An Act

ENROLLED HOUSE
BILL NO. 2827

By: Peters and Kern of the House

and

Anderson of the Senate

An Act relating to criminal procedure; amending 22 O.S. 2001, Section 40.3, as amended by Section 4, Chapter 466, O.S.L. 2002 (22 O.S. Supp. 2009, Section 40.3), which relates to emergency temporary orders of protection; authorizing victim of certain crimes to request emergency temporary order of protection; deleting certain filing requirement; amending 22 O.S. 2001, Sections 60.1, as last amended by Section 14, Chapter 348, O.S.L. 2005, 60.2, as last amended by Section 1, Chapter 189, O.S.L. 2008, 60.4, as last amended by Section 128, Chapter 234, O.S.L. 2009 and Section 5, Chapter 466, O.S.L. 2002 (22 O.S. Supp. 2009, Sections 60.1, 60.2, 60.4 and 60.15), which relate to the Protection from Domestic Abuse Act; modifying definition of stalking; authorizing petitioner of protective order to request custody and control of animal; authorizing court to enter certain order; modifying certain notice requirement; updating statutory reference; amending 22 O.S. 2001, Section 1105, as last amended by Section 1, Chapter 128, O.S.L. 2005 (22 O.S. Supp. 2009, Section 1105), which relates to discharging defendants on bail; directing courts to consider specified circumstances prior to determining bond and conditions of release; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2001, Section 40.3, as amended by Section 4, Chapter 466, O.S.L. 2002 (22 O.S. Supp. 2009, 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 or forcible sodomy may request a petition for an emergency temporary order of protection. The peace officer making the preliminary investigation shall:

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

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

3. Inform the victim whether the judge has approved or disapproved the emergency temporary order. If an emergency temporary order has been approved, the officer shall provide the victim, or a responsible adult if the victim is a minor child or an incompetent person, with a copy of the petition and a written statement signed by the officer attesting that the judge has approved the emergency temporary order of protection; and

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

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

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

SECTION 2. AMENDATORY 22 O.S. 2001, Section 60.1, as last amended by Section 14, Chapter 348, O.S.L. 2005 (22 O.S. Supp. 2009, Section 60.1), is amended to read as follows:

Section 60.1 As used in the Protection from Domestic Abuse Act and in 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 child thirteen (13) years of age 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 or harassment 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~~ in a manner that would cause a reasonable person to feel frightened, intimidated, threatened, harassed, or molested and actually causes the person being followed or harassed to feel terrorized, frightened, intimidated, threatened, harassed or molested. Stalking also means a course of conduct composed of a series of two or more separate acts over a period of time, however short, evidencing a continuity of purpose or unconsented contact with a person that is initiated or continued without the consent of the individual or in disregard of the expressed desire of the individual that the contact be avoided or discontinued. Unconsented contact or course of conduct includes, but is not limited to:

a. following or appearing within the sight of that individual,

b. approaching or confronting that individual in a public place or on private property,

c. appearing at the workplace or residence of that individual,

d. entering onto or remaining on property owned, leased, or occupied by that individual,

e. contacting that individual by telephone,

f. sending mail or electronic communications to that individual, or

g. placing an object on, or delivering an object to, property owned, leased or occupied by that individual;

3. "Harassment" means a knowing and willful course or pattern of conduct by a family or household member or an individual who is or has been involved in a dating relationship with the person, 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:

a. spouses,

b. ex-spouses,

c. present spouses of ex-spouses,

d. parents, including grandparents, stepparents, adoptive parents and foster parents,

e. children, including grandchildren, stepchildren, adopted children and foster children,

f. persons otherwise related by blood or marriage,

g. persons living in the same household or who formerly lived in the same household, and

h. 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;

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;

6. "Foreign protective order" means any valid order of protection issued by a court of another state or a tribal court;

7. "Rape" means rape and rape by instrumentation in violation of Sections 1111 and 1111.1 of Title 21 of the Oklahoma Statutes;

8. "Victim support person" means a person affiliated with a certified domestic violence or sexual assault program, certified by the Attorney General or certified by a recognized Native American Tribe if operating mainly within tribal lands, who provides support and assistance for a person who files a petition under the Protection from Domestic Violence Act; and

9. "Mutual protective order" means a final protective order or orders issued to both a plaintiff who has filed a petition for a protective order and a defendant included as the defendant in the plaintiff's petition restraining the parties from committing domestic violence, stalking, harassment or rape against each other. If both parties allege domestic abuse, violence, stalking, harassment or rape against each other, the parties shall do so by separate petition pursuant to Section 60.4 of this title.

