. 2001, Section 1105, as last amended
24 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.

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

22 SECTION 1. AMENDATORY 22 O.S. 2001, Section 40.3, as
23 amended by Section 4, Chapter 466, O.S.L. 2002 (22 O.S. Supp. 2009,
24 Section 40.3), is amended to read as follows:

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

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

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

16 3. Inform the victim whether the judge has approved or
17 disapproved the emergency temporary order. If an emergency
18 temporary order has been approved, the officer shall provide the
19 victim, or a responsible adult if the victim is a minor child or an
20 incompetent person, with a copy of the petition and a written
21 statement signed by the officer attesting that the judge has
22 approved the emergency temporary order of protection; and

23 4. Notify the person subject to the emergency temporary
24 protection order of the issuance and conditions of the order if

1 known. Notification pursuant to this paragraph may be made
2 personally by the officer upon arrest, or upon identification of the
3 assailant notice shall be given by any law enforcement officer. A
4 copy of the petition and the statement of the officer attesting to
5 the order of the judge shall be made available to the person, and

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

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

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

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

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

1 2. "Stalking" means the willful, malicious, and repeated
2 following or harassment of a person by an adult, emancipated minor,
3 or minor thirteen (13) years of age or older, ~~with the intent of~~
4 ~~placing the person in reasonable fear of death or great bodily~~
5 ~~injury~~ in a manner that would cause a reasonable person to feel
6 frightened, intimidated, threatened, harassed, or molested and
7 actually causes the person being followed or harassed to feel
8 terrorized, frightened, intimidated, threatened, harassed or
9 molested. Stalking also means a course of conduct composed of a
10 series of two or more separate acts over a period of time, however
11 short, evidencing a continuity of purpose or unconsented contact
12 with a person that is initiated or continued without the consent of
13 the individual or in disregard of the expressed desire of the
14 individual that the contact be avoided or discontinued. Unconsented
15 contact or course of conduct includes, but is not limited to:

- 16 a. following or appearing within the sight of that
17 individual,
- 18 b. approaching or confronting that individual in a public
19 place or on private property,
- 20 c. appearing at the workplace or residence of that
21 individual,
- 22 d. entering onto or remaining on property owned, leased,
23 or occupied by that individual,
- 24 e. contacting that individual by telephone,

- 1 f. sending mail or electronic communications to that
2 individual, or
3 g. placing an object on, or delivering an object to,
4 property owned, leased or occupied by that individual;

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

16 4. "Family or household members" means:

- 17 a. spouses,
18 b. ex-spouses,
19 c. present spouses of ex-spouses,
20 d. parents, including grandparents, stepparents, adoptive
21 parents and foster parents,
22 e. children, including grandchildren, stepchildren,
23 adopted children and foster children,
24 f. persons otherwise related by blood or marriage,

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

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

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

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

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

15 8. "Victim support person" means a person affiliated with a
16 certified domestic violence or sexual assault program, certified by
17 the Attorney General or certified by a recognized Native American
18 Tribe if operating mainly within tribal lands, who provides support
19 and assistance for a person who files a petition under the
20 Protection from Domestic Violence Act; and

21 9. "Mutual protective order" means a final protective order or
22 orders issued to both a plaintiff who has filed a petition for a
23 protective order and a defendant included as the defendant in the
24 plaintiff's petition restraining the parties from committing

1 domestic violence, stalking, harassment or rape against each other.
2 If both parties allege domestic abuse, violence, stalking,
3 harassment or rape against each other, the parties shall do so by
4 separate petition pursuant to Section 60.4 of this title.

5 SECTION 3. AMENDATORY 22 O.S. 2001, Section 60.2, as
6 last amended by Section 1, Chapter 189, O.S.L. 2008 (22 O.S. Supp.
7 2009, Section 60.2), is amended to read as follows:

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

14 1. The person seeking relief may file a petition for a
15 protective order with the district court in the county in which the
16 victim resides, the county in which the defendant resides, or the
17 county in which the domestic violence occurred. If the person
18 seeking relief is a victim of stalking but is not a family or
19 household member or an individual who is or has been in a dating
20 relationship with the defendant, the person seeking relief must file
21 a complaint against the defendant with the proper law enforcement
22 agency before filing a petition for a protective order with the
23 district court. The person seeking relief shall provide a copy of
24 the complaint that was filed with the law enforcement agency at the

