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are not compensated for their work by way of royalties. The sound engineers obtain their copyright through the originality involved in arranging a recording session;⁸⁴ but the performers who make the sounds audible are overlooked.

Although recognition of performance rights in sound recordings is long overdue, it is not too late. Even if the current Commercial Use of Sound Recordings Amendment does not pass, unquestionably the drive for the recognition of such rights will continue. The history of this movement since 1975 dictates that it will not cease until such rights have been recognized, and properly so.

Lisbeth L. McCarty

Domestic Relations: Oklahoma's Protection from Domestic Abuse Act

The Oklahoma legislature recently responded to what has been called the "silent crisis"¹ by enacting the Protection from Domestic Abuse Act.² Although no one really knows how widespread domestic violence is, it has been estimated that 50% of all married women are battered sometime during the marriage³ and that nearly two million wives are beaten by their husbands in any one year.⁴ Moreover, when the numbers of husbands abused by their wives, elderly people abused by their adult children with whom they live, and unmarried people abused by their present or former housemates are added to the number of abused married women, it is obvious that domestic violence has reached epidemic proportions.

The new Protection from Domestic Abuse Act recognizes that domestic violence can no longer be relegated to an untouchable private family matter. This note will examine the importance of the Act, its operation, the foreseeable problems of its construction and enforcement, and will offer suggestions for strengthening and clarifying the Act.

obtains its copyright, i.e., through the sound engineer who captures and electronically processes the sounds.

84. *Id.*

1. R. LANGLEY & R. LEVY, *WIFE BEATING: THE SILENT CRISIS* 2 (1977), where the author contends that "battered women are the missing persons of official statistics." Wife beating is so pervasive, so accepted in our society, that it often goes unnoticed as well as unreported. Until recently, no statistics were kept regarding the incidence of the problem.

2. 22 OKLA. STAT. §§ 60-60.6 (Supp. 1982).

Four separate bills concerning domestic violence were introduced in the 1982 session. Two of the bills—one concerning marital rape, the other mandatory police records of domestic violence calls—were defeated. This Act was passed along with 22 OKLA. STAT. §§ 40-40.4 (Supp. 1982), which concerns the rights of victims of rape, forcible sodomy, and domestic violence.

3. M. STRAUS, R. GELLES, & S. STEINMETZ, *BEHIND CLOSED DOORS* 4 (1980).

4. *Id.*

Importance of the Act

Before the passage of the Act, in order to get a civil injunction to stop abuse, the victim married to her abuser had to file for a divorce or separate maintenance.⁵ Armed with the Act, the victim is no longer forced into a decision to dissolve the marriage. It goes without saying that the victim of domestic abuse is in a highly emotional state and in no condition to make such a major decision. Often the victim may believe the marriage could work if only the abuse could be brought under control. Many victims have religious or moral convictions that preclude divorce as an alternative. Even those who would be willing to divorce the abuser may remain in the marriage because they lack financial resources.

For those victims who were eligible to obtain an injunction to restrain their abusers without the benefit of this Act, obtaining and enforcing the injunction were too expensive and time-consuming under the circumstances to afford real protection. For those to whom civil relief was unavailable or impractical, the only recourse was criminal prosecution.⁶ Victims of abuse normally do not want retribution; they simply want the abuse to stop. Because the victim of domestic violence often loves and financially depends upon the abuser, he or she may be reluctant to file a criminal complaint. Adding to the victim's hesitance is the fear of retaliation after the abuser is out on bail.