SECTION 3. AMENDATORY 22 O.S. 2001, Section 60.2, as last amended by Section 1, Chapter 189, O.S.L. 2008 (22 O.S. Supp. 2009, Section 60.2), is amended to read as follows:

Section 60.2 A. A victim of domestic abuse, a victim of stalking, a victim of harassment, a victim of rape, 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 may seek relief under the provisions of the Protection from Domestic Abuse Act.

1. The person seeking relief may file a petition for a protective order with the district court in the county in which the victim resides, the county in which the defendant resides, or the county in which the domestic violence occurred. If the person seeking relief is a victim of stalking but is not a family or household member or an individual who is or has been in a dating relationship with the defendant, the person seeking relief must file

a complaint against the defendant with the proper law enforcement agency before filing a petition for a protective order with the district court. The person seeking relief shall provide a copy of the complaint that was filed with the law enforcement agency at the full hearing if the complaint is not available from the law enforcement agency. Failure to provide a copy of the complaint filed with the law enforcement agency shall constitute a frivolous filing and the court may assess attorney fees and court costs against the plaintiff pursuant to paragraph 2 of subsection C of this section. The filing of a petition for a protective order shall not require jurisdiction or venue of the criminal offense if either the plaintiff or defendant resides in the county. If a petition has been filed in an action for divorce or separate maintenance and either party to the action files a petition for a protective order in the same county where the action for divorce or separate maintenance is filed, the petition for the protective order may be heard by the court hearing the divorce or separate maintenance action if:

a. there is no established protective order docket in such court, or

b. the court finds that, in the interest of judicial economy, both actions may be heard together; provided, however, the petition for a protective order, including, but not limited to, a petition in which children are named as petitioners, shall remain a separate action and a separate order shall be entered in the protective order action. Protective orders may be dismissed in favor of restraining orders in the divorce or separate maintenance action if the court specifically finds, upon hearing, that such dismissal is in the best interests of the parties and does not compromise the safety of any petitioner.

If the defendant is a minor child, the petition shall be filed with the court having jurisdiction over juvenile matters.

2. When the abuse occurs when the court is not open for business, such person may request an emergency temporary order of protection as authorized by Section 40.3 of this title.

B. The petition forms shall be provided by the clerk of the court. The Administrative Office of the Courts shall develop a standard form for the petition.

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

2. If the court makes specific findings that a petition for a protective order has been filed frivolously and no victim exists, the court may assess attorney fees and court costs against the plaintiff.

D. The person seeking relief shall prepare the petition or, at the request of the plaintiff, the court clerk or the victim-witness coordinator, victim support person, and court case manager shall prepare or assist the plaintiff in preparing the petition.

E. The person seeking a protective order may further request the exclusive care, possession, or control of any animal owned, possessed, leased, kept, or held by either the petitioner, defendant or minor child residing in the residence of the petitioner or defendant. The court may order the defendant to make no contact with the animal and forbid the defendant from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal.

SECTION 4. AMENDATORY 22 O.S. 2001, Section 60.4, as last amended by Section 128, Chapter 234, O.S.L. 2009 (22 O.S. Supp. 2009, Section 60.4), is amended to read as follows:

Section 60.4 A. 1. A copy of a petition for a protective order, notice of hearing and a copy of any emergency ex parte order issued by the court shall be served upon the defendant in the same manner as a bench warrant. In addition, if the service is to be in another county, the court clerk may issue service to the sheriff by facsimile or other electronic transmission for service by the sheriff. Any fee for service of a petition for protective order, notice of hearing, and emergency ex parte order shall only be charged pursuant to subsection C of Section 60.2 of this title and,

if charged, shall be the same as the sheriff's service fee plus mileage expenses.

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

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

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

5. 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 2-2-101 of Title 10A of the Oklahoma Statutes.

B. 1. Within twenty (20) days of the filing of the petition for a protective order, the court shall schedule a full hearing on the petition, if the court finds sufficient grounds within the scope of the Protection from Domestic Abuse Act stated in the petition to hold such a hearing, 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 2-2-101 of Title 10A 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.

2. The court may schedule a full hearing on the petition for a protective order within seventy-two (72) hours when the court issues an emergency ex parte order suspending child visitation rights due to physical violence or threat of abuse.

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

4. A petition for a protective order shall, upon the petitioner's request, renew every twenty (20) days with a new hearing date assigned until the defendant is served. A petition for a protective order shall not expire unless the petitioner fails to appear at the hearing or fails to request a new order. A petitioner may move to dismiss the petition and emergency or final order at any time, however, a protective order must be dismissed by court order.

