

ENGROSSED SENATE
BILL NO. 1104

By: Mickle, Haney and Weedn of
the Senate

and

Benson of the House

[domestic violence - requiring certain actions within
certain time -
modifying language
- emergency]

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 40, is
amended to read as follows:

Section 40. As used in Sections 40 through 40.4 of this title:

1. "Rape" means an act of sexual intercourse
accomplished with a person pursuant to Sections
1111, 1111.1 and 1114 of Title 21 of the Oklahoma
Statutes;
2. "Forcible sodomy" means the act of forcing
another person to engage in the detestable and
abominable crime against nature pursuant to
~~Sections~~ Section 886 ~~and 887~~ or 888 of Title 21 of
the Oklahoma Statutes;

3. "Domestic abuse" means any act of physical harm, or the
threat of imminent physical harm which is committed by an adult,
emancipated minor, or minor age ~~sixteen (16) or seventeen (17)~~

thirteen (13) years or older against another adult, emancipated minor or minor child who are family or household members or who were in a dating relationship as defined in paragraph 5 of this section; and

4. "Family or household members" means spouses, ex-spouses, present spouses of ex-spouses, parents, foster parents, children, persons otherwise related by blood or marriage, persons living in the same household or who formerly lived in the same household, or persons who are the biological parents of the same child, regardless of their marital status, or whether they have lived together at any time. This shall include the elderly and handicapped; and

5. "Dating relationship" means a courtship or engagement relationship. For purposes of Sections 40 through 40.4 of this title, a casual acquaintance or ordinary fraternization between persons in a business or social context shall not constitute a dating relationship.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 60.1, as last amended by Section 29, Chapter 247, O.S.L. 1996 (22 O.S. Supp. 1997, Section 60.1), is amended to read as follows:

Section 60.1 As used in the Protection from Domestic Abuse Act ~~and in,~~ Section 60 et seq. of this title, the Domestic Abuse Reporting Act, Sections 40.5 through 40.7 of this title, and Section 150.12B of Title 74 of the Oklahoma Statutes:

1. "Domestic abuse" means any act of physical harm, or the threat of imminent physical harm which is committed by an adult, emancipated minor, or minor age thirteen (13) years or older against another adult, emancipated minor or minor child who are family or household members or who are or were in a dating relationship;

2. "Stalking" means the willful, malicious, and repeated following of a person by an adult, emancipated minor, or minor thirteen (13) years of age or older, with the intent of placing the person in reasonable fear of death or great bodily injury;

3. "Harassment" means a knowing and willful course or pattern of conduct by an adult, emancipated minor, or minor thirteen (13) years of age or older, directed at a specific person which seriously alarms or annoys the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial distress to the person. "Harassment" shall include, but not be limited to, harassing or obscene telephone calls in violation of Section 1172 of Title 21 of the Oklahoma Statutes and fear of death or bodily injury;

4. "Family or household members" means spouses, ex-spouses, present spouses of ex-spouses, parents, foster parents, children, persons otherwise related by blood or marriage, persons living in the same household or who formerly lived in the same household, persons who are the biological parents of the same child, regardless of their marital status, or whether they have lived together at any time. This shall include the elderly and handicapped; and

5. "Dating relationship" means a courtship or engagement relationship. For purposes of this act, a casual acquaintance or ordinary fraternization between persons in a business or social context shall not constitute a dating relationship.

SECTION 3. AMENDATORY 22 O.S. 1991, Section 60.2, as last amended by Section 7, Chapter 403, O.S.L. 1997 (22 O.S. Supp. 1997, Section 60.2), is amended to read as follows:

Section 60.2 A. A Any adult, emancipated minor, or child sixteen (16) or seventeen (17) years of age, who is a victim of, or is acting on behalf of any minor child or incompetent family or household member as defined in Section 60 of this title who is a victim of domestic abuse, ~~a victim of stalking, a victim of harassment, any adult or emancipated minor household member on behalf of any other family or household member who is a minor or incompetent, or any minor age sixteen (16) or seventeen (17) years~~

or any crime involving physical harm or the threat of imminent physical harm may seek relief under the provisions of the Protection from Domestic Abuse Act.

1. ~~Such~~ The person ~~may seek~~ seeking relief ~~by filing~~ shall file a petition for a protective order with the district court in either the county in which the victim resides or the county in which the defendant resides and such petition shall be given priority for service and consideration for criminal prosecution.

2. ~~When the abuse~~ The person seeking relief may request an emergency temporary protective order from the peace officer making the preliminary investigation of the offense or attempted offense as provided in Section 40.3 of this title, if the offense occurs when the court is not open for business, such person may request an. Any request for an emergency temporary order of protection as provided by Section 40.3 of this title shall be processed immediately.

