

1 ENGROSSED HOUSE  
2 BILL NO. 2739

By: Peters of the House

3 and

4 Anderson of the Senate

5  
6  
7 An Act relating to criminal procedure; amending 22  
8 O.S. 2011, Sections 60.1, 60.2, 60.3 and 60.4, which  
9 relate to the Protection From Domestic Abuse Act;  
10 modifying definition; providing time limitation for  
11 protective order hearing under certain circumstances;  
12 prohibiting the assessment of costs to plaintiff for  
13 failure to appear at hearings; prohibiting courts  
14 from making certain hearing requirement; directing  
15 courts to enter permanent order within certain time  
16 limitation; clarifying protective order terms and  
17 conditions; authorizing service of process by private  
18 investigators or private process servers; directing  
19 the Administrative Director of the Courts to provide  
20 domestic violence educational training for members of  
21 the judiciary; providing for codification; and  
22 providing an effective date.

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

24 SECTION 1. AMENDATORY 22 O.S. 2011, Section 60.1, is  
amended to read as follows:

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

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

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

- 21            a. following or appearing within the sight of that
- 22                    individual,
- 23            b. approaching or confronting that individual in a public
- 24                    place or on private property,

- c. appearing at the workplace or residence of that individual,
- d. entering onto or remaining on property owned, leased, or occupied by that individual,
- e. contacting that individual by telephone,
- f. sending mail or electronic communications to that individual, or
- g. placing an object on, or delivering an object to, property owned, leased or occupied by that individual;

3. "Harassment" means a knowing and willful course or pattern of conduct by a family or household member or an individual who is or has been involved in a dating relationship with the person, directed at a specific person which seriously alarms or annoys the person, 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 person. "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;

4. "Family or household members" means:

- a. spouses,
- b. ex-spouses,
- c. present spouses of ex-spouses,

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

12 5. "Dating relationship" means a courtship ~~or~~, engagement or  
13 sexual relationship, regardless of duration or frequency of contact.

14 For purposes of this act, a casual acquaintance or ordinary  
15 fraternization between persons in a business or social context shall  
16 not constitute a dating relationship;

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

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

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

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

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

11 SECTION 2. AMENDATORY 22 O.S. 2011, Section 60.2, is  
12 amended to read as follows:

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

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

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

- 20 a. there is no established protective order docket in  
21 such court, or
- 22 b. the court finds that, in the interest of judicial  
23 economy, both actions may be heard together; provided,  
24 however, the petition for a protective order<sup>7</sup>

1 including, but not limited to, a petition in which  
2 children are named as petitioners, shall remain a  
3 separate action and a separate order shall be entered  
4 in the protective order action no later than sixty  
5 (60) days from the date of service on the defendant.

6 ~~Protective orders may be dismissed in favor of~~  
7 ~~restraining orders in the divorce or separate~~  
8 ~~maintenance action if the court specifically finds,~~  
9 ~~upon hearing, that such dismissal is in the best~~  
10 ~~interests of the parties and does not compromise the~~  
11 ~~safety of any petitioner.~~

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

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

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

20 C. 1. Except as otherwise provided by this section, no filing  
21 fee, service of process fee, attorney fees or any other fee or  
22 costs shall be charged the plaintiff or victim at any time for  
23 filing a petition for a protective order, for requesting dismissal  
24 of a protective order, or when a plaintiff or victim fails to

1 appear for a protective order hearing, whether a protective order  
2 is granted or not granted. The court may assess court costs,  
3 service of process fees, attorney fees, other fees and filing fees  
4 against the defendant at the hearing on the petition, if a  
5 protective order is granted against the defendant; provided, the  
6 court shall have authority to waive the costs and fees if the court  
7 finds that the party does not have the ability to pay the costs and  
8 fees.

9 2. If the court makes specific findings that a petition for a  
10 protective order has been filed frivolously and no victim exists,  
11 the court, after providing notice of hearing to the plaintiff  
12 regarding the assessment of fees and costs, may assess attorney  
13 fees and court costs against the plaintiff. Failure to appear at a  
14 protective order hearing shall not constitute grounds for assessing  
15 costs and fees to a 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. A court may not require the filing of any other action  
5 including, but not limited to, divorce, separation, paternity or  
6 criminal proceedings prior to hearing a petition for a protective  
7 order.

8 SECTION 3. AMENDATORY 22 O.S. 2011, Section 60.3, is  
9 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. A permanent order shall be entered in the protective order  
4 action no later than one hundred eighty (180) days from the service  
5 of process on the defendant.

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

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

21 SECTION 4. AMENDATORY 22 O.S. 2011, Section 60.4, is  
22 amended to read as follows:

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

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

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

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

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

23 5. When the defendant is a minor child who is ordered removed  
24 from the residence of the victim, in addition to those documents

1 served upon the defendant, a copy of the petition, notice of hearing  
2 and a copy of any ex parte order issued by the court shall be  
3 delivered with the child to the caretaker of the place where such  
4 child is taken pursuant to Section 2-2-101 of Title 10A of the  
5 Oklahoma Statutes.

