

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

HOUSE BILL 3601 By: Kerbs of the House

By: Kerbs of the House

and

Weaver of the Senate

AS INTRODUCED

An Act relating to victim protective orders; amending 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), which relates to emergency temporary orders of protection for victims of certain crimes; directing peace officers to complete return of service when filing petition; directing court clerk to review and evaluate petition; amending 22 O.S. 2011, Sections 60.3, as last amended by Section 2, Chapter 113, O.S.L. 2019 and 60.16 (22 O.S. Supp. 2019, Section 60.3), which relate to the Protection from Domestic Abuse Act; directing peace officers to complete return of service when filing petition; directing court clerk to review and evaluate petition; modifying effective date of emergency temporary orders; providing for notification of hearing date, time and location; directing peace 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,
last amended by Section 4, Chapter 183, O.S.L. 2016 (22 O.S. S
2019, Section 40.3), is amended to read as follows:

1 Section 40.3 A. When the court is not open for business, the
2 victim of domestic violence, stalking, harassment, rape, forcible
3 sodomy, a sex offense, kidnapping or assault and battery with a
4 deadly weapon or member of the immediate family of a victim of
5 first-degree murder may request a petition for an emergency
6 temporary order of protection. The peace officer making the
7 preliminary investigation shall:

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

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

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

1 an incompetent person or member of the immediate family of a victim
2 of first-degree murder, with a copy of the petition and a written
3 statement signed by the peace officer attesting that the judge has
4 approved the emergency temporary order of protection; ~~and~~

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

13 5. Make every attempt to serve the subject of the order and
14 complete a return of service when filing the petition with the
15 district court. If the peace officer is unable to obtain service,
16 the petition should be filed with the district court the next
17 business day. The court clerk shall review the petition upon
18 delivery by the peace officer to ensure all required documents are
19 accounted for. The court clerk, upon evaluation of the petition,
20 shall make sure a return of service is properly filled out and
21 attached to the petition. The court clerk shall document the
22 hearing date and time assigned to the case. If the court clerk
23 observes that no service has been obtained, the petition shall be
24

1 filed and issued to the appropriate office of the county sheriff to
2 obtain service with priority.

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 2. AMENDATORY 22 O.S. 2011, Section 60.3, as
7 last amended by Section 2, Chapter 113, O.S.L. 2019 (22 O.S. Supp.
8 2019, Section 60.3), is amended to read as follows:

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

1 shall develop a standard form for emergency ex parte protective
2 orders.

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

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

20 The peace officer shall make every attempt to serve the subject
21 of the order and complete a return of service when filing the
22 petition with the district court. If the peace officer is unable to
23 obtain service, the petition should be filed with the district court
24 the next business day. The court clerk shall review the petition

1 upon delivery by the peace officer to ensure all required documents
2 are accounted for. The court clerk, upon evaluation of the
3 petition, shall make sure a return of service is properly filled out
4 and attached to the petition. The court clerk shall document the
5 hearing date and time assigned to the case. If the court clerk
6 observes that service has not been obtained, the petition shall
7 still be filed by the court clerk and issued to the appropriate
8 office of the county sheriff to obtain service with priority.

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

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

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

22 B. 1. A peace officer may arrest without a warrant a person
23 anywhere, including a place of residence, if the peace officer has
24 probable cause to believe the person within the preceding seventy-

1 two (72) hours has committed an act of domestic abuse as defined by
2 Section 60.1 of this title, although the assault did not take place
3 in the presence of the peace officer. A peace officer may not
4 arrest a person pursuant to this section without first observing a
5 recent physical injury to, or an impairment of the physical
6 condition of, the alleged victim.

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

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

19 1. Provide the victim with a petition for an emergency
20 temporary order of protection and, if necessary, assist the victim
21 in completing the petition form. The petition shall be in
22 substantially the same form as provided by Section 60.2 of this
23 title for a petition for protective order;
24

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

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

21 4. Notify the person subject to the emergency temporary
22 protection order of the issuance and conditions of the order.
23 Notification pursuant to this paragraph may be made personally by
24 the peace officer or in writing. A copy of the petition and the

1 statement of the peace officer attesting to the order of the judge
2 shall be made available to such person; and

3 5. File a copy of the petition and the statement of the peace
4 officer with the district court of the county immediately upon the
5 opening of the court on the next day the court is open for business.
6 The peace officer shall make every attempt to serve the defendant
7 and complete a return of service when filing the petition with the
8 district court. If the peace officer is unable to obtain service,
9 the petition shall be filed with the district court the next
10 business day. The court clerk shall review the petition upon
11 delivery by the peace officer to ensure all required documents are
12 accounted for. The court clerk, upon evaluation of the petition,
13 shall make sure a return of service is properly filled out and
14 attached to the petition. The court clerk shall document the
15 hearing date and time assigned to the case. If the court clerk
16 observes that service has not been obtained, the petition shall
17 still be filed by the court clerk and issued to the appropriate
18 office of the county sheriff to obtain service with priority.

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

22 SECTION 4. This act shall become effective November 1, 2020.

23 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/27/2020 - DO
24 PASS, As Coauthored.