

1 ENGROSSED HOUSE  
2 BILL NO. 2118

By: Hickman of the House

3 and

4 Crain of the Senate

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6  
7 An Act relating to criminal procedure; amending 22  
8 O.S. 2001, Sections 60.2, as last amended by Section  
9 3, Chapter 116, O.S.L. 2010, 60.3, as amended by  
10 Section 3, Chapter 407, O.S.L. 2003 and 60.4, as last  
11 amended by Section 4, Chapter 116, O.S.L. 2010 (22  
12 O.S. Supp. 2010, Sections 60.2, 60.3 and 60.4), which  
13 relate to the Protection from Domestic Abuse Act;  
14 making petitions for protective orders confidential;  
15 making court file available for public inspection  
16 after issuance of final protective order; and  
17 providing an effective date.

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

19 SECTION 1. AMENDATORY 22 O.S. 2001, Section 60.2, as  
20 last amended by Section 3, Chapter 116, O.S.L. 2010 (22 O.S. Supp.  
21 2010, Section 60.2), is amended to read as follows:

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

1           1. The person seeking relief may file a petition for a  
2 protective order with the district court in the county in which the  
3 victim resides, the county in which the defendant resides, or the  
4 county in which the domestic violence occurred. If the person  
5 seeking relief is a victim of stalking but is not a family or  
6 household member or an individual who is or has been in a dating  
7 relationship with the defendant, the person seeking relief must file  
8 a complaint against the defendant with the proper law enforcement  
9 agency before filing a petition for a protective order with the  
10 district court. The person seeking relief shall provide a copy of  
11 the complaint that was filed with the law enforcement agency at the  
12 full hearing if the complaint is not available from the law  
13 enforcement agency. Failure to provide a copy of the complaint  
14 filed with the law enforcement agency shall constitute a frivolous  
15 filing and the court may assess attorney fees and court costs  
16 against the plaintiff pursuant to paragraph 2 of subsection C of  
17 this section. The filing of a petition for a protective order shall  
18 not require jurisdiction or venue of the criminal offense if either  
19 the plaintiff or defendant resides in the county. If a petition has  
20 been filed in an action for divorce or separate maintenance and  
21 either party to the action files a petition for a protective order  
22 in the same county where the action for divorce or separate  
23 maintenance is filed, the petition for the protective order may be

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1 heard by the court hearing the divorce or separate maintenance  
2 action if:

3 a. there is no established protective order docket in  
4 such court, or

5 b. the court finds that, in the interest of judicial  
6 economy, both actions may be heard together; provided,  
7 however, the petition for a protective order,  
8 including, but not limited to, a petition in which  
9 children are named as petitioners, shall remain a  
10 separate action and a separate order shall be entered  
11 in the protective order action. Protective orders may  
12 be dismissed in favor of restraining orders in the  
13 divorce or separate maintenance action if the court  
14 specifically finds, upon hearing, that such dismissal  
15 is in the best interests of the parties and does not  
16 compromise the safety of any petitioner.

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

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

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

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

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

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

20 E. The person seeking a protective order may further request  
21 the exclusive care, possession, or control of any animal owned,  
22 possessed, leased, kept, or held by either the petitioner, defendant  
23 or minor child residing in the residence of the petitioner or  
24 defendant. The court may order the defendant to make no contact

1 with the animal and forbid the defendant from taking, transferring,  
2 encumbering, concealing, molesting, attacking, striking,  
3 threatening, harming, or otherwise disposing of the animal.

4 F. Any petition for a protective order filed with the court  
5 shall be maintained in a confidential case file and shall not be  
6 disclosed to the general public.

7 SECTION 2. AMENDATORY 22 O.S. 2001, Section 60.3, as  
8 amended by Section 3, Chapter 407, O.S.L. 2003 (22 O.S. Supp. 2010,  
9 Section 60.3), is amended to read as follows:

10 Section 60.3 A. If a plaintiff requests an emergency ex parte  
11 order pursuant to Section 60.2 of this title, the court shall hold  
12 an ex parte hearing on the same day the petition is filed, if the  
13 court finds sufficient grounds within the scope of the Protection  
14 from Domestic Abuse Act stated in the petition to hold such a  
15 hearing. The court may, for good cause shown at the hearing, issue  
16 any emergency ex parte order that it finds necessary to protect the  
17 victim from immediate and present danger of domestic abuse,  
18 stalking, or harassment. The emergency ex parte order shall be in  
19 effect until after the full hearing is conducted. Provided, if the  
20 defendant, after having been served, does not appear at the hearing,  
21 the emergency ex parte order shall remain in effect until the  
22 defendant is served with the permanent order. If the terms of the  
23 permanent order are the same as those in the emergency order, or are  
24 less restrictive, then it is not necessary to serve the defendant

1 with the permanent order. The Administrative Office of the Courts  
2 shall develop a standard form for emergency ex parte protective  
3 orders.

4 B. An emergency ex parte protective order authorized by this  
5 section shall include the name, sex, race, date of birth of the  
6 defendant, and the dates of issue and expiration of the protective  
7 order.