Even in the cases where complaints are filed, district attorneys, who have broad discretion, are often reluctant to prosecute. Some prosecutors adhere to the traditional view that spousal abuse is a private family matter.⁷ Others consider the very high attrition rate of spousal abuse cases.⁸ Victims give such reasons for not following through with the complaint as their emotional attachment to and genuine concern for the defendant; their fear of retaliation; the inconvenience of taking off work and/or obtaining child care for court appearances; and that they have been able to get out of the abusive situation. Another factor contributing to the prosecutor's reluctance is that spousal abuse is difficult to prove. Most domestic violence occurs at night in the privacy of the home, so there are seldom disinterested witnesses. The physical evidence

5. 12 OKLA. STAT. § 1276 (1981) authorizes restraining orders during the divorce litigation. 12 OKLA. STAT. § 1382 (1981) authorizes injunctions between strangers. Cases have held that the injunction is available to protect against harm to the person as well as to property, even if the prohibited conduct also constitutes a crime. *See Anderson v. Trimble*, 519 P.2d 1352 (Okla. 1974), *cert. denied*, 419 U.S. 995 (1974); *Taylor v. State*, 291 P.2d 1033 (Okla. 1955).

6. The applicable crimes are assault; assault and battery; assault, battery or assault and battery with a dangerous weapon; aggravated assault and battery; assault and battery with a deadly weapon; assault with intent to kill.

7. Traditionally, a man has had the right to chastise his wife. "For as he is to answer for her misbehavior, the law thought it reasonable to intrust him with this power of restraining her, by domestic chastisement. . . ." W. BLACKSTONE, COMMENTARIES 445 (N.D.), cited in J. FLEMING, STOPPING WIFE ABUSE 153 (1979). This right became a matter of case law in *Bradley v. State*, 2 Miss. 156 (1824).

8. More than half the battered wife complainants either fail to cooperate with the prosecutor or request that the charges be withdrawn.

has disappeared before the trial date unless it was documented by photographs or medical examination. The result is that prosecutors are reluctant to pursue convictions and police officers and prosecutors discourage victims from filing charges. In short, criminal prosecution has not provided a solution to domestic abuse.

Although not a cure-all for the former inadequacies in the law, Oklahoma's new Protection from Domestic Abuse Act promises to be of great help in protecting victims. It affords a remedy to nearly all persons who are victims of domestic violence: spouses, former spouses, parents, children, persons otherwise related by blood or marriage, and persons living in the same household or who formerly lived in the same household.⁹

The Act also provides a comprehensive range of possible remedies. In addition to ordering the defendant not to threaten, abuse, visit, or communicate with the victim and to leave the residence if the parties reside together,¹⁰ the court has discretion to order anything else necessary for the safety and welfare of the victim.¹¹ Because violation of a protective order carries criminal sanctions,¹² it has more force and effect than the traditional civil injunction.

Two especially noteworthy features of the Act are that it allows victims to appear *pro se*¹³ and to file the petition for a protective order without having to pay costs in advance.¹⁴ In most civil litigation, the plaintiff must hire an attorney and pay court costs at the time of filing. This can be quite expensive, especially for the victim who is without independent means.

Perhaps even more important, the court must hold an *ex parte* hearing on the same day a petition requesting an *ex parte* order is filed.¹⁵ This ensures that where there is a threat of immediate harm, there is also an immediate means of obtaining a protective order.

Mechanics of the Act: Getting a Protective Order

The victim of domestic abuse, or an adult household member on behalf of a minor or incompetent, may file a petition for a protective order in the district court of the county in which the victim resides.¹⁶ The victim may prepare the petition himself, or upon request, be assisted by the court clerk

9. 22 OKLA. STAT. § 60.1 (Supp. 1982).

10. It is important that the court be empowered to order the defendant out of the home. Although Oklahoma does have a few shelters throughout the state, space is limited, and there is a maximum time the victim can stay. Also, if the victim is the one forced to leave, she and her children's lives are unfairly disrupted. In some instances, the children are forced to go to different schools.

11. 22 OKLA. STAT. §§ 60.3-60.4 (Supp. 1982).

12. *Id.* § 60.6. Violation of a protective order is a misdemeanor punishable by a fine not to exceed \$1,000 and/or a jail term not to exceed one year.