B. The petition forms for a protective order shall be provided by the clerk of the court and shall be in substantially the following form:

IN THE DISTRICT COURT IN AND FOR _____ COUNTY

STATE OF OKLAHOMA

_____)

Plaintiff)

)

vs.

)

Case No. _____

)

_____)

Defendant)

PETITION FOR PROTECTIVE ORDER

Plaintiff, being sworn, states:

1. (Check one or more)

[] The defendant caused or attempted to cause serious physical harm to _____.

The defendant threatened _____ with imminent serious physical harm.

The defendant has stalked or harassed _____.

2. The incident causing the filing of this petition occurred on or about _____.

(date)

(Describe what happened:)

3. The victim and the defendant are related as follows:

(check one)

married

divorced

parent and child

persons related by blood

persons related by marriage

present spouse of an ex-spouse

persons living in the same household

persons formerly living in the same household

biological parents of the same child

not related

4. (Answer this question only if the plaintiff is filing on behalf of someone else, minor or incompetent)

The plaintiff and the victim are related as follows:

married

divorced

parent and child

- persons related by blood
- persons related by marriage
- present spouse of an ex-spouse
- persons living in the same household
- persons formerly living in the same household
- biological parents of the same child
- not related

5. (Check A or B)

(A) The victim is in immediate and present danger of abuse from the defendant and an emergency ex parte order is necessary to protect the victim from serious harm. The plaintiff requests the following relief in the emergency ex parte order: (check one or more)

order the defendant not to abuse or injure the victim.

order the defendant not to telephone, visit, assault, molest or otherwise interfere with the victim.

order suspension of child visitation orders due to alleged abuse or threat of abuse to the child by the defendant.

order the defendant not to threaten the victim.

order the defendant to cease stalking the victim.

order the defendant to cease harassment of the victim.

order the defendant to leave the residence located at _____ on or before _____.

order the defendant who is a minor child to leave the residence located at _____ by immediately placing the defendant in any type of care authorized for children taken into custody pursuant to subsection A of Section 7303-1.1 of Title 10 of the Oklahoma Statutes.

Circle age of defendant: Thirteen (13), fourteen (14), fifteen (15), sixteen (16), or seventeen (17) years.

_____ (describe other relief that plaintiff requests)

(B) [] The plaintiff does not request an emergency ex parte order.

6. Plaintiff requests the following order to be made by the court following notice to the defendant and a hearing: (check one or more)

[] order the defendant not to abuse or injure the victim.

[] order the defendant not to telephone, visit, assault, molest or otherwise interfere with the victim.

[] order suspension of child visitation orders due to alleged abuse or threat of abuse to the child by the defendant.

[] order the defendant not to threaten the victim.

[] order the defendant to cease stalking the victim.

[] order the defendant to cease harassment of the victim.

[] order the defendant to leave the residence located at _____ on or before _____.

[] order the defendant who is a minor child to leave the residence located at _____ by immediately placing the defendant in any type of care authorized for children taken into custody pursuant to subsection A of Section 7303-1.1 of Title 10 of the Oklahoma Statutes.

Circle age of defendant: Thirteen (13), fourteen (14), fifteen (15), sixteen (16), or seventeen (17) years.

[] _____ (describe other relief that plaintiff requests)

[] order the defendant to pay attorney fees of the plaintiff in the sum of _____ on or before _____.

[] order the defendant to pay the court costs and costs of service of process of this action in the sum of _____ on or before _____.

7. [] Victim is a resident of the county wherein this petition is filed.

[] Defendant is a resident of the county wherein this petition is filed.

8. WARNING: Whoever makes a statement or allegation in this Petition for Protective Order but does not believe that the statement or allegation is true, or knows that it is not true, or intends thereby to avoid or obstruct the ascertainment of the truth, may be found guilty of perjury. Pursuant to Sections 500 and 504 of Title 21 of the Oklahoma Statutes, the penalty for perjury, or subornation of perjury, is ~~imprisonment for not more than five (5) years~~ a felony.

9. Plaintiff, being first duly sworn on oath states: That I have read the above and foregoing document, understand the meaning thereof, and declare, under penalty of perjury, that the facts and statements contained herein are believed to the best of my knowledge to be the truth, and nothing but the truth.

Plaintiff

Witness my hand and seal, affixed on the ___ day of _____, 19__.