8 C. If a plaintiff requests an emergency temporary ex parte  
9 order of protection as provided by Section 40.3 of this title, the  
10 judge who is notified of the request by a peace officer may issue  
11 such order verbally to the officer or in writing when there is  
12 reasonable cause to believe that the order is necessary to protect  
13 the victim from immediate and present danger of domestic abuse.  
14 When the order is issued verbally the judge shall direct the officer  
15 to complete and sign a statement attesting to the order. The  
16 emergency temporary ex parte order shall be in effect until the  
17 close of business on the next day the court is open for business  
18 after the order is issued.

19 D. Any emergency temporary ex parte order of protection filed  
20 with the court shall be maintained in a confidential case file and  
21 shall not be disclosed to the general public.

22 SECTION 3. AMENDATORY 22 O.S. 2001, Section 60.4, as  
23 last amended by Section 4, Chapter 116, O.S.L. 2010 (22 O.S. Supp.  
24 2010, Section 60.4), is amended to read as follows:

1 Section 60.4 A. 1. A copy of a petition for a protective  
2 order, notice of hearing and a copy of any emergency ex parte order  
3 issued by the court shall be served upon the defendant in the same  
4 manner as a bench warrant. In addition, if the service is to be in  
5 another county, the court clerk may issue service to the sheriff by  
6 facsimile or other electronic transmission for service by the  
7 sheriff. Any fee for service of a petition for protective order,  
8 notice of hearing, and emergency ex parte order shall only be  
9 charged pursuant to subsection C of Section 60.2 of this title and,  
10 if charged, shall be the same as the sheriff's service fee plus  
11 mileage expenses.

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

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

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

1           5. When the defendant is a minor child who is ordered removed  
2 from the residence of the victim, in addition to those documents  
3 served upon the defendant, a copy of the petition, notice of hearing  
4 and a copy of any ex parte order issued by the court shall be  
5 delivered with the child to the caretaker of the place where such  
6 child is taken pursuant to Section 2-2-101 of Title 10A of the  
7 Oklahoma Statutes.

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

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

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

5 4. A petition for a protective order shall, upon the  
6 ~~petitioner's~~ request of the petitioner, renew every twenty (20) days  
7 with a new hearing date assigned until the defendant is served. A  
8 petition for a protective order shall not expire unless the  
9 petitioner fails to appear at the hearing or fails to request a new  
10 order. A petitioner may move to dismiss the petition and emergency  
11 or final order at any time, however, a protective order must be  
12 dismissed by court order.

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

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

1           2. If the court grants a protective order and the defendant is  
2 a minor child, the court shall order a preliminary inquiry in a  
3 juvenile proceeding to determine whether further court action  
4 pursuant to the Oklahoma Juvenile Code should be taken against a  
5 juvenile defendant.

6           D. Final protective orders authorized by this section shall be  
7 on a standard form developed by the Administrative Office of the  
8 Courts. Upon issuance of a final protective order, the entire  
9 contents of the court file shall be open and available to the  
10 general public for inspection.

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

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

20           F. When necessary to protect the victim and when authorized by  
21 the court, protective orders granted pursuant to the provisions of  
22 this section may be served upon the defendant by a peace officer,  
23 sheriff, constable, or policeman or other officer whose duty it is  
24

1 to preserve the peace, as defined by Section 99 of Title 21 of the  
2 Oklahoma Statutes.

3 G. 1. Any protective order issued on or after November 1,  
4 1999, pursuant to subsection C of this section shall be for a fixed  
5 period not to exceed a period of three (3) years unless extended,  
6 modified, vacated or rescinded upon motion by either party or if the  
7 court approves any consent agreement entered into by the plaintiff  
8 and defendant.

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

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

16 4. If a child has been removed from the residence of a parent  
17 or custodial adult because of domestic abuse committed by the child,  
18 the parent or custodial adult may refuse the return of such child to  
19 the residence, unless upon further consideration by the court in a  
20 juvenile proceeding, it is determined that the child is no longer a  
21 threat and should be allowed to return to the residence.

22 H. 1. It shall be unlawful for any person to knowingly and  
23 willfully seek a protective order against a spouse or ex-spouse  
24 pursuant to the Protection from Domestic Abuse Act for purposes of

1 harassment, undue advantage, intimidation, or limitation of child  
2 visitation rights in any divorce proceeding or separation action  
3 without justifiable cause.

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

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

13 I. 1. A protective order issued under the Protection from  
14 Domestic Abuse Act shall not in any manner affect title to real  
15 property, purport to grant to the parties a divorce or otherwise  
16 purport to determine the issues between the parties as to child  
17 custody, visitation or visitation schedules, child support or  
18 division of property or any other like relief obtainable pursuant to  
19 Title 43 of the Oklahoma Statutes, except child visitation orders  
20 may be temporarily suspended or modified to protect from threats of  
21 abuse or physical violence by the defendant or a threat to violate a  
22 custody order. Orders not affecting title may be entered for good  
23 cause found to protect an animal owned by either of the parties or  
24 any child living in the household.

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

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

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

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

15           a. the court makes specific findings that:

16               (1) sufficient evidence exists of domestic abuse,  
17               stalking, harassment or rape against each party,  
18               and

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

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

