

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 53rd Legislature (2011)

4 HOUSE BILL 1358

 By: Peters

7 AS INTRODUCED

8 An Act relating to criminal procedure; amending 22
9 O.S. 2001, Section 60.4, as last amended by Section
10 4, Chapter 116, O.S.L. 2010 (22 O.S. Supp. 2010,
11 Section 60.4), which relates to the Protection from
 Domestic Abuse Act; authorizing issuance of
 protective orders against incarcerated persons; and
 providing an effective date.

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

15 SECTION 1. AMENDATORY 22 O.S. 2001, Section 60.4, as
16 last amended by Section 4, Chapter 116, O.S.L. 2010 (22 O.S. Supp.
17 2010, Section 60.4), is amended to read as follows:

18 Section 60.4 A. 1. A copy of a petition for a protective
19 order, notice of hearing and a copy of any emergency ex parte order
20 issued by the court shall be served upon the defendant in the same
21 manner as a bench warrant. In addition, if the service is to be in
22 another county, the court clerk may issue service to the sheriff by
23 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

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.

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

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

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

21 2. If the court grants a protective order and the defendant is
22 a minor child, the court shall order a preliminary inquiry in a
23 juvenile proceeding to determine whether further court action

1 pursuant to the Oklahoma Juvenile Code should be taken against a
2 juvenile defendant.

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

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

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

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

21 G. 1. Any protective order issued on or after November 1,
22 1999, pursuant to subsection C of this section shall be for a fixed
23 period not to exceed a period of three (3) years unless extended,
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1 modified, vacated or rescinded upon motion by either party or if the
2 court approves any consent agreement entered into by the plaintiff
3 and defendant; provided, if the defendant is incarcerated, the
4 protective order shall remain in full force and effect during the
5 period of incarceration. The period of incarceration, in any
6 jurisdiction, shall not be included in the calculation of the three-
7 year time limitation.

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

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

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

21 H. 1. It shall be unlawful for any person to knowingly and
22 willfully seek a protective order against a spouse or ex-spouse
23 pursuant to the Protection from Domestic Abuse Act for purposes of
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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
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1 cause found to protect an animal owned by either of the parties or
2 any child living in the household.

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

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

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

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

17 a. the court makes specific findings that:

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

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

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

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

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

13 SECTION 2. This act shall become effective November 1, 2011.

14 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02-15-2011 - DO
15 PASS.