1 full hearing if the complaint is not available from the law
2 enforcement agency. Failure to provide a copy of the complaint
3 filed with the law enforcement agency shall constitute a frivolous
4 filing and the court may assess attorney fees and court costs
5 against the plaintiff pursuant to paragraph 2 of subsection C of
6 this section. The filing of a petition for a protective order shall
7 not require jurisdiction or venue of the criminal offense if either
8 the plaintiff or defendant resides in the county. If a petition has
9 been filed in an action for divorce or separate maintenance and
10 either party to the action files a petition for a protective order
11 in the same county where the action for divorce or separate
12 maintenance is filed, the petition for the protective order may be
13 heard by the court hearing the divorce or separate maintenance
14 action if:

- 15 a. there is no established protective order docket in
16 such court, or
- 17 b. the court finds that, in the interest of judicial
18 economy, both actions may be heard together; provided,
19 however, the petition for a protective order,
20 including, but not limited to, a petition in which
21 children are named as petitioners, shall remain a
22 separate action and a separate order shall be entered
23 in the protective order action. Protective orders may
24 be dismissed in favor of restraining orders in the

1 divorce or separate maintenance action if the court
2 specifically finds, upon hearing, that such dismissal
3 is in the best interests of the parties and does not
4 compromise the safety of any petitioner.

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

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

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

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

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

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

9 E. The person seeking a protective order may further request
10 the exclusive care, possession, or control of any animal owned,
11 possessed, leased, kept, or held by either the petitioner, defendant
12 or minor child residing in the residence of the petitioner or
13 defendant. The court may order the defendant to make no contact
14 with the animal and forbid the defendant from taking, transferring,
15 encumbering, concealing, molesting, attacking, striking,
16 threatening, harming, or otherwise disposing of the animal.

17 SECTION 4. AMENDATORY Section 5, Chapter 466, O.S.L.
18 2002 (22 O.S. Supp. 2009, Section 60.15), is amended to read as
19 follows:

20 Section 60.15 Upon the preliminary investigation of any crime
21 involving domestic abuse, rape, forcible sodomy or stalking, it
22 shall be the duty of the first peace officer who interviews the
23 victim of the domestic abuse, rape, forcible sodomy or stalking to
24 inform the victim of the twenty-four-hour statewide telephone

1 communication service established by Section ~~3-314 of Title 43A~~ 18p-
2 5 of Title 74 of the Oklahoma Statutes and to give notice to the
3 victim of certain rights. The notice shall consist of handing such
4 victim the following statement:

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

7 1. The right to request that charges be pressed against your
8 assailant;

9 2. The right to request protection from any harm or threat of
10 harm arising out of your cooperation with law enforcement and
11 prosecution efforts as far as facilities are available and to be
12 provided with information on the level of protection available;

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

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

19 SECTION 5. AMENDATORY 22 O.S. 2001, Section 1105, as
20 last amended by Section 1, Chapter 128, O.S.L. 2005 (22 O.S. Supp.
21 2009, Section 1105), is amended to read as follows:

22 Section 1105. A. Except as otherwise provided by this section,
23 upon the allowance of bail and the execution of the requisite
24 recognizance, bond, or undertaking to the state, the magistrate,

1 judge, or court, shall, if the defendant is in custody, make and
2 sign an order for discharge. The court, in its discretion, may
3 prescribe by court rule the conditions under which the court clerk
4 or deputy court clerk, or the sheriff or deputy sheriff, may prepare
5 and execute an order of release on behalf of the court.

6 B. No police officer or sheriff may release a person arrested
7 for a violation of an ex parte or final protective order as provided
8 in Sections 60.2 and 60.3 of this title, or arrested for an act
9 constituting domestic abuse as specified in Section 644 of Title 21
10 of the Oklahoma Statutes, or arrested for any act constituting
11 domestic abuse, stalking or harassment as defined by Section 60.1 of
12 this title without the violator appearing before a magistrate, judge
13 or court. ~~The~~ To the extent that any of the following information
14 is available to the court, the magistrate, judge or court shall
15 ~~determine~~ consider, in addition to any other circumstances, before
16 determining bond and other conditions of release as necessary for
17 the protection of the alleged victim, the following:

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

20 2. The mental health of the person;

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

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

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

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

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

7 a. the duration of the alleged violent incident,

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

10 c. whether the alleged violent incident involved sexual
11 assault,

12 d. whether the alleged violent incident involved
13 strangulation,

14 e. whether the alleged violent incident involved abuse
15 during the pregnancy of the alleged victim,

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

18 g. whether the alleged violent incident involved forcible
19 entry to gain access to the alleged victim;

20 8. Whether a separation of the person from the alleged victim
21 or a termination of the relationship between the person and the
22 alleged victim has recently occurred or is pending;

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

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

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

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

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

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

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

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