5. Failure to serve the defendant shall not be grounds for dismissal of a petition or an ex parte order unless the victim requests dismissal or fails to appear for the hearing thereon.

C. 1. At the hearing, the court may impose any terms and conditions in the protective order that the court reasonably believes are necessary to bring about the cessation of domestic abuse against the victim or stalking or harassment of the victim or the victim's immediate family and may order the defendant to obtain domestic abuse counseling or treatment in a program certified by the Attorney General at the defendant's expense pursuant to Section 644 of Title 21 of the Oklahoma Statutes.

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

E. 1. 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 court-approved counseling services necessary to bring about cessation of domestic abuse against the victim pursuant to Section 644 of Title 21 of the Oklahoma Statutes.

2. 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 orders granted pursuant to the provisions of this section may be served upon the defendant by 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.

G. 1. Any protective order issued on or after November 1, 1999, pursuant to subsection C of this section shall be for a fixed period not to exceed a period of three (3) years unless extended, modified, vacated or rescinded upon motion by either party or if the court approves any consent agreement entered into by the plaintiff and defendant.

2. The court shall notify the parties at the time of the issuance of the protective order of the duration of the protective order.

3. Upon the filing of a motion by either party to modify, extend, or vacate a protective order, a hearing shall be scheduled and notice given to the parties. At the hearing, the issuing court may take such action as is necessary under the circumstances.

4. 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. 1. It shall be unlawful for any person to knowingly and willfully seek a protective order against a spouse or ex-spouse pursuant to the Protection from Domestic Abuse Act for purposes of harassment, undue advantage, intimidation, or limitation of child visitation rights in any divorce proceeding or separation action without justifiable cause.

2. The violator shall, upon conviction thereof, be guilty of a misdemeanor punishable by imprisonment in the county jail for a period not exceeding one (1) year or by a fine not to exceed Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

3. A second or subsequent conviction under this subsection shall be a felony punishable by imprisonment in the custody of the Department of Corrections for a period not to exceed two (2) years, or by a fine not to exceed Ten Thousand Dollars ($10,000.00), or by both such fine and imprisonment.

I. 1. A protective order issued under the Protection from Domestic Abuse Act 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 or visitation schedules, child support or division of property or any other like relief obtainable pursuant to Title 43 of the Oklahoma Statutes, except child visitation orders may be temporarily suspended or modified to protect from threats of abuse or physical violence by the defendant or a threat to violate a custody order. Orders not affecting title may be entered for good cause found to protect an animal owned by either of the parties or any child living in the household.

2. When granting any protective order for the protection of a minor child from violence or threats of abuse, the court shall allow visitation only under conditions that provide adequate supervision and protection to the child while maintaining the integrity of a divorce decree or temporary order.

J. 1. A court shall not issue any mutual protective orders.

2. If both parties allege domestic abuse by the other party, the parties shall do so by separate petitions. The court shall review each petition separately, in an individual or a consolidated hearing and grant or deny each petition on its individual merits. If the court finds cause to grant both motions, the court shall do so by separate orders and with specific findings justifying the issuance of each order.

3. The court may only consolidate a hearing if:

a. the court makes specific findings that:

(1) sufficient evidence exists of domestic abuse, stalking, harassment or rape against each party, and

(2) each party acted primarily as aggressors, and

b. the defendant filed a petition with the court for a protective order no less than three (3) days, not including weekends or holidays, prior to the first scheduled full hearing on the petition filed by the plaintiff, and

c. the defendant had no less than forty-eight (48) hours' notice prior to the full hearing on the petition filed by the plaintiff.

K. The court may allow a plaintiff or victim to be accompanied by a victim support person at court proceedings. A victim support person shall not make legal arguments~~,~~; however, a victim support person who is not a licensed attorney may offer the plaintiff or victim comfort or support and may remain in close proximity to the plaintiff or victim.

SECTION 5. AMENDATORY Section 5, Chapter 466, O.S.L. 2002 (22 O.S. Supp. 2009, Section 60.15), is amended to read as follows:

Section 60.15 Upon the preliminary investigation of any crime involving domestic abuse, rape, forcible sodomy or stalking, it shall be the duty of the first peace officer who interviews the victim of the domestic abuse, rape, forcible sodomy or stalking to inform the victim of the twenty-four-hour statewide telephone communication service established by Section ~~3-314 of Title 43A~~ 18p-5 of Title 74 of the Oklahoma Statutes and to give notice to the victim of certain rights. The notice shall consist of handing such victim the following statement:

"As a victim of domestic abuse, rape, forcible sodomy or stalking you have certain rights. These rights are as follows:

1. The right to request that charges be pressed against your assailant;

2. The right to request protection from any harm or threat of harm arising out of your cooperation with law enforcement and prosecution efforts as far as facilities are available and to be provided with information on the level of protection available;

3. The right to be informed of financial assistance and other social services available as a result of being a victim, including information on how to apply for the assistance and services; and

4. The right to file a petition for a protective order or, when the domestic abuse occurs when the court is not open for business, to request an emergency temporary protective order."

