

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 HOUSE BILL 1845

By: Kerbs

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5  
6 AS INTRODUCED

7 An Act relating to victim protective orders; amending  
8 22 O.S. 2021, Section 40.3, which relates to  
9 emergency temporary orders of protection for certain  
10 victims; directing peace officers to serve order and  
11 complete return of service when filing petition;  
12 directing court clerk to receive petition; providing  
13 for the filing and issuance of petition despite  
14 absence of service; amending 22 O.S. 2021, Sections  
15 60.3 and 60.16, which relate to the Protection from  
16 Domestic Abuse Act; directing peace officers to serve  
17 order and complete return of service when filing  
18 petition; directing court clerk to receive petition;  
19 providing for the filing and issuance of petition  
20 despite absence of service; increasing time  
21 limitation for effectiveness of emergency temporary  
22 orders; providing for notification of hearing date,  
23 time and location; directing peace officer to provide  
24 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. 2021, 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

1 deadly weapon or member of the immediate family of a victim of  
2 first-degree murder may request a petition for an emergency  
3 temporary order of protection. The peace officer making the  
4 preliminary investigation shall:

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

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

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

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

11 5. Make every attempt to serve the subject of the order and  
12 complete a return of service when filing the petition with the  
13 district court. If the peace officer is unable to obtain service,  
14 the petition shall be filed with the district court the next  
15 business day. The court clerk shall receive the petition upon  
16 delivery by the peace officer and document the hearing date and time  
17 assigned to the case as documented by the peace officer. If the  
18 court clerk observes that service has not been obtained, the  
19 petition shall still be filed by the court clerk and issued to the  
20 appropriate office of the county sheriff to obtain service with  
21 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. 2021, Section 60.3, is  
2 amended to read as follows:

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

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

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

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

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

9 SECTION 3. AMENDATORY 22 O.S. 2021, Section 60.16, is  
10 amended to read as follows:

11 Section 60.16 A. A peace officer shall not discourage a victim  
12 of domestic abuse from pressing charges against the assailant of the  
13 victim.

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

23 2. An arrest, when made pursuant to this section, shall be  
24 based on an investigation by the peace officer of the circumstances

1 surrounding the incident, past history of violence between the  
2 parties, statements of any children present in the residence, and  
3 any other relevant factors. A determination by the peace officer  
4 shall be made pursuant to the investigation as to which party is the  
5 dominant aggressor in the situation. A peace officer may arrest the  
6 dominant aggressor.

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

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

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

21 3. Inform the victim 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, with a copy of the petition and a written  
2 statement signed by the peace officer attesting that the judge has  
3 approved the emergency temporary order of protection and notify the  
4 victim that the emergency temporary order shall be effective ~~only~~  
5 ~~until the close of business on the next day that the court is open~~  
6 ~~for business~~ until the date of the hearing set by the judge. The  
7 peace officer requesting the order shall be notified by the judge of  
8 the date, time, and courtroom location in which the hearing will be  
9 held or shall be notified of the date, time, and location of the  
10 hearing from a list of available court dates provided by the judge.  
11 The peace officer shall provide the victim and subject of the order  
12 with a copy of the completed order and return the original order to  
13 the district court;

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

20 5. File a copy of the petition and the statement of the peace  
21 officer with the district court of the county immediately upon the  
22 opening of the court on the next day the court is open for business.  
23 The peace officer shall make every attempt to serve the subject of  
24 the order and complete a return of service when filing the petition



1 with the district court. If the peace officer is unable to obtain  
2 service, the petition shall be filed with the district court the  
3 next business day. The court clerk shall receive the petition upon  
4 delivery by the peace officer and document the hearing date and time  
5 assigned to the case as documented by the peace officer. If the  
6 court clerk observes that service has not been obtained, the  
7 petition shall still be filed by the court clerk and issued to the  
8 appropriate office of the county sheriff to obtain service with  
9 priority.

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

13 SECTION 4. This act shall become effective November 1, 2023.

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15 59-1-5168 GRS 12/06/22

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