

1 **SENATE FLOOR VERSION**

2 February 26, 2019

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 715

6 By: Paxton

7 [protective orders - Protection from Workplace
8 Violence Act - codification - effective date]
9

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

11 SECTION 1. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 62 of Title 22, unless there is
13 created a duplication in numbering, reads as follows:

14 This act shall be known and may be cited as the "Protection from
15 Workplace Violence Act".

16 SECTION 2. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 62.1 of Title 22, unless there
18 is created a duplication in numbering, reads as follows:

19 As used in the Protection from Workplace Violence Act:

20 1. "Course of conduct" means a pattern of conduct composed of a
21 series of two or more separate acts over a period of time, however
22 short, evidencing a continuity of purpose. Course of conduct does
23 not include constitutionally protected activity or conduct that
24 serves a legitimate purpose;

1 2. "Credible threat of violence" is a knowing and willful
2 statement or course of conduct that would place a reasonable person
3 in fear for his or her safety, or the safety of his or her immediate
4 family, and that serves no legitimate purpose;

5 3. "Employee" means any person who supplies labor for
6 remuneration to his or her employer in this state and shall not
7 include an independent contractor, subcontractor or an employee of
8 an independent contractor;

9 4. "Employer" means any person, firm, corporation, partnership,
10 association, nonprofit organization or public employer, which has
11 one or more employees within this state, or which has offered or may
12 offer employment to one or more individuals in this state;

13 5. "Plaintiff" refers to an employer seeking relief pursuant to
14 this Act;

15 6. "Public employer" means the State of Oklahoma or any
16 political subdivision thereof, including any department, agency,
17 board, commission, institution, authority, public trust,
18 municipality, county, district or instrumentalities thereof;

19 7. "Unlawful violence" means any assault or battery, or
20 stalking as prohibited in Section 1173 of Title 21 of the Oklahoma
21 Statutes, but shall not include lawful acts of self-defense or
22 defense of others; and

23 8. "Victim" or "victims" refers to an employee or employees on
24 whose behalf relief is being sought pursuant to this Act.

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 62.2 of Title 22, unless there
3 is created a duplication in numbering, reads as follows:

4 A. An employer whose employee has suffered unlawful violence or
5 a credible threat of violence from any individual, which can
6 reasonably be construed to be carried out or to have been carried
7 out at the workplace, may seek relief under the provisions of the
8 Protection from Workplace Violence Act on behalf of the employee
9 and, at the discretion of the court, any number of other employees
10 at the workplace, and, if appropriate, other employees at other
11 workplaces of the employer. Upon a showing of good cause, the court
12 may include other named family or household members of the employee,
13 or other persons employed at the employee's workplace or workplaces
14 in an emergency ex parte order or final protective order issued
15 under the Protection from Workplace Violence Act. This Act shall
16 not be construed as expanding, diminishing, altering or modifying
17 the duty, if any, of an employer to provide a safe workplace for
18 employees and other persons.

19 B. The employer may file a petition for a protective order with
20 the district court in the county in which the employer is located,
21 the county in which the defendant resides, or the county in which
22 the unlawful violence or credible threat of violence occurred. The
23 employee must file a complaint against the defendant with the proper
24 law enforcement agency before an employer may file a petition for a

1 protective order with the district court. The employer shall
2 provide a copy of the complaint that was filed by the employee with
3 the law enforcement agency at the full hearing if the complaint is
4 not available from the law enforcement agency. Failure to provide a
5 copy of the complaint filed by the employee with the law enforcement
6 agency shall constitute a frivolous filing and the court may assess
7 attorney fees and court costs against the employer pursuant to
8 paragraph 2 of subsection C of this section. The filing of a
9 petition for a protective order shall not require jurisdiction or
10 venue of the criminal offense if either the employer is located or
11 the defendant resides in the county. The petition forms shall be
12 provided by the clerk of the court. The Administrative Office of
13 the Courts shall develop a standard form for the petition.