13. *Id.* § 60.2(A).

14. *Id.* § 60.2(C). The court may award court costs and attorney's fees to either party at the full hearing. *Id.* § 60.4(E).

15. *Id.* § 60.3.

16. *Id.* § 60.2(A).

or the victim-witness coordinator.¹⁷ The plaintiff cannot be required to pay filing fees at this time.¹⁸

There must be some relationship between the victim¹⁹ and the defendant, i.e., the parties must be spouses, former spouses, parent and child, related by blood or marriage, or persons living together presently or formerly.²⁰ The petition must allege that the defendant either caused or attempted to cause serious physical harm to the victim or threatened the victim with imminent serious physical harm.²¹

If the victim alleges that he is in "immediate and present danger of domestic abuse" from the defendant and requests an ex parte order, a hearing on the petition must be held on the same day the petition is filed.²² If good cause is shown at the hearing, the court may issue any emergency ex parte order necessary to protect the plaintiff from immediate and present danger of abuse.²³ This ex parte order remains in effect until after a show cause hearing, which must be conducted within twenty days thereafter.²⁴

If the plaintiff does not request an emergency ex parte order, or if the court denies the request for one, the court must schedule a hearing on the petition within ten days of the filing of the petition.²⁵

An emergency ex parte protective order and/or a final protective order, may, *inter alia*, order the defendant not to abuse, injure, threaten, visit, or communicate with the victim, as well as order the defendant to leave the residence.²⁶ After a full hearing where both parties are present, the court may also order either party to pay court costs and attorney's fees.²⁷

The final order of protection may remain in effect for a period up to one year,²⁸ and upon motion of either party the fixed duration may be extended

17. *Id.* § 60.2(D). Because this provision uses the word "or," there has already been some dispute regarding who has the primary responsibility of assisting the plaintiff. To prevent future volleying of the plaintiff, the provision should be amended. Because the victim-witness coordinator is the more appropriate party, the Act should require the court clerk to assist only where there is not a victim-witness coordinator.

18. *Id.* § 60.2(C).

19. The plaintiff may be the victim or an adult household member filing on behalf of any other family or household member who is a minor or incompetent. *Id.* § 60.2(A).

20. "Domestic abuse" is defined under the Act as "the occurrence of one or more of the following acts between family or household members: a. causing or attempting to cause serious physical harm, or b. threatening another with imminent serious physical harm." 22 OKLA. STAT. § 60.1(1) (Supp. 1982). "Family or household members" means spouses, former spouses, parents, children, persons otherwise related by blood or marriage, or persons living in the same household. This includes the elderly and the handicapped. *Id.* § 60.1(2) (Supp. 1982).

21. *Id.* § 60.2(B).

22. *Id.* § 60.3.

23. *Id.*

24. *Id.* § 60.4(B).

25. *Id.* § 60.4(C).

26. *Id.* § 60.4(E).

27. *Id.*

28. *Id.* § 60.4(F).

for as long as the court deems it necessary to protect the victim.²⁹ The order may also be modified upon motion of either party.³⁰

A copy of the protective order is to be sent to the police department with appropriate jurisdiction by the court clerk within twenty-four hours of the issuance of the order.³¹ Violation of a served protective order constitutes a misdemeanor punishable by fine of up to \$1,000 and/or by a jail term of as long as one year.³²

Enforcement

The Act provides that a protective order may be enforced by the civil court that issued the injunction³³ or by the criminal courts.³⁴ Neither enforcement procedure is without problems. The issuing court, of course, has the inherent power to enforce its lawful orders.³⁵ Traditionally, the courts have punished violations of civil injunctions by citing the violator with contempt of court upon application for citation, citation, and finding of guilt. Thus the court compels obedience to its orders through fines or imprisonment.³⁶

Unfortunately, this type of enforcement thwarts the purposes of the Act. For example, the victim will have the expense of hiring a private attorney,³⁷ which defeats the advantages gained by permitting the victim to file a petition for a protective order *pro se* and by not requiring costs of filing to be paid in advance. Additionally, in a contempt proceeding the defendant must be served with notice, and the parties must return to court for a full hearing. In the interim, the plaintiff-victim is left in the abuse-threatening situation that caused the emergency protective order to be issued in the first place. Once in court, the victim must convince the judge to impose some form of punishment.

