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March 26, 2013

ENGROSSED HOUSE
BILL NO. 1912

By: Shannon, Roberts (Dustin)
and Echols of the House

and

Bingman and Ivester of the
Senate

An Act relating to criminal procedure; amending 22 O.S. 2011, Sections 60.2, 60.4, as amended by Section 1, Chapter 313, O.S.L. 2012 and 60.9 (22 O.S. Supp. 2012, Section 60.4), which relate to the Protection from Domestic Abuse Act; prohibiting courts from ordering victims to seek certain sanctions; modifying time period for certain filing; prohibiting certain terms and conditions for protective orders; changing applicability of counseling requirements; requiring payment of counseling services by defendant under certain circumstances; requiring peace officers to make certain arrests; modifying procedure for setting certain bond; directing the Administrative Office of the Courts to provide certain training; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2011, Section 60.2, is amended to read as follows:

Section 60.2 A. A victim of domestic abuse, a victim of stalking, a victim of harassment, a victim of rape, any adult or emancipated minor household member on behalf of any other family or

1 household member who is a minor or incompetent, or any minor age
2 sixteen (16) or seventeen (17) years may seek relief under the
3 provisions of the Protection from Domestic Abuse Act.

4 1. The person seeking relief may file a petition for a
5 protective order with the district court in the county in which the
6 victim resides, the county in which the defendant resides, or the
7 county in which the domestic violence occurred. If the person
8 seeking relief is a victim of stalking but is not a family or
9 household member or an individual who is or has been in a dating
10 relationship with the defendant, the person seeking relief must file
11 a complaint against the defendant with the proper law enforcement
12 agency before filing a petition for a protective order with the
13 district court. The person seeking relief shall provide a copy of
14 the complaint that was filed with the law enforcement agency at the
15 full hearing if the complaint is not available from the law
16 enforcement agency. Failure to provide a copy of the complaint
17 filed with the law enforcement agency shall constitute a frivolous
18 filing and the court may assess attorney fees and court costs
19 against the plaintiff pursuant to paragraph 2 of subsection C of
20 this section. The filing of a petition for a protective order shall
21 not require jurisdiction or venue of the criminal offense if either
22 the plaintiff or defendant resides in the county. If a petition has
23 been filed in an action for divorce or separate maintenance and
24 either party to the action files a petition for a protective order

1 in the same county where the action for divorce or separate
2 maintenance is filed, the petition for the protective order may be
3 heard by the court hearing the divorce or separate maintenance
4 action if:

5 a. there is no established protective order docket in
6 such court, or

7 b. the court finds that, in the interest of judicial
8 economy, both actions may be heard together; provided,
9 however, the petition for a protective order,
10 including, but not limited to, a petition in which
11 children are named as petitioners, shall remain a
12 separate action and a separate order shall be entered
13 in the protective order action. Protective orders may
14 be dismissed in favor of restraining orders in the
15 divorce or separate maintenance action if the court
16 specifically finds, upon hearing, that such dismissal
17 is in the best interests of the parties and does not
18 compromise the safety of any petitioner.

19 If the defendant is a minor child, the petition shall be filed
20 with the court having jurisdiction over juvenile matters.

21 2. When the abuse occurs when the court is not open for
22 business, such person may request an emergency temporary order of
23 protection as authorized by Section 40.3 of this title.

1 B. The petition forms shall be provided by the clerk of the
2 court. The Administrative Office of the Courts shall develop a
3 standard form for the petition.

4 C. 1. Except as otherwise provided by this section, no filing
5 fee, service of process fee, attorney fees or any other fee or
6 costs shall be charged the plaintiff or victim at any time for
7 filing a petition for a protective order whether a protective order
8 is granted or not granted. The court may assess court costs,
9 service of process fees, attorney fees, other fees and filing fees
10 against the defendant at the hearing on the petition, if a
11 protective order is granted against the defendant; provided, the
12 court shall have authority to waive the costs and fees if the court
13 finds that the party does not have the ability to pay the costs and
14 fees.

15 2. If the court makes specific findings that a petition for a
16 protective order has been filed frivolously and no victim exists,
17 the court may assess attorney fees and court costs against the
18 plaintiff.

19 D. The person seeking relief shall prepare the petition or, at
20 the request of the plaintiff, the court clerk or the victim-witness
21 coordinator, victim support person, and court case manager shall
22 prepare or assist the plaintiff in preparing the petition.

23 E. The person seeking a protective order may further request
24 the exclusive care, possession, or control of any animal owned,

1 possessed, leased, kept, or held by either the petitioner, defendant
2 or minor child residing in the residence of the petitioner or
3 defendant. The court may order the defendant to make no contact
4 with the animal and forbid the defendant from taking, transferring,
5 encumbering, concealing, molesting, attacking, striking,
6 threatening, harming, or otherwise disposing of the animal.

7 F. A court may not require the victim to seek legal sanctions
8 against the defendant including, but not limited to, divorce,
9 separation, paternity or criminal proceedings prior to hearing a
10 petition for protective order.

11 SECTION 2. AMENDATORY 22 O.S. 2011, Section 60.4, as
12 amended by Section 1, Chapter 313, O.S.L. 2012 (22 O.S. Supp. 2012,
13 Section 60.4), is amended to read as follows:

14 Section 60.4 A. 1. A copy of a petition for a protective
15 order, notice of hearing and a copy of any emergency ex parte order
16 issued by the court shall be served upon the defendant in the same
17 manner as a bench warrant. In addition, if the service is to be in
18 another county, the court clerk may issue service to the sheriff by
19 facsimile or other electronic transmission for service by the
20 sheriff. Any fee for service of a petition for protective order,
21 notice of hearing, and emergency ex parte order shall only be
22 charged pursuant to subsection C of Section 60.2 of this title and,
23 if charged, shall be the same as the sheriff's service fee plus
24 mileage expenses.

1 2. Emergency ex parte orders shall be given priority for
2 service and can be served twenty-four (24) hours a day when the
3 location of the defendant is known. When service cannot be made
4 upon the defendant by the sheriff, the sheriff may contact another
5 law enforcement officer or a private investigator or private process
6 server to serve the defendant.

7 3. An emergency ex parte order, a petition for protective
8 order, and a notice of hearing shall have statewide validity and may
9 be transferred to any law enforcement jurisdiction to effect service
10 upon the defendant.

11 4. The return of service shall be submitted to the sheriff's
12 office in the court where the petition, notice of hearing or order
13 was issued.

14 5. When the defendant is a minor child who is ordered removed
15 from the residence of the victim, in addition to those documents
16 served upon the defendant, a copy of the petition, notice of hearing
17 and a copy of any ex parte order issued by the court shall be
18 delivered with the child to the caretaker of the place where such
19 child is taken pursuant to Section 2-2-101 of Title 10A of the
20 Oklahoma Statutes.

21 B. 1. Within ~~twenty (20)~~ fourteen (14) days of the filing of
22 the petition for a protective order, the court shall schedule a full
23 hearing on the petition, if the court finds sufficient grounds
24 within the scope of the Protection from Domestic Abuse Act stated in

1 the petition to hold such a hearing, regardless of whether an
2 emergency ex parte order has been previously issued, requested or
3 denied. Provided, however, when the defendant is a minor child who
4 has been removed from the residence pursuant to Section 2-2-101 of
5 Title 10A of the Oklahoma Statutes, the court shall schedule a full
6 hearing on the petition within seventy-two (72) hours, regardless of
7 whether an emergency ex parte order has been previously issued,
8 requested or denied.

9 2. The court may schedule a full hearing on the petition for a
10 protective order within seventy-two (72) hours when the court issues
11 an emergency ex parte order suspending child visitation rights due
12 to physical violence or threat of abuse.

13 3. If service has not been made on the defendant at the time of
14 the hearing, the court shall, at the request of the petitioner,
15 issue a new emergency order reflecting a new hearing date and direct
16 service to issue.

17 4. A petition for a protective order shall, upon the request of
18 the petitioner, renew every ~~twenty (20)~~ fourteen (14) days with a
19 new hearing date assigned until the defendant is served. A petition
20 for a protective order shall not expire unless the petitioner fails
21 to appear at the hearing or fails to request a new order. A
22 petitioner may move to dismiss the petition and emergency or final
23 order at any time, however, a protective order must be dismissed by
24 court order.

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

4 C. 1. At the hearing, the court may impose any terms and
5 conditions in the protective order that the court reasonably
6 believes are necessary to bring about the cessation of domestic
7 abuse against the victim or stalking or harassment of the victim or
8 the immediate family of the victim ~~and~~ but shall not impose any term
9 and condition that may compromise the safety of the victim
10 including, but not limited to, mediation, couples counseling, family
11 counseling, parenting classes or joint victim-offender counseling
12 sessions. The court may order the defendant to obtain domestic
13 abuse counseling or treatment in a program certified by the Attorney
14 General at the expense of the defendant pursuant to Section 644 of
15 Title 21 of the Oklahoma Statutes.

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

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

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 but shall not order any treatment or counseling
7 that may compromise the safety of the victim including, but not
8 limited to, mediation, couples counseling, family counseling,
9 parenting classes or joint victim-offender counseling sessions.

10 2. ~~Either party or both~~ The defendant may be required to pay
11 all or any part of the cost of such treatment or counseling
12 services. The court shall not be responsible for such cost.

13 3. Should the plaintiff choose to undergo treatment or
14 participate in court-approved counseling services for victims of
15 domestic abuse, the court may order the defendant to pay all or any
16 part of the cost of such treatment or counseling services if the
17 court determines that payment by the defendant is appropriate.