SECTION 6. AMENDATORY 22 O.S. 2001, Section 1105, as last amended by Section 1, Chapter 128, O.S.L. 2005 (22 O.S. Supp. 2009, Section 1105), is amended to read as follows:

Section 1105. A. Except as otherwise provided by this section, upon the allowance of bail and the execution of the requisite recognizance, bond, or undertaking to the state, the magistrate, judge, or court, shall, if the defendant is in custody, make and sign an order for discharge. The court, in its discretion, may prescribe by court rule the conditions under which the court clerk or deputy court clerk, or the sheriff or deputy sheriff, may prepare and execute an order of release on behalf of the court.

B. No police officer or sheriff may release a person arrested for a violation of an ex parte or final protective order as provided in Sections 60.2 and 60.3 of this title, or arrested for an act constituting domestic abuse as specified in Section 644 of Title 21 of the Oklahoma Statutes, or arrested for any act constituting domestic abuse, stalking or harassment as defined by Section 60.1 of this title without the violator appearing before a magistrate, judge or court. ~~The~~ To the extent that any of the following information is available to the court, the magistrate, judge or court shall ~~determine~~ consider, in addition to any other circumstances, before determining bond and other conditions of release as necessary for the protection of the alleged victim, the following:

1. Whether the person has a history of domestic violence or a history of other violent acts;

2. The mental health of the person;

3. Whether the person has a history of violating the orders of any court or governmental entity;

4. Whether the person is potentially a threat to any other person;

5. Whether the person has a history of abusing alcohol or any controlled substance;

6. Whether the person has access to deadly weapons or a history of using deadly weapons;

7. The severity of the alleged violence that is the basis of the alleged offense including, but not limited to:

a. the duration of the alleged violent incident,

b. whether the alleged violent incident involved serious physical injury,

c. whether the alleged violent incident involved sexual assault,

d. whether the alleged violent incident involved strangulation,

e. whether the alleged violent incident involved abuse during the pregnancy of the alleged victim,

f. whether the alleged violent incident involved the abuse of pets, or

g. whether the alleged violent incident involved forcible entry to gain access to the alleged victim;

8. Whether a separation of the person from the alleged victim or a termination of the relationship between the person and the alleged victim has recently occurred or is pending;

9. Whether the person has exhibited obsessive or controlling behaviors toward the alleged victim including, but not limited to, stalking, surveillance, or isolation of the alleged victim;

10. Whether the person has expressed suicidal or homicidal ideations; and

11. Any information contained in the complaint and any police reports, affidavits, or other documents accompanying the complaint.

C. No police officer or sheriff may release a person arrested for any violation of subsection G of Section 2-401 of Title 63 of

the Oklahoma Statutes, without the violator appearing before a magistrate, judge, or court. In determining bond and other conditions of release, the magistrate, judge, or court shall consider any evidence that the person is in any manner dependent upon a controlled dangerous substance or has a pattern of regular, illegal use of any controlled dangerous substance. A rebuttable presumption that no conditions of release on bond would assure the safety of the community or any person therein shall arise if the state shows by clear and convincing evidence:

1. The person was arrested for a violation of subsection G of Section 2-401 of Title 63 of the Oklahoma Statutes, relating to manufacturing or attempting to manufacture a controlled dangerous substance, or possessing any of the substances listed in subsection G of Section 2-401 of Title 63 of the Oklahoma Statutes with the intent to manufacture a controlled dangerous substance; and

2. The person is in any manner dependent upon a controlled dangerous substance or has a pattern of regular illegal use of a controlled dangerous substance, and the violation referred to in paragraph 1 of this subsection was committed or attempted in order to maintain or facilitate the dependence or pattern of illegal use in any manner.

SECTION 7. This act shall become effective November 1, 2010.

Passed the House of Representatives the 24th day of February, 2010.

Presiding Officer of the House of Representatives

Passed the Senate the 12th day of April, 2010.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this 13th

day of April, 2010,

at 2:15 **o'clock** P **M.**

By:

Approved by the Governor of the State of Oklahoma the 16th **day of** April, 2010, **at** 5:58 **o'clock** P **M.**

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this

19th **day of** April, 2010

at 2:20 **o'clock** P **M.**

By: