

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1028

By: Kerbs

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5  
6 AS INTRODUCED

7 An Act relating to victim protective orders; amending  
8 22 O.S. 2011, Section 40.3, as last amended by  
9 Section 4, Chapter 183, O.S.L. 2016 (22 O.S. Supp.  
10 2020, Section 40.3), which relates to emergency  
11 temporary orders of protection for certain victims;  
12 directing peace officers to serve order and complete  
13 the return of service when filing petition; directing  
14 court clerk to review and evaluate petition;  
15 providing for the filing and issuance of petition  
16 despite absence of service; amending 22 O.S. 2011,  
17 Sections 60.3, as last amended by Section 2, Chapter  
18 113, O.S.L. 2019 and 60.16 (22 O.S. Supp. 2020,  
19 Section 60.3), which relate to the Protection from  
20 Domestic Abuse Act; directing peace officers to serve  
21 order and complete the return of service when filing  
22 petition; directing court clerk to review and  
23 evaluate petition; providing for the filing and  
24 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 review the petition upon  
21 delivery by the peace officer to ensure all required documents are  
22 accounted for. The court clerk, upon evaluation of the petition,  
23 shall make sure a return of service is properly filled out and  
24 attached to the petition. The court clerk shall document the

1 hearing date and time assigned to the case. If the court clerk  
2 observes that service has not been obtained, the petition shall  
3 still be filed by the court clerk and issued to the appropriate  
4 office of the county sheriff to obtain service with priority.

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

8 SECTION 2. AMENDATORY 22 O.S. 2011, Section 60.3, as  
9 last amended by Section 2, Chapter 113, O.S.L. 2019 (22 O.S. Supp.  
10 2020, Section 60.3), is amended to read as follows:

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

1 less restrictive, then it is not necessary to serve the defendant  
2 with the permanent order. The Administrative Office of the Courts  
3 shall develop a standard form for emergency ex parte protective  
4 orders.

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

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

22 The peace officer shall make every attempt to serve the subject  
23 of the order and complete a return of service when filing the  
24 petition with the district court. If the peace officer is unable to

1 obtain service, the petition shall be filed with the district court  
2 the next business day. The court clerk shall review the petition  
3 upon delivery by the peace officer to ensure all required documents  
4 are accounted for. The court clerk, upon evaluation of the  
5 petition, shall make sure a return of service is properly filled out  
6 and attached to the petition. The court clerk shall document the  
7 hearing date and time assigned to the case. If the court clerk  
8 observes that service has not been obtained, the petition shall  
9 still be filed by the court clerk and issued to the appropriate  
10 office of the county sheriff to obtain service with priority.

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

19 SECTION 3. AMENDATORY 22 O.S. 2011, Section 60.16, is  
20 amended to read as follows:

21 Section 60.16 A. A peace officer shall not discourage a victim  
22 of domestic abuse from pressing charges against the assailant of the  
23 victim.

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1 B. 1. A peace officer may arrest without a warrant a person  
2 anywhere, including a place of residence, if the peace officer has  
3 probable cause to believe the person within the preceding seventy-  
4 two (72) hours has committed an act of domestic abuse as defined by  
5 Section 60.1 of this title, although the assault did not take place  
6 in the presence of the peace officer. A peace officer may not  
7 arrest a person pursuant to this section without first observing a  
8 recent physical injury to, or an impairment of the physical  
9 condition of, the alleged victim.

10 2. An arrest, when made pursuant to this section, shall be  
11 based on an investigation by the peace officer of the circumstances  
12 surrounding the incident, past history of violence between the  
13 parties, statements of any children present in the residence, and  
14 any other relevant factors. A determination by the peace officer  
15 shall be made pursuant to the investigation as to which party is the  
16 dominant aggressor in the situation. A peace officer may arrest the  
17 dominant aggressor.

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

22 1. Provide the victim with a petition for an emergency  
23 temporary order of protection and, if necessary, assist the victim  
24 in completing the petition form. The petition shall be in

1 substantially the same form as provided by Section 60.2 of this  
2 title for a petition for protective order;

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

8 3. Inform the victim whether the judge has approved or  
9 disapproved the emergency temporary order. If an emergency  
10 temporary order has been approved, the peace officer shall provide  
11 the victim, or a responsible adult if the victim is a minor child or  
12 an incompetent person, with a copy of the petition and a written  
13 statement signed by the peace officer attesting that the judge has  
14 approved the emergency temporary order of protection and notify the  
15 victim that the emergency temporary order shall be effective ~~only~~  
16 ~~until the close of business on the next day that the court is open~~  
17 ~~for business~~ until the date of the hearing set by the judge. The  
18 peace officer requesting the order shall be notified by the judge of  
19 the date, time and courtroom location in which the hearing will be  
20 held or shall be notified of the date, time and location of the  
21 hearing from a list of available court dates provided by the judge.  
22 The peace officer shall provide the victim and defendant with a copy  
23 of the completed order and return the original order to the district  
24 court;

1           4. Notify the person subject to the emergency temporary  
2 protection order of the issuance and conditions of the order.  
3 Notification pursuant to this paragraph may be made personally by  
4 the peace officer or in writing. A copy of the petition and the  
5 statement of the peace officer attesting to the order of the judge  
6 shall be made available to such person; and

7           5. File a copy of the petition and the statement of the peace  
8 officer with the district court of the county immediately upon the  
9 opening of the court on the next day the court is open for business.  
10 The peace officer shall make every attempt to serve the subject of  
11 the order and complete a return of service when filing the petition  
12 with the district court. If the peace officer is unable to obtain  
13 service, the petition shall be filed with the district court the  
14 next business day. The court clerk shall review the petition upon  
15 delivery by the peace officer to ensure all required documents are  
16 accounted for. The court clerk, upon evaluation of the petition,  
17 shall make sure a return of service is properly filled out and  
18 attached to the petition. The court clerk shall document the  
19 hearing date and time assigned to the case. If the court clerk  
20 observes that service has not been obtained, the petition shall  
21 still be filed by the court clerk and issued to the appropriate  
22 office of the county sheriff to obtain service with priority.  
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1 D. The forms utilized by law enforcement agencies in carrying  
2 out the provisions of this section may be substantially similar to  
3 those used under Section 60.2 of this title.

4 SECTION 4. This act shall become effective November 1, 2021.

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6 58-1-6001 GRS 12/23/20

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