Court Clerk, Deputy Court Clerk,
or Notary Public

C. No filing fee or service of process fee shall be charged the plaintiff at the time the petition is filed. The court ~~may~~ shall assess court costs, service of process fees, and filing fees to either party at the hearing on the petition. No peace officer shall require payment of service fees in advance of service of the petition nor shall any peace officer deny service of a Petition For A Protective Order or any ex parte, temporary or final protective order due to nonpayment of service fee. If a private process server accepts responsibility for serving a petition or ex parte, temporary or final protective order, the private process server shall not thereafter refuse to serve said documents for nonpayment of fees in

advance. The court clerk shall keep records of fees payable to peace officers and private process servers for service of petitions and orders under this section. The court clerk shall pay the applicable service fees to the peace officers and private process servers immediately upon collection of the fee. Every reasonable effort shall be made to serve the petition for a protective order immediately.

D. The ~~plaintiff~~ person seeking relief shall prepare the petition as set forth above or, ~~at the request of the plaintiff,~~ the court clerk ~~of the court or,~~ the victim-witness coordinator or a person designated by the court or the district attorney's office shall prepare or assist the plaintiff in preparing the same.

E. When a report of abuse is made to a law enforcement officer, the law enforcement officer shall make an immediate preliminary investigation of the offense unless such offense has been previously investigated and reported to the district attorney. Within twenty-four (24) hours of the filing of a petition for a protective order or the issuance of an emergency protective order or the report of abuse, the law enforcement officer shall notify the district attorney's office in writing of the results of the preliminary investigation.

F. Within seventy-two (72) hours of receiving a report on a preliminary investigation of alleged abuse, the district attorney shall review the report and shall either file criminal charges against the defendant or notify the victim and the law enforcement officer in writing that the district attorney declines to prosecute at this time. The district attorney may state the reason for a decision not to prosecute.

SECTION 4. AMENDATORY 22 O.S. 1991, Section 60.4, as last amended by Section 32, Chapter 247, O.S.L. 1996 (22 O.S. Supp. 1997, Section 60.4), is amended to read as follows:

Section 60.4 A. A copy of the petition for a protective order, notice of hearing and a copy of any ex parte order issued by the court shall be served upon the defendant in the same manner as a summons, except that a service of process fee shall not be required to be paid by the plaintiff in advance of the service. Ex parte orders shall be given priority for service ~~by the sheriff's office~~ and ~~can~~ shall be served twenty-four (24) hours a day by either a peace officer or any private process server who is certified by the Council on Law Enforcement Education and Training (CLEET). When the defendant is a minor child who is ordered removed from the residence of the victim, in addition to those documents served upon the defendant, a copy of the petition, notice of hearing and a copy of any ex parte order issued by the court shall be delivered with the child to the caretaker of the place where such child is taken pursuant to Section 7303-1.1 of Title 10 of the Oklahoma Statutes.

B. Within fifteen (15) days of the filing of the petition for a protective order the court shall schedule a full hearing on the petition, regardless of whether an emergency ex parte order has been previously issued, requested or denied. Provided, however, when the defendant is a minor child who has been removed from the residence pursuant to Section 7303-1.1 of Title 10 of the Oklahoma Statutes, the court shall schedule a full hearing on the petition within seventy-two (72) hours, regardless of whether an emergency ex parte order has been previously issued, requested or denied. The court shall also schedule a full hearing on the petition within seventy-two (72) hours when the court issues an emergency ex parte order suspending visitation rights.

C. At the hearing, the court may grant any terms and conditions necessary for the protective order that are intended to bring about the cessation of ~~domestic abuse against the victim or stalking or harassment of the victim~~ threats to the victim, physical abuse or interference to the victim or to the victim's immediate family. The

court may require a performance bond to be posted by the defendant which shall be forfeited upon any violation of the terms and conditions of the protective order by the defendant. If the court grants a protective order and the defendant is a minor child, the court shall order a preliminary inquiry in a juvenile proceeding to determine whether further court action pursuant to the Oklahoma Juvenile Code should be taken against a juvenile defendant.

D. Protective orders authorized by this section may include the following:

1. An order to the defendant not to abuse or injure the victim;
2. An order to the defendant not to telephone, visit, assault, molest, harass or otherwise interfere with the victim;
3. An order suspending child visitation rights due to alleged abuse or threat of abuse to the child by the defendant or an order requiring supervised visitation with the child in a neutral setting;
4. An order to the defendant not to threaten the victim;
- ~~4.~~ 5. An order to the defendant to cease stalking the victim;
- ~~5.~~ 6. An order to the defendant to cease harassment of the victim;
- ~~6.~~ 7. An order to the defendant to leave the residence;
- ~~7.~~ 8. An order awarding attorney fees;
- ~~8.~~ 9. An order ~~awarding~~ requiring payment of court costs and service of process fees; and
- ~~9.~~ 10. An order requiring a preliminary inquiry in a juvenile proceeding pursuant to the Oklahoma Juvenile Code.

