

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 HOUSE BILL 1350

By: Roussetot

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5  
6 AS INTRODUCED

7 An Act relating to stalking and victim protection  
8 orders; amending 21 O.S. 2011, Section 1173, which  
9 relates to stalking; updating language; modifying  
10 penalties; making certain acts unlawful; amending 22  
11 O.S. 2011, Sections 40, 40.2 and 40.3, which relate  
12 to victim protection orders; adding definitions;  
13 modifying requirements for emergency temporary orders  
14 of protection and victim protection orders; and  
15 providing an effective date.

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

17 SECTION 1. AMENDATORY 21 O.S. 2011, Section 1173, is  
18 amended to read as follows:

19 Section 1173. A. Any person who willfully, maliciously, and  
20 repeatedly follows or harasses another person in a manner that:

21 1. Would cause a reasonable person or a member of the immediate  
22 family of that person as defined in subsection F of this section to  
23 feel frightened, intimidated, threatened, harassed, or molested; and

24 2. Actually causes the person being followed or harassed to  
feel terrorized, frightened, intimidated, threatened, harassed, or  
molested,

1 ~~upon conviction,~~ shall, upon conviction, be guilty of the crime of  
2 stalking, which is a misdemeanor punishable by imprisonment in a  
3 county jail for not more than one (1) year, or by a fine of not more  
4 than One Thousand Dollars (\$1,000.00), or by both such fine and  
5 imprisonment.

6 B. Any person who violates the provisions of subsection A of  
7 this section when:

8 1. There is a permanent or temporary restraining order, a  
9 protective order, an emergency ex parte protective order, or an  
10 injunction in effect prohibiting the behavior described in  
11 subsection A of this section against the same party, when the person  
12 violating the provisions of subsection A of this section has actual  
13 notice of the issuance of such order or injunction; or

14 2. Said person is on probation or parole, a condition of which  
15 prohibits the behavior described in subsection A of this section  
16 against the same party or under the conditions of a community or  
17 alternative punishment; or

18 3. Said person, within ten (10) years preceding the violation  
19 of subsection A of this section, completed the execution of sentence  
20 for a conviction of a crime involving the use or threat of violence  
21 against the same party, or against any member of the immediate  
22 family of such party,

23 ~~upon conviction,~~ shall, upon conviction, be guilty of a felony  
24 punishable by imprisonment in the ~~State Penitentiary~~ custody of the

1 Department of Corrections for a term not exceeding five (5) years,  
2 or by a fine of not more than Two Thousand Five Hundred Dollars  
3 (\$2,500.00), or by both such fine and imprisonment.

4 C. Any person who ~~commits~~:

5 1. Commits a second act of stalking within ten (10) years of  
6 the completion of sentence for a prior conviction ~~under subsection A~~  
7 of ~~this section~~ stalking; or

8 2. Has a prior conviction of stalking and, after being served  
9 with a protective order that prohibits contact with an individual,  
10 knowingly makes unconsented contact with the same individual,  
11 shall, upon conviction ~~thereof,~~ ~~shall~~ be guilty of a felony  
12 punishable by imprisonment in the ~~State Penitentiary~~ custody of the  
13 Department of Corrections for a term of not ~~exceeding~~ less than five  
14 (5) years, or by a fine of not ~~more~~ less than Two Thousand Five  
15 Hundred Dollars (\$2,500.00), or by both such fine and imprisonment.

16 D. Any person who commits an act of stalking within ten (10)  
17 years of the completion of execution of sentence for a prior  
18 conviction under subsection B or C of this section, shall, upon  
19 conviction ~~thereof,~~ be guilty of a felony punishable by ~~a fine of~~  
20 ~~not less than Two Thousand Five Hundred Dollars (\$2,500.00) nor more~~  
21 ~~than Ten Thousand Dollars (\$10,000.00), or by~~ imprisonment in the  
22 ~~State Penitentiary~~ custody of the Department of Corrections for a  
23 term of not ~~exceeding~~ less than ten (10) years, or by a fine of not  
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1 less than Five Thousand Dollars (\$5,000.00), or by both such fine  
2 and imprisonment.

3 E. Evidence that the defendant continued to engage in a course  
4 of conduct involving repeated unconsented contact, as defined in  
5 subsection F of this section, with the victim after having been  
6 requested by the victim to discontinue the same or any other form of  
7 unconsented contact, and to refrain from any further unconsented  
8 contact with the victim, shall give rise to a rebuttable presumption  
9 that the continuation of the course of conduct caused the victim to  
10 feel terrorized, frightened, intimidated, threatened, harassed, or  
11 molested.

