

STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

COMMITTEE SUBSTITUTE  
FOR

HOUSE BILL NO. 2441

By: Rousselot

COMMITTEE SUBSTITUTE

An Act relating to stalking and victim protection orders; amending 21 O.S. 2011, Section 1173, which relates to the crime of stalking; updating language; modifying penalties; making certain acts unlawful; amending 22 O.S. 2011, Sections 40, 40.2 and 40.3, which relate to victim protection orders; adding definitions; allowing victims of certain crimes to request an emergency temporary order of protection and a victim protection order; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2011, Section 1173, is amended to read as follows:

Section 1173. A. Any person who willfully, maliciously, and repeatedly follows or harasses another person in a manner that:

1. Would cause a reasonable person or a member of the immediate family of that person as defined in subsection F of this section to feel frightened, intimidated, threatened, harassed, or molested; and

1        2. Actually causes the person being followed or harassed to  
2 feel terrorized, frightened, intimidated, threatened, harassed, or  
3 molested,  
4 ~~upon conviction,~~ shall, upon conviction, be guilty of the crime of  
5 stalking, which is a misdemeanor punishable by imprisonment in a  
6 county jail for not more than one (1) year, or by a fine of not more  
7 than One Thousand Dollars (\$1,000.00), or by both such fine and  
8 imprisonment.

9        B. Any person who violates the provisions of subsection A of  
10 this section when:

11        1. There is a permanent or temporary restraining order, a  
12 protective order, an emergency ex parte protective order, or an  
13 injunction in effect prohibiting the behavior described in  
14 subsection A of this section against the same party, when the person  
15 violating the provisions of subsection A of this section has actual  
16 notice of the issuance of such order or injunction; or

17        2. Said person is on probation or parole, a condition of which  
18 prohibits the behavior described in subsection A of this section  
19 against the same party or under the conditions of a community or  
20 alternative punishment; or

21        3. Said person, within ten (10) years preceding the violation  
22 of subsection A of this section, completed the execution of sentence  
23 for a conviction of a crime involving the use or threat of violence  
24

1 against the same party, or against any member of the immediate  
2 family of such party,  
3 ~~upon conviction,~~ shall, upon conviction, be guilty of a felony  
4 punishable by imprisonment in the ~~State Penitentiary~~ custody of the  
5 Department of Corrections for a term not exceeding five (5) years,  
6 or by a fine of not more than Two Thousand Five Hundred Dollars  
7 (\$2,500.00), or by both such fine and imprisonment.

8 C. Any person who ~~commits:~~

9 1. Commits a second act of stalking within ten (10) years of  
10 the completion of sentence for a prior conviction ~~under subsection A~~  
11 ~~of this section~~ stalking; or

12 2. Has a prior conviction of stalking and, after being served  
13 with a protective order that prohibits contact with an individual,  
14 knowingly makes unconsented contact with the same individual,  
15 shall, upon conviction ~~thereof,~~ ~~shall~~ be guilty of a felony  
16 punishable by imprisonment in the ~~State Penitentiary~~ custody of the  
17 Department of Corrections for a term of not ~~exceeding~~ less than five  
18 (5) years, or by a fine of not ~~more~~ less than Two Thousand Five  
19 Hundred Dollars (\$2,500.00), or by both such fine and imprisonment.

20 D. Any person who commits an act of stalking within ten (10)  
21 years of the completion of execution of sentence for a prior  
22 conviction under subsection B or C of this section, shall, upon  
23 conviction ~~thereof,~~ be guilty of a felony punishable by ~~a fine of~~  
24 ~~not less than Two Thousand Five Hundred Dollars (\$2,500.00) nor more~~

1 ~~than Ten Thousand Dollars (\$10,000.00), or by~~ imprisonment in the  
2 ~~State Penitentiary~~ custody of the Department of Corrections for a  
3 term of not exceeding less than ten (10) years, or by a fine of not  
4 less than Five Thousand Dollars (\$5,000.00), or by both such fine  
5 and imprisonment.

6 E. Evidence that the defendant continued to engage in a course  
7 of conduct involving repeated unconsented contact, as defined in  
8 subsection F of this section, with the victim after having been  
9 requested by the victim to discontinue the same or any other form of  
10 unconsented contact, and to refrain from any further unconsented  
11 contact with the victim, shall give rise to a rebuttable presumption  
12 that the continuation of the course of conduct caused the victim to  
13 feel terrorized, frightened, intimidated, threatened, harassed, or  
14 molested.

