

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 3079

By: Hamilton

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5  
6 AS INTRODUCED

7 An Act relating to criminal procedure; amending 22  
8 O.S. 2001, Section 60.4, as last amended by Section  
9 128, Chapter 234, O.S.L. 2009 and Section 4, Chapter  
10 516, O.S.L. 2004, as amended by Section 2, Chapter  
11 114, O.S.L. 2008 (22 O.S. Supp. 2009, Sections 60.4  
12 and 60.17), which relate to the Protection from  
13 Domestic Abuse Act; authorizing use of global  
14 positioning system (GPS) monitoring devices under  
15 certain circumstances; allowing victims access to GPS  
16 monitoring information of defendants; and providing  
17 an effective date.

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

19 SECTION 1. AMENDATORY 22 O.S. 2001, Section 60.4, as  
20 last amended by Section 128, Chapter 234, O.S.L. 2009 (22 O.S. Supp.  
21 2009, Section 60.4), is amended to read as follows:

22 Section 60.4 A. 1. A copy of a petition for a protective  
23 order, notice of hearing and a copy of any emergency ex parte order  
24 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

1 sheriff. Any fee for service of a petition for protective order,  
2 notice of hearing, and emergency ex parte order shall only be  
3 charged pursuant to subsection C of Section 60.2 of this title and,  
4 if charged, shall be the same as the sheriff's service fee plus  
5 mileage expenses.

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

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

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

19 5. When the defendant is a minor child who is ordered removed  
20 from the residence of the victim, in addition to those documents  
21 served upon the defendant, a copy of the petition, notice of hearing  
22 and a copy of any ex parte order issued by the court shall be  
23 delivered with the child to the caretaker of the place where such  
24

1 child is taken pursuant to Section 2-2-101 of Title 10A of the  
2 Oklahoma Statutes.

3 B. 1. Within twenty (20) days of the filing of the petition  
4 for a protective order, the court shall schedule a full hearing on  
5 the petition, if the court finds sufficient grounds within the scope  
6 of the Protection from Domestic Abuse Act stated in the petition to  
7 hold such a hearing, regardless of whether an emergency ex parte  
8 order has been previously issued, requested or denied. Provided,  
9 however, when the defendant is a minor child who has been removed  
10 from the residence pursuant to Section 2-2-101 of Title 10A of the  
11 Oklahoma Statutes, the court shall schedule a full hearing on the  
12 petition within seventy-two (72) hours, regardless of whether an  
13 emergency ex parte order has been previously issued, requested or  
14 denied.

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

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

23 4. A petition for a protective order shall, upon ~~the~~  
24 ~~petitioner's~~ request of the petitioner, renew every twenty (20) days

1 with a new hearing date assigned until the defendant is served. A  
2 petition for a protective order shall not expire unless the  
3 petitioner fails to appear at the hearing or fails to request a new  
4 order. A petitioner may move to dismiss the petition and emergency  
5 or final order at any time, however, a protective order must be  
6 dismissed by court order.

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

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

19 2. In conjunction with any protective order authorized by this  
20 section, the court may order the defendant to use an active, real-  
21 time, twenty-four-hour Global Positioning System (GPS) monitoring  
22 device for such term as the court deems appropriate. The court may  
23 authorize the victim to monitor the location of the defendant.  
24 Before the court orders the use of a GPS device, the court shall

1 find that the defendant has a history that demonstrates an intent to  
2 commit violence against the victim, including, but not limited to,  
3 prior conviction for an offense under the Protection from Domestic  
4 Abuse Act or any other violent offense, or any other evidence that  
5 shows by a preponderance of the evidence that the defendant is  
6 likely to commit violence against the victim. The court may further  
7 order the defendant to pay costs and expenses related to the GPS  
8 device and monitoring.

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

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

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

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1           2. Either party or both may be required to pay all or any part  
2 of the cost of such treatment or counseling services. The court  
3 shall not be responsible for such cost.

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

10          G. 1. Any protective order issued on or after November 1,  
11 1999, pursuant to subsection C of this section shall be for a fixed  
12 period not to exceed a period of three (3) years unless extended,  
13 modified, vacated or rescinded upon motion by either party or if the  
14 court approves any consent agreement entered into by the plaintiff  
15 and defendant.

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

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

23          4. If a child has been removed from the residence of a parent  
24 or custodial adult because of domestic abuse committed by the child,

1 the parent or custodial adult may refuse the return of such child to  
2 the residence, unless upon further consideration by the court in a  
3 juvenile proceeding, it is determined that the child is no longer a  
4 threat and should be allowed to return to the residence.

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

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

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

20 I. 1. A protective order issued under the Protection from  
21 Domestic Abuse Act shall not in any manner affect title to real  
22 property, purport to grant to the parties a divorce or otherwise  
23 purport to determine the issues between the parties as to child  
24 custody, visitation or visitation schedules, child support or

1 division of property or any other like relief obtainable pursuant to  
2 Title 43 of the Oklahoma Statutes, except child visitation orders  
3 may be temporarily suspended or modified to protect from threats of  
4 abuse or physical violence by the defendant or a threat to violate a  
5 custody order.

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

11 J. 1. A court shall not issue any mutual protective orders.

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

19 3. The court may only consolidate a hearing if:

20 a. the court makes specific findings that:

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

23 and

24 (2) each party acted primarily as aggressors, and

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

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

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

15           SECTION 2.        AMENDATORY        Section 4, Chapter 516, O.S.L.  
16           2004, as amended by Section 2, Chapter 114, O.S.L. 2008 (22 O.S.  
17           Supp. 2009, Section 60.17), is amended to read as follows:

18           Section 60.17   The court shall consider the safety of any and  
19           all alleged victims of domestic violence, stalking, harassment,  
20           sexual assault, or forcible sodomy where the defendant is alleged to  
21           have violated a protective order, committed domestic assault and  
22           battery, stalked, sexually assaulted, or forcibly sodomized the  
23           alleged victim or victims prior to the release of the alleged  
24           defendant from custody on bond. The court, after consideration and

1 to ensure the safety of the alleged victim or victims, may issue an  
2 emergency protective order pursuant to the Protection from Domestic  
3 Abuse Act. The court may also issue to the alleged victim or  
4 victims, an order restraining the alleged defendant from any  
5 activity or action from which they may be restrained under the  
6 Protection from Domestic Abuse Act. The protective order shall  
7 remain in effect until either a plea has been accepted, sentencing  
8 has occurred in the case, the case has been dismissed, or until  
9 further order of the court dismissing the protective order. In  
10 conjunction with any protective order or restraining order  
11 authorized by this section, the court may order the defendant to use  
12 an active, real-time, twenty-four-hour Global Positioning System  
13 (GPS) monitoring device for such term as the court deems  
14 appropriate. The court may authorize the victim to monitor the  
15 location of the defendant. Before the court orders the use of a GPS  
16 device, the court shall find that the defendant has a history that  
17 demonstrates an intent to commit violence against the victim,  
18 including, but not limited to, prior conviction for an offense under  
19 the Protection from Domestic Abuse Act or any other violent offense,  
20 or any other evidence that shows by a preponderance of the evidence  
21 that the defendant is likely to commit violence against the victim.  
22 The court may further order the defendant to pay costs and expenses  
23 related to the GPS device and monitoring.

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SECTION 3. This act shall become effective November 1, 2010.

52-2-8926            GRS            12/16/09