6 B. 1. Within twenty (20) days of the filing of the petition  
7 for a protective order, the court shall schedule a full hearing on  
8 the petition, if the court finds sufficient grounds within the scope  
9 of the Protection from Domestic Abuse Act stated in the petition to  
10 hold such a hearing, regardless of whether an emergency ex parte  
11 order has been previously issued, requested or denied. Provided,  
12 however, when the defendant is a minor child who has been removed  
13 from the residence pursuant to Section 2-2-101 of Title 10A of the  
14 Oklahoma Statutes, the court shall schedule a full hearing on the  
15 petition within seventy-two (72) hours, regardless of whether an  
16 emergency ex parte order has been previously issued, requested or  
17 denied and without regard as to whether any other civil or criminal  
18 action has been filed.

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

23 3. If service has not been made on the defendant at the time of  
24 the hearing, the court shall, at the request of the petitioner,

1 issue a new emergency order reflecting a new hearing date and direct  
2 service to issue.

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

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

13 C. 1. At the hearing, the court may impose any terms and  
14 conditions in the protective order that the court reasonably  
15 believes are necessary to bring about the cessation of domestic  
16 abuse against the victim or stalking or harassment of the victim or  
17 the immediate family of the victim ~~and~~ but shall not include any  
18 parenting classes or joint counseling sessions. The court may order  
19 the defendant to obtain domestic abuse counseling or treatment in a  
20 program certified by the Attorney General at the expense of the  
21 defendant pursuant to Section 644 of Title 21 of the Oklahoma  
22 Statutes.

23 2. If the court grants a protective order and the defendant is  
24 a minor child, the court shall order a preliminary inquiry in a

1 juvenile proceeding to determine whether further court action  
2 pursuant to the Oklahoma Juvenile Code should be taken against a  
3 juvenile defendant.

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

7 E. 1. After notice and hearing, protective orders authorized  
8 by this section may require the plaintiff or the defendant or both  
9 to undergo treatment or participate in the court-approved counseling  
10 services necessary to bring about cessation of domestic abuse  
11 against the victim pursuant to Section 644 of Title 21 of the  
12 Oklahoma Statutes but shall not include any parenting classes or  
13 joint counseling sessions.

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

17 F. When necessary to protect the victim and when authorized by  
18 the court, protective orders granted pursuant to the provisions of  
19 this section may be served upon the defendant by a peace officer,  
20 sheriff, constable, or policeman or other officer whose duty it is  
21 to preserve the peace, as defined by Section 99 of Title 21 of the  
22 Oklahoma Statutes. For good cause, the court may authorize service  
23 of process by a private investigator or private process server;  
24 provided, that the cost be borne by the party requesting said

1 service and the private investigator or private process server be  
2 directed to:

3 1. Immediately notify the sheriff of the county where the  
4 petition was filed that service on the defendant was completed; and

5 2. Immediately cause the return of service to be filed with the  
6 clerk of the district court.

7 G. 1. Any protective order issued on or after November 1,  
8 1999, pursuant to subsection C of this section shall be for a fixed  
9 period not to exceed a period of three (3) years unless extended,  
10 modified, vacated or rescinded upon motion by either party or if the  
11 court approves any consent agreement entered into by the plaintiff  
12 and defendant; provided, if the defendant is incarcerated, the  
13 protective order shall remain in full force and effect during the  
14 period of incarceration. The period of incarceration, in any  
15 jurisdiction, shall not be included in the calculation of the three-  
16 year time limitation.

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

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

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

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

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

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

22 I. 1. A protective order issued under the Protection from  
23 Domestic Abuse Act shall not in any manner affect title to real  
24 property, purport to grant to the parties a divorce or otherwise



1 purport to determine the issues between the parties as to child  
2 custody, visitation or visitation schedules, child support or  
3 division of property or any other like relief obtainable pursuant to  
4 Title 43 of the Oklahoma Statutes, except child visitation orders  
5 may be temporarily suspended or modified to protect from threats of  
6 abuse or physical violence by the defendant or a threat to violate a  
7 custody order. Orders not affecting title may be entered for good  
8 cause found to protect an animal owned by either of the parties or  
9 any child living in the household.

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

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

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

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

24 a. the court makes specific findings that:

1 (1) sufficient evidence exists of domestic abuse,  
2 stalking, harassment or rape against each party,  
3 and

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

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

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

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

19 SECTION 5. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 60.20 of Title 22, unless there  
21 is created a duplication in numbering, reads as follows:

22 The Administrative Office of the Courts shall provide  
23 appropriate annual domestic violence educational training for  
24 members of the judiciary.