15 F. For purposes of this section:

16 1. "Harasses" means a pattern or course of conduct directed  
17 toward another individual that includes, but is not limited to,  
18 repeated or continuing unconsented contact, that would cause a  
19 reasonable person to suffer emotional distress, and that actually  
20 causes emotional distress to the victim. Harassment shall include  
21 harassing or obscene phone calls as prohibited by Section 1172 of  
22 this title and conduct prohibited by Section 850 of this title.  
23 Harassment does not include constitutionally protected activity or  
24 conduct that serves a legitimate purpose;

1        2. "Course of conduct" means a pattern of conduct composed of a  
2 series of two (2) or more separate acts over a period of time,  
3 however short, evidencing a continuity of purpose. Constitutionally  
4 protected activity is not included within the meaning of "course of  
5 conduct";

6        3. "Emotional distress" means significant mental suffering or  
7 distress that may, but does not necessarily require, medical or  
8 other professional treatment or counseling;

9        4. "Unconsented contact" means any contact with another  
10 individual that is initiated or continued without the consent of the  
11 individual, or in disregard of that individual's expressed desire  
12 that the contact be avoided or discontinued. Constitutionally  
13 protected activity is not included within the meaning of unconsented  
14 contact. Unconsented contact includes but is not limited to any of  
15 the following:

- 16            a. following or appearing within the sight of that  
17                individual,
- 18            b. approaching or confronting that individual in a public  
19                place or on private property,
- 20            c. appearing at the workplace or residence of that  
21                individual,
- 22            d. entering onto or remaining on property owned, leased,  
23                or occupied by that individual,
- 24            e. contacting that individual by telephone,

- 1           f.     sending mail or electronic communications to that  
2                 individual, and
- 3           g.     placing an object on, or delivering an object to,  
4                 property owned, leased, or occupied by that  
5                 individual; and

6           5. "Member of the immediate family", for the purposes of this  
7 section, means any spouse, parent, child, person related within the  
8 third degree of consanguinity or affinity or any other person who  
9 regularly resides in the household or who regularly resided in the  
10 household within the prior six (6) months.

11           SECTION 2.        AMENDATORY        22 O.S. 2011, Section 40, is  
12 amended to read as follows:

13           Section 40. As used in Sections 40 through 40.3 of this title:

14           1. "Rape" means an act of sexual intercourse accomplished with  
15 a person pursuant to Sections 1111, 1111.1 and 1114 of Title 21 of  
16 the Oklahoma Statutes; ~~and~~

17           2. "Forcible sodomy" means the act of forcing another person to  
18 engage in the detestable and abominable crime against nature  
19 pursuant to Sections 886 and 887 of Title 21 of the Oklahoma  
20 Statutes that is punishable under Section 888 of Title 21 of the  
21 Oklahoma Statutes;

22           3. "Sex offense" means the following crimes:

- 23               a.     sexual assault as provided in Section 681 of Title 21  
24               of the Oklahoma Statutes,

- 1        b. human trafficking as provided in Section 748 of Title  
2        21 of the Oklahoma Statutes,
- 3        c. sexual abuse or sexual exploitation by a caretaker as  
4        provided in Section 843.1 of Title 21 of the Oklahoma  
5        Statutes,
- 6        d. child sexual abuse or child sexual exploitation as  
7        provided in Section 843.5 of Title 21 of the Oklahoma  
8        Statutes,
- 9        e. permitting sexual abuse of a child as provided in  
10       Section 852.1 of Title 21 of the Oklahoma Statutes,
- 11       f. incest as provided in Section 885 of Title 21 of the  
12       Oklahoma Statutes,
- 13       g. forcible sodomy as provided in Section 888 of Title 21  
14       of the Oklahoma Statutes,
- 15       h. child stealing for purposes of sexual abuse or sexual  
16       exploitation as provided in Section 891 of Title 21 of  
17       the Oklahoma Statutes,
- 18       i. indecent exposure or solicitation of minors as  
19       provided in Section 1021 of Title 21 of the Oklahoma  
20       Statutes,
- 21       j. procuring, producing, distributing or possessing child  
22       pornography as provided in Sections 1021.2 and 1024.2  
23       of Title 21 of the Oklahoma Statutes,
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- 1        k. parental consent to child pornography as provided in  
2        Section 1021.3 of Title 21 of the Oklahoma Statutes,  
3        l. aggravated possession of child pornography as provided  
4        in Section 1040.12a of Title 21 of the Oklahoma  
5        Statutes,  
6        m. distributing obscene material or child pornography as  
7        provided in Section 1040.13 of Title 21 of the  
8        Oklahoma Statutes,  
9        n. offering or soliciting sexual conduct with a child as  
10       provided in Section 1040.13a of Title 21 of the  
11       Oklahoma Statutes,  
12       o. procuring a child for prostitution or other lewd acts  
13       as provided in Section 1087 of Title 21 of the  
14       Oklahoma Statutes,  
15       p. inducing a child to engage in prostitution as provided  
16       in Section 1088 of Title 21 of the Oklahoma Statutes,  
17       and  
18       q. lewd or indecent proposals or acts to a child or  
19       sexual battery as provided in Section 1123 of Title 21  
20       of the Oklahoma Statutes;

