

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1912

By: Shannon

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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 60.9 (22 O.S. Supp.  
10 2012, Section 60.4), which relate to the Protection  
11 from Domestic Abuse Act; changing applicability of  
12 counseling requirements; modifying qualifiers for  
13 continuous protective orders; modifying bail  
14 conditions for protective order violations; and  
15 providing an effective date.

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

17 SECTION 1. AMENDATORY 22 O.S. 2011, Section 60.4, as  
18 amended by Section 1, Chapter 313, O.S.L. 2012 (22 O.S. Supp. 2012,  
19 Section 60.4), is amended to read as follows:

20 Section 60.4 A. 1. A copy of a petition for a protective  
21 order, notice of hearing and a copy of any emergency ex parte order  
22 issued by the court shall be served upon the defendant in the same  
23 manner as a bench warrant. In addition, if the service is to be in  
24 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) 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.

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~~ The defendant may be required to pay  
8 all or any part of the cost of such treatment or counseling  
9 services. The court 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 2012, pursuant to subsection C of this section shall be:

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19 years unless extended, modified, vacated or rescinded  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

1 incarceration. The period of incarceration, in any  
2 jurisdiction, shall not be included in the calculation  
3 of the five-year time limitation, or

4 b. continuous upon a specific finding by the court of one  
5 of the following:

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

8 (2) the person has previously been convicted of a  
9 violent felony offense, ~~or~~

10 (3) the person has a previous felony conviction for  
11 stalking as provided in Section 1173 of Title 21  
12 of the Oklahoma Statutes ~~and~~, or

13 (4) a court order for a final Victim Protection Order  
14 has previously been issued against the person in  
15 this state or another state.

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

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           hours of notice prior to the full hearing on the  
21           petition filed 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  
24 person shall not make legal arguments; however, a victim support

1 person who is not a licensed attorney may offer the plaintiff or  
2 victim comfort or support and may remain in close proximity to the  
3 plaintiff or victim.

4 SECTION 2. AMENDATORY 22 O.S. 2011, Section 60.9, is  
5 amended to read as follows:

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

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

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

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

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

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

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

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

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

9 C. A person arrested pursuant to this section shall be brought  
10 before the court within twenty-four (24) hours after arrest to  
11 answer to a charge for violation of the order pursuant to Section  
12 ~~60.8~~ 60.6 of this title, at which time the court shall do each of  
13 the following:

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

17 2. ~~Set a reasonable~~ Require the arrested person to post the  
18 entire amount of the bond or a real property bond equal to the  
19 amount of the bail pending a hearing of the alleged violation of the  
20 order. Bail on personal recognizance shall not be admitted; and

21 3. Notify the party who has procured the order and direct the  
22 party to appear at the hearing and give evidence on the charge.

23 D. A copy of a protective order shall be prima facie evidence  
24 that such order is valid in this state when such documentation is

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

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

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

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20 54-1-6503 GRS 01/04/13

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