

1 ENGROSSED HOUSE
2 BILL NO. 1028

By: Kerbs of the House

3 and

4 Weaver of the Senate

5
6 An Act relating to victim protective orders; amending
7 22 O.S. 2011, Section 40.3, as last amended by
8 Section 4, Chapter 183, O.S.L. 2016 (22 O.S. Supp.
9 2020, Section 40.3), which relates to emergency
10 temporary orders of protection for certain victims;
11 directing peace officers to serve order and complete
12 the return of service when filing petition; directing
13 court clerk to receive petition; providing for the
14 filing and issuance of petition despite absence of
15 service; amending 22 O.S. 2011, Sections 60.3, as
16 last amended by Section 2, Chapter 113, O.S.L. 2019
17 and 60.16 (22 O.S. Supp. 2020, Section 60.3), which
18 relate to the Protection from Domestic Abuse Act;
19 directing peace officers to serve order and complete
20 the return of service when filing petition; directing
21 court clerk to receive petition; providing for the
22 filing and issuance of petition despite absence of
23 service; increasing time limitation for effectiveness
24 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:

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

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

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

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

20 3. Inform the victim or member of the immediate family of a
21 victim of first-degree murder 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 or member of the immediate family of a victim
2 of first-degree murder, with a copy of the petition and a written
3 statement signed by the peace officer attesting that the judge has
4 approved the emergency temporary order of protection; ~~and~~

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

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

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1 B. 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 2. AMENDATORY 22 O.S. 2011, Section 60.3, as
5 last amended by Section 2, Chapter 113, O.S.L. 2019 (22 O.S. Supp.
6 2020, Section 60.3), is amended to read as follows:

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

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

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

18 The peace officer shall make every attempt to serve the subject
19 of the order and complete a return of service when filing the
20 petition with the district court. If the peace officer is unable to
21 obtain service, the petition shall be filed with the district court
22 the next business day. The court clerk shall receive the petition
23 upon delivery by the peace officer and document the hearing date and
24 time assigned to the case as documented by the peace officer. If

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

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

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

15 Section 60.16 A. A peace officer shall not discourage a victim
16 of domestic abuse from pressing charges against the assailant of the
17 victim.

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

1 recent physical injury to, or an impairment of the physical
2 condition of, the alleged victim.

3 2. An arrest, when made pursuant to this section, shall be
4 based on an investigation by the peace officer of the circumstances
5 surrounding the incident, past history of violence between the
6 parties, statements of any children present in the residence, and
7 any other relevant factors. A determination by the peace officer
8 shall be made pursuant to the investigation as to which party is the
9 dominant aggressor in the situation. A peace officer may arrest the
10 dominant aggressor.

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

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

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

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

18 4. Notify the person subject to the emergency temporary
19 protection order of the issuance and conditions of the order.
20 Notification pursuant to this paragraph may be made personally by
21 the peace officer or in writing. A copy of the petition and the
22 statement of the peace officer attesting to the order of the judge
23 shall be made available to such person; and
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1 5. File a copy of the petition and the statement of the peace
2 officer with the district court of the county immediately upon the
3 opening of the court on the next day the court is open for business.
4 The peace officer shall make every attempt to serve the subject of
5 the order and complete a return of service when filing the petition
6 with the district court. If the peace officer is unable to obtain
7 service, the petition shall be filed with the district court the
8 next business day. The court clerk shall receive the petition upon
9 delivery by the peace officer and document the hearing date and time
10 assigned to the case as documented by the peace officer. If the
11 court clerk observes that service has not been obtained, the
12 petition shall still be filed by the court clerk and issued to the
13 appropriate office of the county sheriff to obtain service with
14 priority.

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

18 SECTION 4. This act shall become effective November 1, 2021.
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1 Passed the House of Representatives the 1st day of March, 2021.

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3 _____
4 Presiding Officer of the House
of Representatives

5 Passed the Senate the ____ day of _____, 2021.

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9 Presiding Officer of the Senate