

1 ENGROSSED HOUSE  
2 BILL NO. 3601

By: Kerbs of the House

and

Weaver of the Senate

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7 An Act relating to victim protective orders; amending  
8 22 O.S. 2011, Section 40.3, as last amended by  
9 Section 4, Chapter 183, O.S.L. 2016 (22 O.S. Supp.  
10 2019, Section 40.3), which relates to emergency  
11 temporary orders of protection for victims of certain  
12 crimes; directing peace officers to complete return  
13 of service when filing petition; directing court  
14 clerk to review and evaluate petition; amending 22  
15 O.S. 2011, Sections 60.3, as last amended by Section  
16 2, Chapter 113, O.S.L. 2019 and 60.16 (22 O.S. Supp.  
17 2019, Section 60.3), which relate to the Protection  
18 from Domestic Abuse Act; directing peace officers to  
19 complete return of service when filing petition;  
20 directing court clerk to review and evaluate  
21 petition; modifying effective date of emergency  
22 temporary orders; providing for notification of  
23 hearing date, time and location; directing peace  
24 officer to provide copies of order to victim and  
defendant; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2011, Section 40.3, as  
last amended by Section 4, Chapter 183, O.S.L. 2016 (22 O.S. Supp.  
2019, Section 40.3), is amended to read as follows:

Section 40.3 A. When the court is not open for business, the  
victim of domestic violence, stalking, harassment, rape, forcible

1 sodomy, a sex offense, kidnapping or assault and battery with a  
2 deadly weapon or member of the immediate family of a victim of  
3 first-degree murder may request a petition for an emergency  
4 temporary order of protection. The peace officer making the  
5 preliminary investigation shall:

6 1. Provide the victim or member of the immediate family of a  
7 victim of first-degree murder with a petition for an emergency  
8 temporary order of protection and, if necessary, assist the victim  
9 or member of the immediate family of a victim of first-degree murder  
10 in completing the petition form. The petition shall be in  
11 substantially the same form as provided by Section 60.2 of this  
12 title for a petition for protective order in domestic abuse cases;

13 2. Immediately notify, by telephone or otherwise, a judge of  
14 the district court of the request for an emergency temporary order  
15 of protection and describe the circumstances. The judge shall  
16 inform the peace officer of the decision to approve or disapprove  
17 the emergency temporary order;

18 3. Inform the victim or member of the immediate family of a  
19 victim of first-degree murder whether the judge has approved or  
20 disapproved the emergency temporary order. If an emergency  
21 temporary order has been approved, the peace officer shall provide  
22 the victim, or a responsible adult if the victim is a minor child or  
23 an incompetent person or member of the immediate family of a victim  
24 of first-degree murder, with a copy of the petition and a written

1 statement signed by the peace officer attesting that the judge has  
2 approved the emergency temporary order of protection; ~~and~~

3 4. Notify the person subject to the emergency temporary  
4 protection order of the issuance and conditions of the order, if  
5 known. Notification pursuant to this paragraph may be made  
6 personally by the peace officer upon arrest or, upon identification  
7 of the assailant, notice shall be given by any law enforcement  
8 officer. A copy of the petition and the statement of the peace  
9 officer attesting to the order of the judge shall be made available  
10 to the person; and

11 5. Make every attempt to serve the subject of the order and  
12 complete a return of service when filing the petition with the  
13 district court. If the peace officer is unable to obtain service,  
14 the petition should be filed with the district court the next  
15 business day. The court clerk shall review the petition upon  
16 delivery by the peace officer to ensure all required documents are  
17 accounted for. The court clerk, upon evaluation of the petition,  
18 shall make sure a return of service is properly filled out and  
19 attached to the petition. The court clerk shall document the  
20 hearing date and time assigned to the case. If the court clerk  
21 observes that no service has been obtained, the petition shall be  
22 filed and issued to the appropriate office of the county sheriff to  
23 obtain service with priority.  
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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 2. AMENDATORY 22 O.S. 2011, Section 60.3, as  
5 last amended by Section 2, Chapter 113, O.S.L. 2019 (22 O.S. Supp.  
6 2019, Section 60.3), is amended to read as follows:

7 Section 60.3 A. If a plaintiff requests an emergency ex parte  
8 order pursuant to Section 60.2 of this title, the court shall hold  
9 an ex parte hearing on the same day the petition is filed, if the  
10 court finds sufficient grounds within the scope of the Protection  
11 from Domestic Abuse Act stated in the petition to hold such a  
12 hearing. The court may, for good cause shown at the hearing, issue  
13 any emergency ex parte order that it finds necessary to protect the  
14 victim from immediate and present danger of domestic abuse,  
15 stalking, or harassment. The emergency ex parte order shall be in  
16 effect until after the full hearing is conducted. Provided, if the  
17 defendant, after having been served, does not appear at the hearing,  
18 the emergency ex parte order shall remain in effect until the  
19 defendant is served with the permanent order. If the terms of the  
20 permanent order are the same as those in the emergency order, or are  
21 less restrictive, then it is not necessary to serve the defendant  
22 with the permanent order. The Administrative Office of the Courts  
23 shall develop a standard form for emergency ex parte protective  
24 orders.

1 B. An emergency ex parte protective order authorized by this  
2 section shall include the name, sex, race, date of birth of the  
3 defendant, and the dates of issue and expiration of the protective  
4 order.

