An Act

ENROLLED HOUSE
BILL NO. 1350

By: Rousselot of the House

and

David of the Senate

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

SUBJECT: Crimes against the person

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

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

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

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

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

~~upon conviction,~~ shall, upon conviction, be guilty of the crime of stalking, which is a misdemeanor punishable by imprisonment in a

county jail for not more than one (1) year, or by a fine of not more than One Thousand Dollars ($1,000.00), or by both such fine and imprisonment.

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

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

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

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

~~upon conviction,~~ shall, upon conviction, be guilty of a felony punishable by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for a term not exceeding five (5) years, or by a fine of not more than Two Thousand Five Hundred Dollars ($2,500.00), or by both such fine and imprisonment.

C. Any person who ~~commits~~:

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

2. Has a prior conviction of stalking and, after being served with a protective order that prohibits contact with an individual, knowingly makes unconsented contact with the same individual,

shall, upon conviction ~~thereof~~, ~~shall~~ be guilty of a felony punishable by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for a term not exceeding five (5) years,

or by a fine of not ~~more~~ less than Two Thousand Five Hundred Dollars ($2,500.00), or by both such fine and imprisonment.

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

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

F. For purposes of this section:

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

2. "Course of conduct" means a pattern of conduct composed of a series of two ~~(2)~~ or more separate acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct";

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

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

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, and

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

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

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

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

1. ~~"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~~ "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; ~~and~~

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. "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. "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, is amended to read as follows:

Section 40.2 A victim protection order for any victim of rape ~~or~~, 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 ~~Section 60 et seq. of this title~~ the Protection from Domestic Abuse Act. No peace officer shall discourage a victim of rape ~~or~~, 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, 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, a sex offense, kidnapping or assault and battery with a deadly weapon 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.

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. This act shall become effective November 1, 2015.

Passed the House of Representatives the 3rd day of March, 2015.

Presiding Officer of the House of Representatives

Passed the Senate the 22nd day of April, 2015.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 27th day of April, 2015, at 2:35 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 1st day of May, 2015, at 11:42 o'clock A M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 1st day of May, 2015, at 2:25 o'clock P. M.

By: JeeAnn McNaughton-Hayes