21       4. "Kidnapping" means kidnapping or kidnapping for purposes of  
22       extortion as provided in Sections 741 and 745 of Title 21 of the  
23       Oklahoma Statutes; and  
24



1        5. "Assault and battery with a deadly weapon" means assault and  
2 battery with a deadly weapon or other means likely to produce death  
3 or great bodily harm as provided in Section 652 of Title 21 of the  
4 Oklahoma Statutes.

5        SECTION 3.        AMENDATORY        22 O.S. 2011, Section 40.2, is  
6 amended to read as follows:

7        Section 40.2 A victim protection order for any victim of rape  
8 ~~or,~~ forcible sodomy, a sex offense, kidnapping or assault and  
9 battery with a deadly weapon, shall be substantially similar to a  
10 protective order in domestic abuse cases pursuant to ~~Section 60 et~~  
11 ~~seq. of this title~~ the Protection from Domestic Abuse Act. No peace  
12 officer shall discourage a victim of rape ~~or,~~ forcible sodomy, a sex  
13 offense, kidnapping or assault and battery with a deadly weapon from  
14 pressing charges against any assailant of the victim.

15        SECTION 4.        AMENDATORY        22 O.S. 2011, Section 40.3, is  
16 amended to read as follows:

17        Section 40.3 A. When the court is not open for business, the  
18 victim of domestic violence, stalking, harassment, rape ~~or,~~ forcible  
19 sodomy, a sex offense, kidnapping or assault and battery with a  
20 deadly weapon may request a petition for an emergency temporary  
21 order of protection. The peace officer making the preliminary  
22 investigation shall:

23        1. Provide the victim with a petition for an emergency  
24 temporary order of protection and, if necessary, assist the victim

1 in completing the petition form. The petition shall be in  
2 substantially the same form as provided by Section 60.2 of this  
3 title for a petition for protective order in domestic abuse cases;

4 2. Immediately notify, by telephone or otherwise, a judge of  
5 the district court of the request for an emergency temporary order  
6 of protection and describe the circumstances. The judge shall  
7 inform the peace officer of the decision to approve or disapprove  
8 the emergency temporary order;

9 3. Inform the victim whether the judge has approved or  
10 disapproved the emergency temporary order. If an emergency  
11 temporary order has been approved, the officer shall provide the  
12 victim, or a responsible adult if the victim is a minor child or an  
13 incompetent person, with a copy of the petition and a written  
14 statement signed by the officer attesting that the judge has  
15 approved the emergency temporary order of protection; and

16 4. Notify the person subject to the emergency temporary  
17 protection order of the issuance and conditions of the order, if  
18 known. Notification pursuant to this paragraph may be made  
19 personally by the officer upon arrest, or, upon identification of  
20 the assailant, notice shall be given by any law enforcement officer.  
21 A copy of the petition and the statement of the officer attesting to  
22 the order of the judge shall be made available to the person.

1       B. The forms utilized by law enforcement agencies in carrying  
2 out the provisions of this section may be substantially similar to  
3 those used under Section 60.2 of this title.

4       SECTION 5. This act shall become effective November 1, 2014.

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6       54-2-10185       GRS       02/19/14

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