14 C. 1. Except as otherwise provided by this section, no filing
15 fee, service of process fee, attorney fees or any other fee or costs
16 shall be charged to the employer or employee at any time for filing
17 a petition for a protective order whether a protective order is
18 granted or not granted. The court may assess court costs, service
19 of process fees, attorney fees, other fees and filing fees against
20 the defendant at the hearing on the petition, if a protective order
21 is granted against the defendant; provided, the court shall have
22 authority to waive the costs and fees if the court finds that the
23 party does not have the ability to pay the costs and fees.

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1 2. If the court makes specific findings that a petition for a
2 protective order has been filed frivolously, the court may assess
3 attorney fees and court costs against the employer.

4 SECTION 4. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 62.3 of Title 22, unless there
6 is created a duplication in numbering, reads as follows:

7 A. If a plaintiff requests an emergency ex parte order pursuant
8 to Section 3 of this act, the court shall hold an ex parte hearing
9 on the same day the petition is filed, if the court finds sufficient
10 grounds within the scope of the Protection from Workplace Violence
11 Act stated in the petition to hold such a hearing. The court may,
12 for good cause shown at the hearing, issue any emergency ex parte
13 order that it finds necessary to protect the victim or victims from
14 immediate and present danger of unlawful violence. The emergency ex
15 parte order shall be in effect until after the full hearing is
16 conducted. Provided, if the defendant, after having been served,
17 does not appear at the hearing, the emergency ex parte order shall
18 remain in effect until the defendant is served with the permanent
19 order. If the terms of the permanent order are the same as those in
20 the emergency order, or are less restrictive, then it is not
21 necessary to serve the defendant with the permanent order. The
22 Administrative Office of the Courts shall develop a standard form
23 for emergency ex parte protective 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 SECTION 5. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 62.4 of Title 22, unless there
7 is created a duplication in numbering, reads as follows:

8 A. 1. A copy of a petition for a protective order, notice of
9 hearing and a copy of any emergency ex parte order issued by the
10 court shall be served upon the defendant in the same manner as a
11 bench warrant. In addition, if the service is to be in another
12 county, the court clerk may issue service to the sheriff by
13 facsimile or other electronic transmission for service by the
14 sheriff. Any fee for service of a petition for protective order,
15 notice of hearing, and emergency ex parte order shall only be
16 charged pursuant to subsection C of Section 3 of this act and, if
17 charged, shall be the same as the sheriff's service fee plus mileage
18 expenses.

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

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

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

8 B. 1. Within fourteen (14) days of the filing of the petition
9 for a protective order, the court shall schedule a full hearing on
10 the petition, if the court finds sufficient grounds within the scope
11 of the Protection from Workplace Violence Act stated in the petition
12 to hold such a hearing, regardless of whether an emergency ex parte
13 order has been previously issued, requested or denied.

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

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

1 4. 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 5. A final protective order shall be granted or denied within
5 six (6) months of service on the defendant unless all parties agree
6 that a temporary protective order remain in effect; provided, a
7 victim or victims shall have the right to request a final protective
8 order hearing at any time after the passage of six (6) months.

9 C. Final protective orders authorized by this section shall be
10 on a standard form developed by the Administrative Office of the
11 Courts.

12 D. When necessary to protect the victim or victims and when
13 authorized by the court, protective orders granted pursuant to the
14 provisions of this section may be served upon the defendant by a
15 peace officer, sheriff, constable, or policeman or other officer
16 whose duty it is to preserve the peace, as defined by Section 99 of
17 Title 21 of the Oklahoma Statutes.

18 SECTION 6. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 62.5 of Title 22, unless there
20 is created a duplication in numbering, reads as follows:

21 A. Within twenty-four (24) hours of the return of service of
22 any ex parte or final protective order, the clerk of the issuing
23 court shall send certified copies thereof to all appropriate law
24 enforcement agencies designated by the plaintiff. A certified copy

1 of any extension, modification, vacation, cancellation or consent
2 agreement concerning a final protective order shall be sent within
3 twenty-four (24) hours by the clerk of the issuing court to those
4 law enforcement agencies receiving the original orders pursuant to
5 this section and to any law enforcement agencies designated by the
6 court.

