An Act

ENROLLED HOUSE
BILL NO. 2399

By: Biggs, Jordan and Johnson of the House

and

Sykes and Brooks of the Senate

An Act relating to criminal procedure; creating the Alyssa D. Wiles Act; amending 22 O.S. 2011, Sections 40, 40.2 and 40.3, as amended by Sections 2, 3 and 4, Chapter 206, O.S.L. 2015 (22 O.S. Supp. 2015, Sections 40, 40.2 and 40.3), which relate to victim protection orders; adding definition; authorizing immediate family members to seek victim protection orders against certain persons; authorizing immediate family members to seek emergency temporary orders of protection; providing procedure; amending 22 O.S. 2011, Section 60.3, which relates to the Protection from Domestic Abuse Act; providing jurisdictional requirement for emergency ex parte orders under certain circumstances; providing for noncodification; and providing an effective date.

SUBJECT: Victim protection

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "Alyssa D. Wiles Act".

SECTION 2. AMENDATORY 22 O.S. 2011, Section 40, as amended by Section 2, Chapter 206, O.S.L. 2015 (22 O.S. Supp. 2015, Section 40), is amended to read as follows:

Section 40. As used in Sections 40 through 40.3 of this title:

1. "Assault and battery with a deadly weapon" means assault and battery with a deadly weapon or other means likely to produce death or great bodily harm as provided in Section 652 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 886 and 887 of Title 21 of the Oklahoma Statutes that is punishable under Section 888 of Title 21 of the Oklahoma Statutes;

3. "Kidnapping" means kidnapping or kidnapping for purposes of extortion as provided in Sections 741 and 745 of Title 21 of the Oklahoma Statutes;

4. "Member of the immediate family" means the spouse, a child by birth or adoption, a stepchild, a parent by birth or adoption, a stepparent, a grandparent, a grandchild, a sibling or a stepsibling of a victim of first-degree murder;

5. "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; and

~~5.~~ 6. "Sex offense" means the following crimes:

a. sexual assault as provided in Section 681 of Title 21 of the Oklahoma Statutes,

b. human trafficking for commercial sex as provided in Section 748 of Title 21 of the Oklahoma Statutes,

c. sexual abuse or sexual exploitation by a caretaker as provided in Section 843.1 of Title 21 of the Oklahoma Statutes,

d. child sexual abuse or child sexual exploitation as provided in Section 843.5 of Title 21 of the Oklahoma Statutes,

e. permitting sexual abuse of a child as provided in Section 852.1 of Title 21 of the Oklahoma Statutes,

f. incest as provided in Section 885 of Title 21 of the Oklahoma Statutes,

g. forcible sodomy as provided in Section 888 of Title 21 of the Oklahoma Statutes,

h. child stealing for purposes of sexual abuse or sexual exploitation as provided in Section 891 of Title 21 of the Oklahoma Statutes,

i. indecent exposure or solicitation of minors as provided in Section 1021 of Title 21 of the Oklahoma Statutes,

j. procuring, producing, distributing or possessing child pornography as provided in Sections 1021.2 and 1024.2 of Title 21 of the Oklahoma Statutes,

k. parental consent to child pornography as provided in Section 1021.3 of Title 21 of the Oklahoma Statutes,

l. aggravated possession of child pornography as provided in Section 1040.12a of Title 21 of the Oklahoma Statutes,

m. distributing obscene material or child pornography as provided in Section 1040.13 of Title 21 of the Oklahoma Statutes,

n. offering or soliciting sexual conduct with a child as provided in Section 1040.13a of Title 21 of the Oklahoma Statutes,

o. procuring a child for prostitution or other lewd acts as provided in Section 1087 of Title 21 of the Oklahoma Statutes,

p. inducing a child to engage in prostitution as provided in Section 1088 of Title 21 of the Oklahoma Statutes, and

q. lewd or indecent proposals or acts to a child or sexual battery as provided in Section 1123 of Title 21 of the Oklahoma Statutes.

SECTION 3. AMENDATORY 22 O.S. 2011, Section 40.2, as amended by Section 3, Chapter 206, O.S.L. 2015 (22 O.S. Supp. 2015, Section 40.2), is amended to read as follows:

Section 40.2 A. A victim protection order for any victim of rape, forcible sodomy, a sex offense, kidnapping or assault and battery with a deadly weapon shall be substantially similar to a protective order in domestic abuse cases pursuant to the Protection from Domestic Abuse Act.

B. A member of the immediate family of a victim of first-degree murder may seek a victim protection order against the following persons:

1. The person who was charged and subsequently convicted as the principal in the crime of murder in the first degree; or

2. The person who was charged and subsequently convicted of being an accessory to the crime of murder in the first degree.

A victim protection order for a member of the immediate family of a victim of first-degree murder shall be substantially similar to a protective order in domestic abuse cases pursuant to the Protection from Domestic Abuse Act.

C. No peace officer shall discourage a victim of rape, forcible sodomy, a sex offense, kidnapping or assault and battery with a deadly weapon from pressing charges against any assailant of the victim.

SECTION 4. AMENDATORY 22 O.S. 2011, Section 40.3, as amended by Section 4, Chapter 206, O.S.L. 2015 (22 O.S. Supp. 2015, 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 deadly weapon or member of the immediate family of a victim of first-degree murder may request a petition for an emergency temporary order of protection. The peace officer making the preliminary investigation shall:

1. Provide the victim or member of the immediate family of a victim of first-degree murder with a petition for an emergency

temporary order of protection and, if necessary, assist the victim or member of the immediate family of a victim of first-degree murder 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 or member of the immediate family of a victim of first-degree murder 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 or member of the immediate family of a victim of first-degree murder, 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.

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 5. AMENDATORY 22 O.S. 2011, Section 60.3, is amended to read as follows:

Section 60.3 A. If a plaintiff requests an emergency ex parte order pursuant to Section 60.2 of this title, the court shall hold an ex parte hearing on the same day the petition is filed, 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. The court may, for good cause shown at the hearing, issue any emergency ex parte order that it finds necessary to protect the victim from immediate and present danger of domestic abuse,

stalking, or harassment. The emergency ex parte order shall be in effect until after the full hearing is conducted. Provided, if the defendant, after having been served, does not appear at the hearing, the emergency ex parte order shall remain in effect until the defendant is served with the permanent order. If the terms of the permanent order are the same as those in the emergency order, or are less restrictive, then it is not necessary to serve the defendant with the permanent order. The Administrative Office of the Courts shall develop a standard form for emergency ex parte protective orders.

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

C. If a plaintiff requests an emergency temporary ex parte order of protection as provided by Section 40.3 of this title, the judge who is notified of the request by a peace officer may issue such order verbally to the officer or in writing when there is reasonable cause to believe that the order is necessary to protect the victim from immediate and present danger of domestic abuse. When the order is issued verbally the judge shall direct the officer to complete and sign a statement attesting to the order. The emergency temporary ex parte order shall be in effect until the close of business on the next day the court is open for business after the order is issued.

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

SECTION 6. This act shall become effective November 1, 2016.

Passed the House of Representatives the 2nd day of March, 2016.

Presiding Officer of the House
of Representatives

Passed the Senate the 20th day of April, 2016.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 21st

day of April, 20 16, at 3:23 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 26th

day of April, 20 16, at 1:55 o'clock P M.

Mary Fallin
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 26th

day of April, 20 16, at 3:24 o'clock P. M.

By: Chris Benge