

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

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

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2118

By: Hickman

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8 COMMITTEE SUBSTITUTE

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

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

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

Section 60.2 A. A victim of domestic abuse, a victim of
stalking, a victim of harassment, a victim of rape, any adult or
emancipated minor household member on behalf of any other family or

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UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 household member who is a minor or incompetent, or any minor age
2 sixteen (16) or seventeen (17) years may seek relief under the
3 provisions of the Protection from Domestic Abuse Act.

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

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~~Strike thru~~ language denotes deletion from present Statutes.

1 either party to the action files a petition for a protective order
2 in the same county where the action for divorce or separate
3 maintenance is filed, the petition for the protective order may be
4 heard by the court hearing the divorce or separate maintenance
5 action if:

- 6 a. there is no established protective order docket in
7 such court, or
- 8 b. the court finds that, in the interest of judicial
9 economy, both actions may be heard together; provided,
10 however, the petition for a protective order,
11 including, but not limited to, a petition in which
12 children are named as petitioners, shall remain a
13 separate action and a separate order shall be entered
14 in the protective order action. Protective orders may
15 be dismissed in favor of restraining orders in the
16 divorce or separate maintenance action if the court
17 specifically finds, upon hearing, that such dismissal
18 is in the best interests of the parties and does not
19 compromise the safety of any petitioner.

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

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

4 B. The petition forms shall be provided by the clerk of the
5 court. The Administrative Office of the Courts shall develop a
6 standard form for the petition.

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

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

22 D. The person seeking relief shall prepare the petition or, at
23 the request of the plaintiff, the court clerk or the victim-witness
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1 coordinator, victim support person, and court case manager shall
2 prepare or assist the plaintiff in preparing the petition.

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

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

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

17 Section 60.3 A. If a plaintiff requests an emergency ex parte
18 order pursuant to Section 60.2 of this title, the court shall hold
19 an ex parte hearing on the same day the petition is filed, if the
20 court finds sufficient grounds within the scope of the Protection
21 from Domestic Abuse Act stated in the petition to hold such a
22 hearing. The court may, for good cause shown at the hearing, issue
23 any emergency ex parte order that it finds necessary to protect the

1 victim from immediate and present danger of domestic abuse,
2 stalking, or harassment. The emergency ex parte order shall be in
3 effect until after the full hearing is conducted. Provided, if the
4 defendant, after having been served, does not appear at the hearing,
5 the emergency ex parte order shall remain in effect until the
6 defendant is served with the permanent order. If the terms of the
7 permanent order are the same as those in the emergency order, or are
8 less restrictive, then it is not necessary to serve the defendant
9 with the permanent order. The Administrative Office of the Courts
10 shall develop a standard form for emergency ex parte protective
11 orders.

12 B. An emergency ex parte protective order authorized by this
13 section shall include the name, sex, race, date of birth of the
14 defendant, and the dates of issue and expiration of the protective
15 order.

16 C. If a plaintiff requests an emergency temporary ex parte
17 order of protection as provided by Section 40.3 of this title, the
18 judge who is notified of the request by a peace officer may issue
19 such order verbally to the officer or in writing when there is
20 reasonable cause to believe that the order is necessary to protect
21 the victim from immediate and present danger of domestic abuse.
22 When the order is issued verbally the judge shall direct the officer
23 to complete and sign a statement attesting to the order. The

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1 emergency temporary ex parte order shall be in effect until the
2 close of business on the next day the court is open for business
3 after the order is issued.

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

7 SECTION 3. AMENDATORY 22 O.S. 2001, Section 60.4, as
8 last amended by Section 4, Chapter 116, O.S.L. 2010 (22 O.S. Supp.
9 2010, Section 60.4), is amended to read as follows:

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

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

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

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

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

18 B. 1. Within twenty (20) days of the filing of the petition
19 for a protective order, the court shall schedule a full hearing on
20 the petition, if the court finds sufficient grounds within the scope
21 of the Protection from Domestic Abuse Act stated in the petition to
22 hold such a hearing, regardless of whether an emergency ex parte
23 order has been previously issued, requested or denied. Provided,

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1 | however, when the defendant is a minor child who has been removed
2 | from the residence pursuant to Section 2-2-101 of Title 10A of the
3 | Oklahoma Statutes, the court shall schedule a full hearing on the
4 | petition within seventy-two (72) hours, regardless of whether an
5 | emergency ex parte order has been previously issued, requested or
6 | denied.

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

11 | 3. If service has not been made on the defendant at the time of
12 | the hearing, the court shall, at the request of the petitioner,
13 | issue a new emergency order reflecting a new hearing date and direct
14 | service to issue.

15 | 4. A petition for a protective order shall, upon the
16 | ~~petitioner's~~ request of the petitioner, renew every twenty (20) days
17 | with a new hearing date assigned until the defendant is served. A
18 | petition for a protective order shall not expire unless the
19 | petitioner fails to appear at the hearing or fails to request a new
20 | order. A petitioner may move to dismiss the petition and emergency
21 | or final order at any time, however, a protective order must be
22 | dismissed by court order.

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

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

13 2. If the court grants a protective order and the defendant is
14 a minor child, the court shall order a preliminary inquiry in a
15 juvenile proceeding to determine whether further court action
16 pursuant to the Oklahoma Juvenile Code should be taken against a
17 juvenile defendant.

18 D. Final protective orders authorized by this section shall be
19 on a standard form developed by the Administrative Office of the
20 Courts. Upon issuance of a final protective order, the entire
21 contents of the court file shall be open and available to the
22 general public for inspection.

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

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

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

16 G. 1. Any protective order issued on or after November 1,
17 1999, pursuant to subsection C of this section shall be for a fixed
18 period not to exceed a period of three (3) years unless extended,
19 modified, vacated or rescinded upon motion by either party or if the
20 court approves any consent agreement entered into by the plaintiff
21 and defendant.

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1 2. The court shall notify the parties at the time of the
2 issuance of the protective order of the duration of the protective
3 order.

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

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

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

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

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

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

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

23 J. 1. A court shall not issue any mutual protective orders.
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1 2. If both parties allege domestic abuse by the other party,
2 the parties shall do so by separate petitions. The court shall
3 review each petition separately, in an individual or a consolidated
4 hearing and grant or deny each petition on its individual merits.
5 If the court finds cause to grant both motions, the court shall do
6 so by separate orders and with specific findings justifying the
7 issuance of each order.

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

9 a. the court makes specific findings that:

10 (1) sufficient evidence exists of domestic abuse,
11 stalking, harassment or rape against each party,
12 and

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

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

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

22 K. The court may allow a plaintiff or victim to be accompanied
23 by a victim support person at court proceedings. A victim support
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1 person shall not make legal arguments; however, a victim support
2 person who is not a licensed attorney may offer the plaintiff or
3 victim comfort or support and may remain in close proximity to the
4 plaintiff or victim.

5 SECTION 4. This act shall become effective November 1, 2011.

6 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/15/2011 - DO
7 PASS, As Amended.

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