7 B. Any law enforcement agency receiving copies of the documents
8 listed in subsection A of this section shall be required to ensure
9 that other law enforcement agencies have access twenty-four (24)
10 hours a day to the information contained in the documents which may
11 include entry of information about the ex parte or final protective
12 order in the National Crime Information Center database.

13 SECTION 7. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 62.6 of Title 22, unless there
15 is created a duplication in numbering, reads as follows:

16 A. Except as otherwise provided by this section, any person
17 who:

18 1. Has been served with an ex parte or final protective order
19 and is in violation of such protective order, upon conviction, shall
20 be guilty of a misdemeanor and shall be punished by a fine of not
21 more than One Thousand Dollars (\$1,000.00) or by a term of
22 imprisonment in the county jail of not more than one (1) year, or by
23 both such fine and imprisonment; and

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1 2. After a previous conviction of a violation of a protective
2 order, is convicted of a second or subsequent offense pursuant to
3 the provisions of this section shall, upon conviction, be guilty of
4 a felony and shall be punished by a term of imprisonment in the
5 custody of the Department of Corrections for not less than one (1)
6 year nor more than three (3) years, or by a fine of not less than
7 Two Thousand Dollars (\$2,000.00) nor more than Ten Thousand Dollars
8 (\$10,000.00), or by both such fine and imprisonment.

9 B. 1. Any person who has been served with an ex parte or final
10 protective order who violates the protective order and causes
11 physical injury or physical impairment to the plaintiff or to any
12 other person named in said protective order shall, upon conviction,
13 be guilty of a misdemeanor and shall be punished by a term of
14 imprisonment in the county jail for not less than twenty (20) days
15 nor more than one (1) year. In addition to the term of
16 imprisonment, the person may be punished by a fine not to exceed
17 Five Thousand Dollars (\$5,000.00).

18 2. Any person who is convicted of a second or subsequent
19 violation of a protective order which causes physical injury or
20 physical impairment to a plaintiff or to any other person named in
21 the protective order shall be guilty of a felony and shall be
22 punished by a term of imprisonment in the custody of the Department
23 of Corrections of not less than one (1) year nor more than five (5)
24 years, or by a fine of not less than Three Thousand Dollars

1 (\$3,000.00) nor more than Ten Thousand Dollars (\$10,000.00), or by
2 both such fine and imprisonment.

3 3. In determining the term of imprisonment required by this
4 section, the jury or sentencing judge shall consider the degree of
5 physical injury or physical impairment to the victim.

6 4. The provisions of this subsection shall not affect the
7 applicability of Sections 644, 645, 647 and 652 of Title 21 of the
8 Oklahoma Statutes.

9 C. The minimum sentence of imprisonment issued pursuant to the
10 provisions of paragraph 2 of subsection A and paragraph 1 of
11 subsection B of this section shall not be subject to statutory
12 provisions for suspended sentences, deferred sentences or probation,
13 provided the court may subject any remaining penalty under the
14 jurisdiction of the court to the statutory provisions for suspended
15 sentences, deferred sentences or probation.

16 D. At no time, under any proceeding, may a person protected by
17 a protective order be held to be in violation of that protective
18 order. Only a defendant against whom a protective order has been
19 issued may be held to have violated the order.

20 E. In addition to any other penalty specified by this section,
21 the court may order a defendant to use an active, real-time, twenty-
22 four-hour Global Positioning System (GPS) monitoring device as a
23 condition of a sentence. The court may further order the defendant
24 to pay costs and expenses related to the GPS device and monitoring.

