

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 HOUSE BILL 3601

By: Kerbs

4
5 AS INTRODUCED

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

1 first-degree murder may request a petition for an emergency
2 temporary order of protection. The peace officer making the
3 preliminary investigation shall:

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

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

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

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

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

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

1 SECTION 2. AMENDATORY 22 O.S. 2011, Section 60.3, as
2 last amended by Section 2, Chapter 113, O.S.L. 2019 (22 O.S. Supp.
3 2019, Section 60.3), is amended to read as follows:

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

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

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

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

1 hearing date and time assigned to the case. If the court clerk
2 observes that service has not been obtained, the petition shall
3 still be filed by the court clerk and issued to the appropriate
4 office of the county sheriff to obtain service with priority.

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

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

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

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

1 recent physical injury to, or an impairment of the physical
2 condition of, the alleged victim.

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

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

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

20 2. Immediately notify, by telephone or otherwise, a judge of
21 the district court of the request for an emergency temporary order
22 of protection and describe the circumstances. The judge shall
23 inform the peace officer of the decision to approve or disapprove
24 the emergency temporary order;

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

16 4. Notify the person subject to the emergency temporary
17 protection order of the issuance and conditions of the order.
18 Notification pursuant to this paragraph may be made personally by
19 the peace officer or in writing. A copy of the petition and the
20 statement of the peace officer attesting to the order of the judge
21 shall be made available to such person; and

22 5. File a copy of the petition and the statement of the peace
23 officer with the district court of the county immediately upon the
24 opening of the court on the next day the court is open for business.

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

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

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