5 C. If a plaintiff requests an emergency temporary ex parte  
6 order of protection as provided by Section 40.3 of this title, the  
7 judge who is notified of the request by a peace officer may issue  
8 such order verbally to the peace officer or in writing when there is  
9 reasonable cause to believe that the order is necessary to protect  
10 the victim from immediate and present danger of domestic abuse.  
11 When the order is issued verbally the judge shall direct the peace  
12 officer to complete and sign a statement attesting to the order.  
13 The emergency temporary ex parte order shall be in effect until the  
14 court date that was assigned by the court during the approval of the  
15 order. Emergency temporary ex parte orders shall be heard within  
16 fourteen (14) days after issuance. The court shall provide a list  
17 of available court dates for hearings.

18 The peace officer shall make every attempt to serve the subject  
19 of the order and complete a return of service when filing the  
20 petition with the district court. If the peace officer is unable to  
21 obtain service, the petition should be filed with the district court  
22 the next business day. The court clerk shall review the petition  
23 upon delivery by the peace officer to ensure all required documents  
24 are accounted for. The court clerk, upon evaluation of the

1 petition, shall make sure a return of service is properly filled out  
2 and attached to the petition. The court clerk shall document the  
3 hearing date and time assigned to the case. If the court clerk  
4 observes that service has not been obtained, the petition shall  
5 still be filed by the court clerk and issued to the appropriate  
6 office of the county sheriff to obtain service with priority.

7 D. If an action for divorce, separate maintenance,  
8 guardianship, adoption or any other proceeding involving custody or  
9 visitation has been filed and is pending in a county different than  
10 the county in which the emergency ex parte order was issued, the  
11 hearing on the petition for a final protective order shall be  
12 transferred and held in the same county in which the action for  
13 divorce, separate maintenance, guardianship, adoption or any other  
14 proceeding involving custody or visitation is pending.

15 SECTION 3. AMENDATORY 22 O.S. 2011, Section 60.16, is  
16 amended to read as follows:

17 Section 60.16 A. A peace officer shall not discourage a victim  
18 of domestic abuse from pressing charges against the assailant of the  
19 victim.

20 B. 1. A peace officer may arrest without a warrant a person  
21 anywhere, including a place of residence, if the peace officer has  
22 probable cause to believe the person within the preceding seventy-  
23 two (72) hours has committed an act of domestic abuse as defined by  
24 Section 60.1 of this title, although the assault did not take place

1 in the presence of the peace officer. A peace officer may not  
2 arrest a person pursuant to this section without first observing a  
3 recent physical injury to, or an impairment of the physical  
4 condition of, the alleged victim.

5 2. An arrest, when made pursuant to this section, shall be  
6 based on an investigation by the peace officer of the circumstances  
7 surrounding the incident, past history of violence between the  
8 parties, statements of any children present in the residence, and  
9 any other relevant factors. A determination by the peace officer  
10 shall be made pursuant to the investigation as to which party is the  
11 dominant aggressor in the situation. A peace officer may arrest the  
12 dominant aggressor.

13 C. When the court is not open for business, the victim of  
14 domestic abuse may request a petition for an emergency temporary  
15 order of protection. The peace officer making the preliminary  
16 investigation shall:

17 1. Provide the victim with a petition for an emergency  
18 temporary order of protection and, if necessary, assist the victim  
19 in completing the petition form. The petition shall be in  
20 substantially the same form as provided by Section 60.2 of this  
21 title for a petition for protective order;

22 2. Immediately notify, by telephone or otherwise, a judge of  
23 the district court of the request for an emergency temporary order  
24 of protection and describe the circumstances. The judge shall

1 inform the peace officer of the decision to approve or disapprove  
2 the emergency temporary order;

3 3. Inform the victim whether the judge has approved or  
4 disapproved the emergency temporary order. If an emergency  
5 temporary order has been approved, the peace officer shall provide  
6 the victim, or a responsible adult if the victim is a minor child or  
7 an incompetent person, with a copy of the petition and a written  
8 statement signed by the peace officer attesting that the judge has  
9 approved the emergency temporary order of protection and notify the  
10 victim that the emergency temporary order shall be effective ~~only~~  
11 ~~until the close of business on the next day that the court is open~~  
12 ~~for business~~ until the date of the hearing set by the judge. The  
13 peace officer requesting the order shall be notified by the judge of  
14 the date, time and courtroom location in which the hearing will be  
15 held or notified from the court-provided list. The peace officer  
16 shall provide the victim and defendant with a copy of the completed  
17 order and return the original order to the district court;

18 4. Notify the person subject to the emergency temporary  
19 protection order of the issuance and conditions of the order.  
20 Notification pursuant to this paragraph may be made personally by  
21 the peace officer or in writing. A copy of the petition and the  
22 statement of the peace officer attesting to the order of the judge  
23 shall be made available to such person; and  
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1        5. File a copy of the petition and the statement of the peace  
2 officer with the district court of the county immediately upon the  
3 opening of the court on the next day the court is open for business.  
4 The peace officer shall make every attempt to serve the defendant  
5 and complete a return of service when filing the petition with the  
6 district court. If the peace officer is unable to obtain service,  
7 the petition shall be filed with the district court the next  
8 business day. The court clerk shall review the petition upon  
9 delivery by the peace officer to ensure all required documents are  
10 accounted for. The court clerk, upon evaluation of the petition,  
11 shall make sure a return of service is properly filled out and  
12 attached to the petition. The court clerk shall document the  
13 hearing date and time assigned to the case. If the court clerk  
14 observes that service has not been obtained, the petition shall  
15 still be filed by the court clerk and issued to the appropriate  
16 office of the county sheriff to obtain service with priority.

17        D. The forms utilized by law enforcement agencies in carrying  
18 out the provisions of this section may be substantially similar to  
19 those used under Section 60.2 of this title.

20        SECTION 4. This act shall become effective November 1, 2020.  
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1 Passed the House of Representatives the 9th day of March, 2020.

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4 Presiding Officer of the House  
of Representatives

5 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2020.

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8 Presiding Officer of the Senate