

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 447

By: Barrington

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5
6 AS INTRODUCED

7 An Act relating to criminal procedure; amending 22
8 O.S. 2001, Sections 60.4, as last amended by Section
9 4, Chapter 116, O.S.L. 2010, 60.9, as amended by
10 Section 5, Chapter 284, O.S.L. 2006, and 60.11, as
11 amended by Section 5, Chapter 407, O.S.L. 2003 (22
12 O.S. Supp. 2010, Sections 60.4, 60.9 and 60.11),
13 which relate to protective orders; modifying time for
14 certain filing; requiring peace officers to make
15 certain arrests; modifying procedure for setting
16 certain bond; clarifying items to be included in
17 certain statement; and 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 60.4, as
20 last amended by Section 4, Chapter 116, O.S.L. 2010 (22 O.S. Supp.
21 2010, 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
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1 child is taken pursuant to Section 2-2-101 of Title 10A of the
2 Oklahoma Statutes.

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

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

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

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

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

22 D. Final protective orders authorized by this section shall be
23 on a standard form developed by the Administrative Office of the
24 Courts.

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.

22 2. The court shall notify the parties at the time of the
23 issuance of the protective order of the duration of the protective
24 order.

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

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

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

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

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

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

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

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

21 2. If both parties allege domestic abuse by the other party,
22 the parties shall do so by separate petitions. The court shall
23 review each petition separately, in an individual or a consolidated
24 hearing and grant or deny each petition on its individual merits.

1 If the court finds cause to grant both motions, the court shall do
2 so by separate orders and with specific findings justifying the
3 issuance of each order.

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

5 a. the court makes specific findings that:

6 (1) sufficient evidence exists of domestic abuse,
7 stalking, harassment or rape against each party,
8 and

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

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

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

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

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1 SECTION 2. AMENDATORY 22 O.S. 2001, Section 60.9, as
2 amended by Section 5, Chapter 284, O.S.L. 2006 (22 O.S. Supp. 2010,
3 Section 60.9), is amended to read as follows:

4 Section 60.9 A. A peace officer, without a warrant, ~~may~~ shall
5 arrest and take into custody a person if the peace officer has
6 reasonable cause to believe that:

7 1. An emergency ex parte or final protective order has been
8 issued and served upon the person, pursuant to the Protection from
9 Domestic Abuse Act;

10 2. A true copy and proof of service of the order has been filed
11 with the law enforcement agency having jurisdiction of the area in
12 which the plaintiff or any family or household member named in the
13 order resides or a certified copy of the order and proof of service
14 is presented to the peace officer as provided in subsection D of
15 this section;

16 3. The person named in the order has received notice of the
17 order and has had a reasonable time to comply with such order; and

18 4. The person named in the order has violated the order or is
19 then acting in violation of the order.

20 B. A peace officer, without a warrant, shall arrest and take
21 into custody a person if the following conditions have been met:

22 1. The peace officer has reasonable cause to believe that a
23 foreign protective order has been issued, pursuant to the law of the
24 state or tribal court where the foreign protective order was issued;

1 2. A certified copy of the foreign protective order has been
2 presented to the peace officer that appears valid on its face; and

3 3. The peace officer has reasonable cause to believe the person
4 named in the order has violated the order or is then acting in
5 violation of the order.

6 C. A person arrested pursuant to this section shall be brought
7 before the court within twenty-four (24) hours after arrest to
8 answer to a charge for violation of the order pursuant to Section
9 60.8 of this title, at which time the court shall do each of the
10 following:

11 1. Set a time certain for a hearing on the alleged violation of
12 the order within seventy-two (72) hours after arrest, unless
13 extended by the court on the motion of the arrested person; and

14 2. ~~Set a reasonable bond pending a hearing of the alleged~~
15 ~~violation of the order; and~~

16 3- Notify the party who has procured the order and direct the
17 party to appear at the hearing and give evidence on the charge.

18 The court shall also consider the safety of any and all alleged
19 victims that are subject to the protection of the order prior to the
20 court determining whether to set a reasonable bond pending a hearing
21 of the alleged violation of the order.

22 D. A copy of a protective order shall be prima facie evidence
23 that such order is valid in this state when such documentation is
24 presented to a law enforcement officer by the plaintiff, defendant,

1 or another person on behalf of a person named in the order. Any law
2 enforcement officer may rely on such evidence to make an arrest for
3 a violation of such order, if there is reason to believe the
4 defendant has violated or is then acting in violation of the order
5 without justifiable excuse. When a law enforcement officer relies
6 upon the evidence specified in this subsection, such officer and the
7 employing agency shall be immune from liability for the arrest of
8 the defendant if it is later proved that the evidence was false.

9 E. Any person who knowingly and willfully presents any false or
10 materially altered protective order to any law enforcement officer
11 to effect an arrest of any person shall, upon conviction, be guilty
12 of a felony punishable by imprisonment in the custody of the
13 Department of Corrections for a period not to exceed two (2) years,
14 or by a fine not exceeding Five Thousand Dollars (\$5,000.00) and
15 shall, in addition, be liable for any civil damages to the
16 defendant.

17 SECTION 3. AMENDATORY 22 O.S. 2001, Section 60.11, as
18 amended by Section 5, Chapter 407, O.S.L. 2003 (22 O.S. Supp. 2010,
19 Section 60.11), is amended to read as follows:

20 Section 60.11 In addition to any other provisions required by
21 the Protection from Domestic Abuse Act, or otherwise required by
22 law, each ex parte or final protective order issued pursuant to the
23 Protection from Domestic Abuse Act shall have a statement printed in
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1 bold-faced type or in capital letters containing the following
2 information:

3 1. The filing or nonfiling of criminal charges and the
4 prosecution of the case shall not be determined by a person who is
5 protected by the protective order, but shall be determined by the
6 prosecutor;

7 2. No person, including a person who is protected by the order,
8 may give permission to anyone to ignore or violate any provision of
9 the order. During the time in which the order is valid, every
10 provision of the order shall be in full force and effect unless a
11 court changes the order;

12 3. The order will be in effect for three (3) years unless
13 extended, modified, vacated or rescinded by the court;

14 4. A violation of the order is punishable by a fine of up to
15 One Thousand Dollars (\$1,000.00) or imprisonment for up to one (1)
16 year in the county jail, or by both such fine and imprisonment. A
17 violation of the order which causes injury is punishable by
18 imprisonment for twenty (20) days to one (1) year in the county jail
19 or a fine of up to Five Thousand Dollars (\$5,000.00), or by both
20 such fine and imprisonment; and

21 5. Possession of a firearm ~~or~~, ammunition or other deadly
22 weapon by a defendant while an order is in effect may subject the
23 defendant to prosecution for a violation of federal law even if the
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1 order does not specifically prohibit the defendant from possession
2 of a firearm or ammunition.

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

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