12 F. For purposes of this section:

13 1. "Harasses" means a pattern or course of conduct directed  
14 toward another individual that includes, but is not limited to,  
15 repeated or continuing unconsented contact, that would cause a  
16 reasonable person to suffer emotional distress, and that actually  
17 causes emotional distress to the victim. Harassment shall include  
18 harassing or obscene phone calls as prohibited by Section 1172 of  
19 this title and conduct prohibited by Section 850 of this title.  
20 Harassment does not include constitutionally protected activity or  
21 conduct that serves a legitimate purpose;

22 2. "Course of conduct" means a pattern of conduct composed of a  
23 series of two (2) or more separate acts over a period of time,  
24 however short, evidencing a continuity of purpose. Constitutionally

1 protected activity is not included within the meaning of "course of  
2 conduct";

3 3. "Emotional distress" means significant mental suffering or  
4 distress that may, but does not necessarily require, medical or  
5 other professional treatment or counseling;

6 4. "Unconsented contact" means any contact with another  
7 individual that is initiated or continued without the consent of the  
8 individual, or in disregard of that individual's expressed desire  
9 that the contact be avoided or discontinued. Constitutionally  
10 protected activity is not included within the meaning of unconsented  
11 contact. Unconsented contact includes but is not limited to any of  
12 the following:

- 13 a. following or appearing within the sight of that  
14 individual,
- 15 b. approaching or confronting that individual in a public  
16 place or on private property,
- 17 c. appearing at the workplace or residence of that  
18 individual,
- 19 d. entering onto or remaining on property owned, leased,  
20 or occupied by that individual,
- 21 e. contacting that individual by telephone,
- 22 f. sending mail or electronic communications to that  
23 individual, and

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

4           5. "Member of the immediate family", for the purposes of this  
5 section, means any spouse, parent, child, person related within the  
6 third degree of consanguinity or affinity or any other person who  
7 regularly resides in the household or who regularly resided in the  
8 household within the prior six (6) months.

9           SECTION 2.           AMENDATORY           22 O.S. 2011, Section 40, is  
10 amended to read as follows:

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

12           1. ~~"Rape" means an act of sexual intercourse accomplished with~~  
13 ~~a person pursuant to Sections 1111, 1111.1 and 1114 of Title 21 of~~  
14 ~~the Oklahoma Statutes~~ "Assault and battery with a deadly weapon"  
15 means assault and battery with a deadly weapon or other means likely  
16 to produce death or great bodily harm as provided in Section 652 of  
17 Title 21 of the Oklahoma Statutes; and

18           2. "Forcible sodomy" means the act of forcing another person to  
19 engage in the detestable and abominable crime against nature  
20 pursuant to Sections 886 and 887 of Title 21 of the Oklahoma  
21 Statutes that is punishable under Section 888 of Title 21 of the  
22 Oklahoma Statutes;

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

4       4. "Rape" means an act of sexual intercourse accomplished with  
5 a person pursuant to Sections 1111, 1111.1 and 1114 of Title 21 of  
6 the Oklahoma Statutes; and

7       5. "Sex offense" means the following crimes:

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

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

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

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

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

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

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

- 1        h. child stealing for purposes of sexual abuse or sexual  
2        exploitation as provided in Section 891 of Title 21 of  
3        the Oklahoma Statutes,
- 4        i. indecent exposure or solicitation of minors as  
5        provided in Section 1021 of Title 21 of the Oklahoma  
6        Statutes,
- 7        j. procuring, producing, distributing or possessing child  
8        pornography as provided in Sections 1021.2 and 1024.2  
9        of Title 21 of the Oklahoma Statutes,
- 10       k. parental consent to child pornography as provided in  
11       Section 1021.3 of Title 21 of the Oklahoma Statutes,
- 12       l. aggravated possession of child pornography as provided  
13       in Section 1040.12a of Title 21 of the Oklahoma  
14       Statutes,
- 15       m. distributing obscene material or child pornography as  
16       provided in Section 1040.13 of Title 21 of the  
17       Oklahoma Statutes,
- 18       n. offering or soliciting sexual conduct with a child as  
19       provided in Section 1040.13a of Title 21 of the  
20       Oklahoma Statutes,
- 21       o. procuring a child for prostitution or other lewd acts  
22       as provided in Section 1087 of Title 21 of the  
23       Oklahoma Statutes,
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1           p. inducing a child to engage in prostitution as provided  
2           in Section 1088 of Title 21 of the Oklahoma Statutes,  
3           and  
4           q. lewd or indecent proposals or acts to a child or  
5           sexual battery as provided in Section 1123 of Title 21  
6           of the Oklahoma Statutes.

7           SECTION 3.           AMENDATORY           22 O.S. 2011, Section 40.2, is  
8 amended to read as follows:

9           Section 40.2 A victim protection order for any victim of rape  
10 ~~or,~~ forcible sodomy, a sex offense, kidnapping or assault and  
11 battery with a deadly weapon shall be substantially similar to a  
12 protective order in domestic abuse cases pursuant to ~~Section 60 et~~  
13 ~~seq. of this title~~ the Protection from Domestic Abuse Act. No peace  
14 officer shall discourage a victim of rape ~~or,~~ forcible sodomy, a sex  
15 offense, kidnapping or assault and battery with a deadly weapon from  
16 pressing charges against any assailant of the victim.

17           SECTION 4.           AMENDATORY           22 O.S. 2011, Section 40.3, is  
18 amended to read as follows:

19           Section 40.3 A. When the court is not open for business, the  
20 victim of domestic violence, stalking, harassment, rape ~~or,~~ forcible  
21 sodomy, a sex offense, kidnapping or assault and battery with a  
22 deadly weapon may request a petition for an emergency temporary  
23 order of protection. The peace officer making the preliminary  
24 investigation shall:

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

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

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

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

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 5. This act shall become effective November 1, 2015.

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6 55-1-5299 GRS 12/05/14

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