1 SECTION 8. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 62.7 of Title 22, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Pursuant to paragraph 7 of Section 196 of Title 22 of the
5 Oklahoma Statutes, a peace officer, without a warrant, shall arrest
6 and take into custody a person if the peace officer has reasonable
7 cause to believe that:

8 1. An emergency ex parte or final protective order has been
9 issued and served upon the person, pursuant to the Protection from
10 Workplace Violence Act;

11 2. A true copy and proof of service of the order has been filed
12 with the law enforcement agency having jurisdiction of the area in
13 which the employer is located or any employee, family or household
14 member named in the order resides or a certified copy of the order
15 and proof of service is presented to the peace officer as provided
16 in subsection B of this section;

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

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

21 B. A copy of a protective order shall be prima facie evidence
22 that such order is valid in this state when such documentation is
23 presented to a law enforcement officer by the plaintiff, defendant,
24 or another person on behalf of a person named in the order. Any law

1 enforcement officer may rely on such evidence to make an arrest for
2 a violation of such order, if there is reason to believe the
3 defendant has violated or is then acting in violation of the order
4 without justifiable excuse. When a law enforcement officer relies
5 upon the evidence specified in this subsection, such officer and the
6 employing agency shall be immune from liability for the arrest of
7 the defendant if it is later proved that the evidence was false.

8 C. Any person who knowingly and willfully presents any false or
9 materially altered protective order to any law enforcement officer
10 to effect an arrest of any person shall, upon conviction, be guilty
11 of a felony punishable by imprisonment in the custody of the
12 Department of Corrections for a period not to exceed two (2) years,
13 or by a fine not exceeding Five Thousand Dollars (\$5,000.00) and
14 shall, in addition, be liable for any civil damages to the
15 defendant.

16 SECTION 9. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 62.8 of Title 22, unless there
18 is created a duplication in numbering, reads as follows:

19 In addition to any other provisions required by the Protection
20 from Workplace Violence Act, or otherwise required by law, each ex
21 parte or final protective order issued pursuant to the Protection
22 from Workplace Violence Act shall have a statement printed in bold-
23 faced type or in capital letters containing the following
24 information:

1 1. The filing or nonfiling of criminal charges and the
2 prosecution of the case shall not be determined by a person who is
3 protected by the protective order, but shall be determined by the
4 prosecutor;

5 2. No person, including a person who is protected by the order,
6 may give permission to anyone to ignore or violate any provision of
7 the order. During the time in which the order is valid, every
8 provision of the order shall be in full force and effect unless a
9 court changes the order;

10 3. The order shall be in effect for a fixed period of five (5)
11 years unless extended, modified, vacated or rescinded by the court;

12 4. A violation of the order is punishable by a fine of up to
13 One Thousand Dollars (\$1,000.00) or imprisonment for up to one (1)
14 year in the county jail, or by both such fine and imprisonment. A
15 violation of the order which causes injury is punishable by
16 imprisonment for twenty (20) days to one (1) year in the county jail
17 or a fine of up to Five Thousand Dollars (\$5,000.00), or by both
18 such fine and imprisonment; and

19 5. Possession of a firearm or ammunition by a defendant while
20 an order is in effect may subject the defendant to prosecution for a
21 violation of federal law even if the order does not specifically
22 prohibit the defendant from possession of a firearm or ammunition.

1 SECTION 10. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 62.9 of Title 22, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Persons authorized to file a motion for expungement of
5 victim protective orders (VPOs) issued pursuant to the Protection
6 from Workplace Violence Act in this state must be within one of the
7 following categories:

8 1. An ex parte order was issued to the plaintiff but later
9 terminated due to dismissal of the petition before the full hearing,
10 or denial of the petition upon full hearing, or failure of the
11 plaintiff to appear for full hearing, and at least ninety (90) days
12 have passed since the date set for full hearing;

13 2. The plaintiff filed an application for a victim protective
14 order and failed to appear for the full hearing and at least ninety
15 (90) days have passed since the date last set by the court for the
16 full hearing, including the last date set for any continuance,
17 postponement or rescheduling of the hearing;

18 3. The plaintiff or defendant has had the order vacated and
19 three (3) years have passed since the order to vacate was entered;
20 or

21 4. The plaintiff or defendant is deceased.

22 B. For purposes of this section:
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1 1. "Expungement" means the sealing of victim protective order
2 (VPO) court records from public inspection, but not from law
3 enforcement agencies, the court or the district attorney;

4 2. "Plaintiff" means the employer that sought the original
5 victim protective order (VPO) for cause on behalf of an employee or
6 employees; and

7 3. "Defendant" means the person or persons to whom the victim
8 protective order (VPO) was directed.

