

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 54th Legislature (2014)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2441

By: Rousselot of the House

and

Treat of the Senate

7
8
9 COMMITTEE SUBSTITUTE

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

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21
22 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

23 SECTION 1. AMENDATORY 21 O.S. 2011, Section 1173, is
24 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 1. Would cause a reasonable person or a member of the immediate
2 family of that person as defined in subsection F of this section to
3 feel frightened, intimidated, threatened, harassed, or molested; and

4 2. Actually causes the person being followed or harassed to
5 feel terrorized, frightened, intimidated, threatened, harassed, or
6 molested,

7 ~~upon conviction,~~ shall, upon conviction, be guilty of the crime of
8 stalking, which is a misdemeanor punishable by imprisonment in a
9 county jail for not more than one (1) year, or by a fine of not more
10 than One Thousand Dollars (\$1,000.00), or by both such fine and
11 imprisonment.

12 B. Any person who violates the provisions of subsection A of
13 this section when:

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

20 2. Said person is on probation or parole, a condition of which
21 prohibits the behavior described in subsection A of this section
22 against the same party or under the conditions of a community or
23 alternative punishment; or
24

1 3. Said person, within ten (10) years preceding the violation
2 of subsection A of this section, completed the execution of sentence
3 for a conviction of a crime involving the use or threat of violence
4 against the same party, or against any member of the immediate
5 family of such party,
6 ~~upon conviction,~~ shall, upon conviction, be guilty of a felony
7 punishable by imprisonment in the ~~State Penitentiary~~ custody of the
8 Department of Corrections for a term not exceeding five (5) years,
9 or by a fine of not more than Two Thousand Five Hundred Dollars
10 (\$2,500.00), or by both such fine and imprisonment.

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

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

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

23 D. Any person who commits an act of stalking within ten (10)
24 years of the completion of execution of sentence for a prior

1 conviction under subsection B or C of this section, shall, upon
2 conviction ~~thereof~~, be guilty of a felony punishable by ~~a fine of~~
3 ~~not less than Two Thousand Five Hundred Dollars (\$2,500.00) nor more~~
4 ~~than Ten Thousand Dollars (\$10,000.00), or by imprisonment in the~~
5 ~~State Penitentiary~~ custody of the Department of Corrections for a
6 term of not exceeding less than ten (10) years, or by a fine of not
7 less than Five Thousand Dollars (\$5,000.00), or by both such fine
8 and imprisonment.

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

18 F. For purposes of this section:

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

1 this title and conduct prohibited by Section 850 of this title.

2 Harassment does not include constitutionally protected activity or
3 conduct that serves a legitimate purpose;

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

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

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

19 a. following or appearing within the sight of that
20 individual,

21 b. approaching or confronting that individual in a public
22 place or on private property,

23 c. appearing at the workplace or residence of that
24 individual,

- 1 d. entering onto or remaining on property owned, leased,
2 or occupied by that individual,
3 e. contacting that individual by telephone,
4 f. sending mail or electronic communications to that
5 individual, and
6 g. placing an object on, or delivering an object to,
7 property owned, leased, or occupied by that
8 individual; and

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

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

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

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

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

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

- 2 a. sexual assault as provided in Section 681 of Title 21
3 of the Oklahoma Statutes,
- 4 b. human trafficking as provided in Section 748 of Title
5 21 of the Oklahoma Statutes,
- 6 c. sexual abuse or sexual exploitation by a caretaker as
7 provided in Section 843.1 of Title 21 of the Oklahoma
8 Statutes,
- 9 d. child sexual abuse or child sexual exploitation as
10 provided in Section 843.5 of Title 21 of the Oklahoma
11 Statutes,
- 12 e. permitting sexual abuse of a child as provided in
13 Section 852.1 of Title 21 of the Oklahoma Statutes,
- 14 f. incest as provided in Section 885 of Title 21 of the
15 Oklahoma Statutes,
- 16 g. forcible sodomy as provided in Section 888 of Title 21
17 of the Oklahoma Statutes,
- 18 h. child stealing for purposes of sexual abuse or sexual
19 exploitation as provided in Section 891 of Title 21 of
20 the Oklahoma Statutes,
- 21 i. indecent exposure or solicitation of minors as
22 provided in Section 1021 of Title 21 of the Oklahoma
23 Statutes,
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- 1 j. procuring, producing, distributing or possessing child
2 pornography as provided in Sections 1021.2 and 1024.2
3 of Title 21 of the Oklahoma Statutes,
- 4 k. parental consent to child pornography as provided in
5 Section 1021.3 of Title 21 of the Oklahoma Statutes,
- 6 l. aggravated possession of child pornography as provided
7 in Section 1040.12a of Title 21 of the Oklahoma
8 Statutes,
- 9 m. distributing obscene material or child pornography as
10 provided in Section 1040.13 of Title 21 of the
11 Oklahoma Statutes,
- 12 n. offering or soliciting sexual conduct with a child as
13 provided in Section 1040.13a of Title 21 of the
14 Oklahoma Statutes,
- 15 o. procuring a child for prostitution or other lewd acts
16 as provided in Section 1087 of Title 21 of the
17 Oklahoma Statutes,
- 18 p. inducing a child to engage in prostitution as provided
19 in Section 1088 of Title 21 of the Oklahoma Statutes,
20 and
- 21 q. lewd or indecent proposals or acts to a child or
22 sexual battery as provided in Section 1123 of Title 21
23 of the Oklahoma Statutes;
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1 4. "Kidnapping" means kidnapping or kidnapping for purposes of
2 extortion as provided in Sections 741 and 745 of Title 21 of the
3 Oklahoma Statutes; and

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

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

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

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

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

3 1. Provide the victim with a petition for an emergency
4 temporary order of protection and, if necessary, assist the victim
5 in completing the petition form. The petition shall be in
6 substantially the same form as provided by Section 60.2 of this
7 title for a petition for protective order in domestic abuse cases;

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

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

20 4. Notify the person subject to the emergency temporary
21 protection order of the issuance and conditions of the order, if
22 known. Notification pursuant to this paragraph may be made
23 personally by the officer upon arrest, or upon identification of
24 the assailant, notice shall be given by any law enforcement officer.

1 A copy of the petition and the statement of the officer attesting to
2 the order of the judge shall be made available to the person.

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

6 SECTION 5. This act shall become effective November 1, 2014.
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8 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/19/2014 - DO
9 PASS, As Amended and Coauthored.
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