E. After notice and hearing, protective orders authorized by this section may require the plaintiff or the defendant or both to undergo treatment or participate in the counseling services necessary to bring about cessation of ~~domestic~~ threats and abuse against the victim. Either party or both may be required to pay all or any part of the cost of such treatment or counseling services. The court shall not be responsible for such cost.

F. ~~When necessary to protect the victim and when authorized by the court,~~ protective A Petition For A Protective Order and ex parte protective orders granted pursuant to the provisions of this section may shall be served upon the defendant by a private process server who is certified by the Council on Law Enforcement Education and Training (CLEET), a peace officer, sheriff, constable, or policeman or other officer whose duty it is to preserve the peace, as defined by Section 99 of Title 21 of the Oklahoma Statutes. Service of any petition or protective order by a peace officer shall not be denied due to nonpayment of the service fee in advance. If a private process server accepts responsibility for serving a petition or protective order, the private process server shall not thereafter refuse to serve said documents for nonpayment of fees in advance. The fee shall be paid after the full hearing by the party designated by the court. The court clerk shall have authority to collect the fee as provided by court order and remit such service fees to the party performing the service of process.

G. Any final protective order ~~issued~~ granted pursuant to subsection C of this section shall not be for a fixed period but shall be continuous until the protective order is modified or rescinded ~~upon~~ by the court after a hearing on a motion by either party or by order of the court if the court approves any written consent agreement entered into by the plaintiff and defendant. Any modification or cancellation of a protective order shall be delivered to the victim, the defendant, the sheriff and other law enforcement agencies in the county where the victim and defendant reside within twenty-four (24) hours of issuance. If a child has been removed from the residence of a parent or custodial adult because of domestic abuse committed by the child, the parent or custodial adult may refuse the return of such child to the residence, unless upon further consideration by the court, in a

juvenile proceeding, it is determined that the child is no longer a threat and should be allowed to return to the residence.

H. ~~No~~ A protective order issued granted under the Protection from Domestic Abuse Act, Section 60 et seq. of this title, shall not in any manner affect title to real property, purport to grant to the parties a divorce or otherwise purport to determine the issues between the parties as to child custody, visitation schedules, child support or division of property or any other like relief obtainable under Sections 101 et seq. of Title 43 of the Oklahoma Statutes, except child visitation orders may be temporarily suspended or modified to protect a minor child from threats of abuse or physical abuse by the defendant. When granting any protective order for the protection of a minor child from threats of abuse or physical abuse the court shall only allow visitation under conditions that provide adequate supervision and protection to the child.

SECTION 5. AMENDATORY 22 O.S. 1991, Section 60.5, as last amended by Section 2, Chapter 368, O.S.L. 1997 (22 O.S. Supp. 1997, Section 60.5), is amended to read as follows:

Section 60.5 A. Within twenty-four (24) hours of the return of service of any ex parte or final protective order, the clerk of the issuing court shall ~~send~~ deliver certified copies thereof to all appropriate law enforcement agencies designated by the plaintiff. A certified copy of any modification, cancellation or consent agreement concerning a final protective order shall be ~~sent~~ delivered within twenty-four (24) hours by the clerk of the issuing court to those law enforcement agencies receiving the original orders pursuant to this section and to those law enforcement agencies in the county where the plaintiff and defendant reside.

B. Any law enforcement agency receiving copies of the documents listed in subsection A of this section shall be required to ensure that other law enforcement agencies have access twenty-four (24) hours a day to the information contained in the documents.

C. Any law enforcement officer investigating a report by a plaintiff of a violation of an ex parte or final protective order by a defendant may arrest the defendant without a warrant anywhere, including the defendant's residence, for a bond violation if an appearance or performance bond is a condition of the order; provided, the plaintiff presents the peace officer with a certified copy of the original protective order designating a bond requirement and there is probable cause to believe the defendant has within the preceding six (6) hours committed a violation of the protective order. The plaintiff shall be required to sign a written complaint that has a warning as follows:

WARNING: Whoever makes a statement or allegation in this Complaint of a Violation of a Protective Order but does not believe that the statement or allegation is true, or knows that it is not true, or intends thereby to avoid or obstruct the ascertainment of the truth, may be found guilty of perjury. Pursuant to Sections 500 and 504 of Title 21 of the Oklahoma Statutes, the penalty for perjury, or subornation of perjury, is a felony. In addition, whoever falsely reports a crime is guilty of a criminal offense.

Plaintiff, being first duly sworn on oath states: That I have read the above and foregoing complaint of a violation of a protective order, understand the meaning thereof, and declare, under penalty of perjury and criminal prosecution, that the facts and statements contained herein are believed to the best of my knowledge to be the truth, and nothing but the truth.

Plaintiff

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 11th day of March, 1998.

President of the Senate

Passed the House of Representatives the ____ day of
_____, 1998.

Speaker of the House of
Representatives