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

1 G. 1. Any protective order issued on or after November 1,
2 2012, pursuant to subsection C of this section shall be:

3 a. for a fixed period not to exceed a period of five (5)
4 years unless extended, modified, vacated or rescinded
5 upon motion by either party or if the court approves
6 any consent agreement entered into by the plaintiff
7 and defendant; provided, if the defendant is
8 incarcerated, the protective order shall remain in
9 full force and effect during the period of
10 incarceration. The period of incarceration, in any
11 jurisdiction, shall not be included in the calculation
12 of the five-year time limitation, or

13 b. continuous upon a specific finding by the court of one
14 of the following:

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

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

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

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

1 Further, the court may take into consideration whether the person
2 has a history of domestic violence or a history of other violent
3 acts. The protective order shall remain in effect until modified,
4 vacated or rescinded upon motion by either party or if the court
5 approves any consent agreement entered into by the plaintiff and
6 defendant. If the defendant is incarcerated, the protective order
7 shall remain in full force and effect during the period of
8 incarceration.

9 2. The court shall notify the parties at the time of the
10 issuance of the protective order of the duration of the protective
11 order.

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

16 4. If a child has been removed from the residence of a parent
17 or custodial adult because of domestic abuse committed by the child,
18 the parent or custodial adult may refuse the return of such child to
19 the residence unless, upon further consideration by the court in a
20 juvenile proceeding, it is determined that the child is no longer a
21 threat and should be allowed to return to the residence.

22 H. 1. It shall be unlawful for any person to knowingly and
23 willfully seek a protective order against a spouse or ex-spouse
24 pursuant to the Protection from Domestic Abuse Act for purposes of

1 harassment, undue advantage, intimidation, or limitation of child
2 visitation rights in any divorce proceeding or separation action
3 without justifiable cause.

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

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

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

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

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

7 2. If both parties allege domestic abuse by the other party,
8 the parties shall do so by separate petitions. The court shall
9 review each petition separately in an individual or a consolidated
10 hearing and grant or deny each petition on its individual merits.
11 If the court finds cause to grant both motions, the court shall do
12 so by separate orders and with specific findings justifying the
13 issuance of each order.

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

15 a. the court makes specific findings that:

16 (1) sufficient evidence exists of domestic abuse,
17 stalking, harassment or rape against each party,
18 and

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

20 b. the defendant filed a petition with the court for a
21 protective order no less than three (3) days, not
22 including weekends or holidays, prior to the first
23 scheduled full hearing on the petition filed by the
24 plaintiff, and

1 c. the defendant had no less than forty-eight (48) ~~hours~~
2 hours of notice prior to the full hearing on the
3 petition filed by the plaintiff.

4 K. The court may allow a plaintiff or victim to be accompanied
5 by a victim support person at court proceedings. A victim support
6 person shall not make legal arguments; however, a victim support
7 person who is not a licensed attorney may offer the plaintiff or
8 victim comfort or support and may remain in close proximity to the
9 plaintiff or victim.

10 SECTION 3. AMENDATORY 22 O.S. 2011, Section 60.9, is
11 amended to read as follows:

12 Section 60.9 A. A Pursuant to paragraph 7 of Section 196 of
13 this title, a peace officer, without a warrant, ~~may~~ shall arrest and
14 take into custody a person if the peace officer has reasonable cause
15 to believe that:

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

19 2. A true copy and proof of service of the order has been filed
20 with the law enforcement agency having jurisdiction of the area in
21 which the plaintiff or any family or household member named in the
22 order resides or a certified copy of the order and proof of service
23 is presented to the peace officer as provided in subsection D of
24 this section;

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

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

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

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

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

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

15 C. A person arrested pursuant to this section shall be brought
16 before the court within twenty-four (24) hours after arrest to
17 answer to a charge for violation of the order pursuant to Section
18 60.8 of this title, at which time the court shall do each of the
19 following:

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

23 2. Set a reasonable bond pending a hearing of the alleged
24 violation of the order; and

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

3 The court may also consider the safety of any and all alleged
4 victims that are subject to the protection of the order prior to the
5 court setting a reasonable bond pending a hearing of the alleged
6 violation of the order.

7 D. A copy of a protective order shall be prima facie evidence
8 that such order is valid in this state when such documentation is
9 presented to a law enforcement officer by the plaintiff, defendant,
10 or another person on behalf of a person named in the order. Any law
11 enforcement officer may rely on such evidence to make an arrest for
12 a violation of such order, if there is reason to believe the
13 defendant has violated or is then acting in violation of the order
14 without justifiable excuse. When a law enforcement officer relies
15 upon the evidence specified in this subsection, such officer and the
16 employing agency shall be immune from liability for the arrest of
17 the defendant if it is later proved that the evidence was false.

18 E. Any person who knowingly and willfully presents any false or
19 materially altered protective order to any law enforcement officer
20 to effect an arrest of any person shall, upon conviction, be guilty
21 of a felony punishable by imprisonment in the custody of the
22 Department of Corrections for a period not to exceed two (2) years,
23 or by a fine not exceeding Five Thousand Dollars (\$5,000.00) and
24

1 shall, in addition, be liable for any civil damages to the
2 defendant.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 60.20 of Title 22, unless there
5 is created a duplication in numbering, reads as follows:

6 The Administrative Office of the Courts shall provide annual
7 domestic violence educational training for members of the judiciary.

8 SECTION 5. This act shall become effective November 1, 2013.

9 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
10 March 26, 2013 - DO PASS
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