

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 HOUSE BILL 1250

By: Martin (Steve)

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5
6 AS INTRODUCED

7 An Act relating to criminal procedure; amending 22
8 O.S. 2011, Sections 60.4, as amended by Section 1,
9 Chapter 313, O.S.L. 2012 and 60.17 (22 O.S. Supp.
10 2012, Section 60.4), which relate to the Protection
11 from Domestic Abuse Act; authorizing courts to order
12 use of Global Positioning System (GPS) monitoring
13 devices; providing for review hearings; directing
14 court to make certain findings; providing for payment
15 of costs and expenses; deleting certain GPS
16 monitoring limitation; and providing an effective
17 date.

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

19 SECTION 1. AMENDATORY 22 O.S. 2011, Section 60.4, as
20 amended by Section 1, Chapter 313, O.S.L. 2012 (22 O.S. Supp. 2012,
21 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
24

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.

23 4. A petition for a protective order shall, upon the request of
24 the petitioner, renew every twenty (20) days with a new hearing date

1 assigned until the defendant is served. A petition for a protective
2 order shall not expire unless the petitioner fails to appear at the
3 hearing or fails to request a new order. A petitioner may move to
4 dismiss the petition and emergency or final order at any time,
5 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 immediate family of the victim and may order the defendant to
14 obtain domestic abuse counseling or treatment in a program certified
15 by the Attorney General at the expense of the defendant pursuant to
16 Section 644 of Title 21 of the Oklahoma Statutes. In conjunction
17 with any protective order or restraining order authorized by this
18 section, the court may order the defendant to use an active, real-
19 time, twenty-four-hour Global Positioning System (GPS) monitoring
20 device for such term as the court deems appropriate. Upon
21 application of the victim, the court may authorize the victim to
22 monitor the location of the defendant. Such monitoring by the
23 victim may include a provision allowing the victim to receive a
24 computer- or a cellular-generated signal if the defendant comes

1 within a specified distance of the victim. At the request of the
2 defendant or the victim, the court may set a review of the
3 monitoring order to determine if such order to monitor the location
4 of the defendant is still necessary. Before the court orders the
5 use of a GPS monitoring device, the court shall find that the
6 defendant has a history that demonstrates an intent to commit
7 violence against the victim including, but not limited to, prior
8 conviction for an offense under the Protection from Domestic Abuse
9 Act, any other violent offense, or any other evidence that shows by
10 a preponderance of the evidence that the defendant is likely to
11 commit an act of violence against the victim. The court may further
12 order the defendant, the victim, or both to pay costs and expenses
13 related to the GPS monitoring device and monitoring.

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

19 D. Final protective orders authorized by this section shall be
20 on a standard form developed by the Administrative Office of the
21 Courts.

22 E. 1. After notice and hearing, protective orders authorized
23 by this section may require the plaintiff or the defendant or both
24 to undergo treatment or participate in the court-approved counseling

1 services necessary to bring about cessation of domestic abuse
2 against the victim pursuant to Section 644 of Title 21 of the
3 Oklahoma Statutes.

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

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

13 G. 1. Any protective order issued on or after November 1,
14 2012, pursuant to subsection C of this section shall be:

15 a. for a fixed period not to exceed a period of five (5)
16 years unless extended, modified, vacated or rescinded
17 upon motion by either party or if the court approves
18 any consent agreement entered into by the plaintiff
19 and defendant; provided, if the defendant is
20 incarcerated, the protective order shall remain in
21 full force and effect during the period of
22 incarceration. The period of incarceration, in any
23 jurisdiction, shall not be included in the calculation
24 of the five-year time limitation, or

1 b. continuous upon a specific finding by the court of one
2 of the following:

3 (1) the person has a history of violating the orders
4 of any court or governmental entity,

5 (2) the person has previously been convicted of a
6 violent felony offense, or

7 (3) the person has a previous felony conviction for
8 stalking as provided in Section 1173 of Title 21
9 of the Oklahoma Statutes and a court order for a
10 final Victim Protection Order has previously been
11 issued against the person in this state or
12 another state.

13 Further, the court may take into consideration whether the person
14 has a history of domestic violence or a history of other violent
15 acts. The protective order shall remain in effect until modified,
16 vacated or rescinded upon motion by either party or if the court
17 approves any consent agreement entered into by the plaintiff and
18 defendant. If the defendant is incarcerated, the protective order
19 shall remain in full force and effect during the period of
20 incarceration.

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

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,
24

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.

24

1 SECTION 2. AMENDATORY 22 O.S. 2011, Section 60.17, is
2 amended to read as follows:

3 Section 60.17 The court shall consider the safety of any and
4 all alleged victims of domestic violence, stalking, harassment,
5 sexual assault, or forcible sodomy where the defendant is alleged to
6 have violated a protective order, committed domestic assault and
7 battery, stalked, sexually assaulted, or forcibly sodomized the
8 alleged victim or victims prior to the release of the alleged
9 defendant from custody on bond. The court, after consideration and
10 to ensure the safety of the alleged victim or victims, may issue an
11 emergency protective order pursuant to the Protection from Domestic
12 Abuse Act. The court may also issue to the alleged victim or
13 victims, an order restraining the alleged defendant from any
14 activity or action from which they may be restrained under the
15 Protection from Domestic Abuse Act. The protective order shall
16 remain in effect until either a plea has been accepted, sentencing
17 has occurred in the case, the case has been dismissed, or until
18 further order of the court dismissing the protective order. In
19 conjunction with any protective order or restraining order
20 authorized by this section, the court may order the defendant to use
21 an active, real-time, twenty-four-hour Global Positioning System
22 (GPS) monitoring device for such term as the court deems
23 appropriate. Upon application of the victim, the court may
24 authorize the victim to monitor the location of the defendant. Such

1 monitoring by the victim ~~shall be limited to the ability of the~~
2 ~~victim to make computer or cellular inquiries to determine if the~~
3 ~~defendant is within a specified distance of locations, excluding the~~
4 ~~residence or workplace of the defendant, or may include a provision~~
5 allowing the victim to receive a computer- or a cellular-generated
6 signal if the defendant comes within a specified distance of the
7 victim. ~~The court shall conduct an annual~~ At the request of the
8 defendant or the victim, the court may set a hearing to review of
9 the monitoring order to determine if such order to monitor the
10 location of the defendant is still necessary. Before the court
11 orders the use of a GPS device, the court shall find that the
12 defendant has a history that demonstrates an intent to commit
13 violence against the victim, including, but not limited to, prior
14 conviction for an offense under the Protection from Domestic Abuse
15 Act or any other violent offense, or any other evidence that shows
16 by a preponderance of the evidence that the defendant is likely to
17 commit violence against the victim. The court may further order the
18 defendant or victim, or both, to pay costs and expenses related to
19 the GPS device and monitoring.

20 SECTION 3. This act shall become effective November 1, 2013.

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