

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 1028

By: Kerbs

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7 COMMITTEE SUBSTITUTE

8 An Act relating to victim protective orders; amending
9 22 O.S. 2011, Section 40.3, as last amended by
10 Section 4, Chapter 183, O.S.L. 2016 (22 O.S. Supp.
11 2020, Section 40.3), which relates to emergency
12 temporary orders of protection for certain victims;
13 directing peace officers to serve order and complete
14 the return of service when filing petition; directing
15 court clerk to receive petition; providing for the
16 filing and issuance of petition despite absence of
17 service; amending 22 O.S. 2011, Sections 60.3, as
18 last amended by Section 2, Chapter 113, O.S.L. 2019
19 and 60.16 (22 O.S. Supp. 2020, Section 60.3), which
20 relate to the Protection from Domestic Abuse Act;
21 directing peace officers to serve order and complete
22 the return of service when filing petition; directing
23 court clerk to receive petition; providing for the
24 filing and issuance of petition despite absence of
service; increasing time limitation for effectiveness
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:

1 SECTION 1. AMENDATORY 22 O.S. 2011, Section 40.3, as
2 last amended by Section 4, Chapter 183, O.S.L. 2016 (22 O.S. Supp.
3 2020, Section 40.3), is amended to read as follows:

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

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

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

23 3. Inform the victim or member of the immediate family of a
24 victim of first-degree murder whether the judge has approved or

1 disapproved the emergency temporary order. If an emergency
2 temporary order has been approved, the peace officer shall provide
3 the victim, or a responsible adult if the victim is a minor child or
4 an incompetent person or member of the immediate family of a victim
5 of first-degree murder, 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~~

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

16 5. Make every attempt to serve the subject of the order and
17 complete a return of service when filing the petition with the
18 district court. If the peace officer is unable to obtain service,
19 the petition shall be filed with the district court the next
20 business day. The court clerk shall receive the petition upon
21 delivery by the peace officer and document the hearing date and time
22 assigned to the case as documented by the peace officer. If the
23 court clerk observes that service has not been obtained, the
24 petition shall still be filed by the court clerk and issued to the

1 appropriate office of the county sheriff to obtain service with
2 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 2020, 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 shall be filed with the district court
24 the next business day. The court clerk shall receive the petition

1 upon delivery by the peace officer and document the hearing date and
2 time assigned to the case as documented by the peace officer. If
3 the court clerk observes that service has not been obtained, the
4 petition shall still be filed by the court clerk and issued to the
5 appropriate office of the county sheriff to obtain service with
6 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 shall be notified of the date, time and location of the
16 hearing from a list of available court dates provided by the judge.
17 The peace officer shall provide the victim and defendant with a copy
18 of the completed order and return the original order to the district
19 court;

20 4. Notify the person subject to the emergency temporary
21 protection order of the issuance and conditions of the order.
22 Notification pursuant to this paragraph may be made personally by
23 the peace officer or in writing. A copy of the petition and the
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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 subject of
7 the order and complete a return of service when filing the petition
8 with the district court. If the peace officer is unable to obtain
9 service, the petition shall be filed with the district court the
10 next business day. The court clerk shall receive the petition upon
11 delivery by the peace officer and document the hearing date and time
12 assigned to the case as documented by the peace officer. If the
13 court clerk observes that service has not been obtained, the
14 petition shall still be filed by the court clerk and issued to the
15 appropriate office of the county sheriff to obtain service with
16 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, 2021.

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