9 C. 1. Any person qualified under subsection A of this section
10 may petition the district court of the district in which the
11 protective order pertaining to the person is located for the
12 expungement and sealing of the court records from public inspection.
13 The face of the petition shall state whether the defendant in the
14 protective order has been convicted of any violation of the
15 protective order and whether any prosecution or complaint is pending
16 in this state or any other state for a violation or alleged
17 violation of the protective order that is sought to be expunged.
18 The petition shall further state the authority pursuant to
19 subsection A of this section for eligibility for requesting the
20 expungement. The other party to the protective order shall be
21 mailed a copy of the petition by certified mail within ten (10) days
22 of filing the petition. A written answer or objection may be filed
23 within thirty (30) days of receiving the notice and petition.

1 2. Upon the filing of a petition, the court shall set a date
2 for a hearing and shall provide at least a thirty-day notice of the
3 hearing to all parties to the protective order, the district
4 attorney, and any other person or agency whom the court has reason
5 to believe may have relevant information related to the sealing of
6 the victim protective order (VPO) court record.

7 3. Without objection from the other party to the victim
8 protective order (VPO) or upon a finding that the harm to the
9 privacy of the person in interest or dangers of unwarranted adverse
10 consequences outweigh the public and safety interests of the parties
11 to the protective order in retaining the records, the court may
12 order the court record, or any part thereof, to be sealed from
13 public inspection. Any order entered pursuant to this section shall
14 not limit or restrict any law enforcement agency, the district
15 attorney or the court from accessing said records without the
16 necessity of a court order. Any order entered pursuant to this
17 subsection may be appealed by any party to the protective order or
18 by the district attorney to the Oklahoma Supreme Court in accordance
19 with the rules of the Oklahoma Supreme Court.

20 4. Upon the entry of an order to expunge and seal from public
21 inspection a victim protective order (VPO) court record, or any part
22 thereof, the subject official actions shall be deemed never to have
23 occurred, and the persons in interest and the public may properly
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1 reply, upon any inquiry in the matter, that no such action ever
2 occurred and that no such record exists with respect to the persons.

3 5. Inspection of the protective order court records included in
4 the expungement order issued pursuant to this section may thereafter
5 be permitted only upon petition by the persons in interest who are
6 the subjects of the records, or without petition by the district
7 attorney or a law enforcement agency in the due course of
8 investigation of a crime.

9 6. Employers, educational institutions, state and local
10 government agencies, officials, and employees shall not require, in
11 any application or interview or otherwise, an applicant to disclose
12 any information contained in sealed protective order court records.
13 An applicant need not, in answer to any question concerning the
14 records, provide information that has been sealed, including any
15 reference to or information concerning the sealed information and
16 may state that no such action has ever occurred. The application
17 may not be denied solely because of the refusal of the applicant to
18 disclose protective order court records information that has been
19 sealed.

20 7. The provisions of this section shall apply to all protective
21 order court records existing in the district courts of this state
22 on, before and after the effective date of this section.

23 8. Nothing in this section shall be construed to authorize the
24 physical destruction of any court records, except as otherwise

1 provided by law for records no longer required to be maintained by
2 the court.

3 9. For the purposes of this section, sealed materials which are
4 recorded in the same document as unsealed material may be recorded
5 in a separate document, and sealed, then obliterated in the original
6 document.

7 10. For the purposes of this act, district court index
8 reference of sealed material shall be destroyed, removed or
9 obliterated.

10 11. Any record ordered to be sealed pursuant to this section
11 may be obliterated or destroyed at the end of the ten-year period.

12 12. Nothing herein shall prohibit the introduction of evidence
13 regarding actions sealed pursuant to the provisions of this section
14 at any hearing or trial for purposes of impeaching the credibility
15 of a witness or as evidence of character testimony pursuant to
16 Section 2608 of Title 12 of the Oklahoma Statutes.

17 SECTION 11. This act shall become effective November 1, 2019.

18 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
19 February 26, 2019 - DO PASS AS AMENDED
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