In view of these problems, it seems that enforcement by contempt abrogates some of the Act's usefulness. Fortunately, because the Oklahoma legislature had the foresight to provide that violation of a protective order constitutes a misdemeanor,³⁸ the police and criminal courts also have the authority to enforce the civil injunction.

29. *Id.*

30. *Id.*

31. *Id.* § 60.5. The Act makes no provision for updating the copy sent to reflect whether the order has been served upon the defendant.

32. *Id.* § 60.6.

33. Only the court whose order is defied has power to punish the contempt. *Cooper v. Cooper*, 616 P.2d 1154 (Okla. 1980).

34. Violations of the protective orders constitute misdemeanors and are therefore prosecutable.

35. 12 OKLA. STAT. § 1390 (1981).

36. *Id.* This section provides for a fine not to exceed \$200 for each day of contempt, a jail term for no longer than six months, or both.

37. Although there is no requirement of hiring an attorney, it is doubtful that the average person could successfully bring a contempt proceeding before the court.

38. 22 OKLA. STAT. § 60.6 (Supp. 1982).

The major advantage of giving police the power to enforce the civil injunction is that it provides the victim with immediate enforcement of the order. For example, if the court orders the defendant-abuser out of the home and he refuses to leave, his presence in the house is *per se* a misdemeanor for which the police may arrest him. Were the violation not a crime under the Act, the police would be powerless to arrest the defendant absent a warrant, probable cause that a felony had been committed, or personally witnessing a misdemeanor such as an assault.³⁹

The problem with using police enforcement is that the Act does not compel police officers to take action. Some states with similar statutes provide for mandatory arrest if there is probable cause to believe that a protective order has been violated.⁴⁰ Without such a provision in Oklahoma's Act, the legislature has apparently left it to the discretion of the peace officer whether to make an arrest for a violation of the protective order. This could be a serious problem considering the past inaction of police officers in protecting domestic abuse victims.

Because police enforcement seems to be the only means of truly affording the victim immediate protection, steps should be taken to ensure police involvement. The first and best alternative is to amend the Act to include provisions outlining when arrests are mandatory and when they are discretionary. Or, city ordinances could be passed making the same provisions. A third possibility is for individual police departments to adopt a firm policy about when arrests are appropriate as well as to encourage police officers to make arrests under certain circumstances.

Even if the police do respond positively, the prosecutor may pose yet another problem. Because the prosecutor has absolute discretion whether to file charges against a violator,⁴¹ if he refuses to prosecute, the violator goes unpunished. This serves as a signal to police that arrests need not be made, and worse, it signals the abuser that his actions are permissible. If the prosecutor does file criminal charges, the defendant's guilt must be proved beyond a reasonable doubt.⁴² Furthermore, the defendant may have a right to a jury trial.⁴³

Regardless of what action is taken by the prosecutor and regardless of the rate of attrition or conviction, the police should not be discouraged from making the arrests. Even if the violator is not subsequently punished for his acts, an arrest will result in a cooling-off period between the parties, and the victim will have been rescued from the threat of immediate harm.

To ensure maximum effectiveness of the Act, the legislature needs to develop a system of statewide registry⁴⁴ and to clarify where protective orders are to

39. 22 OKLA. STAT. § 196 (1981).

40. *See, e.g.*, Maine's act at ME. REV. STAT. ANN. tit. 9, § 14 (amended 1979).

41. J. JACOBY, *THE PROSECUTOR'S CHARGING DECISION: A POLICY PERSPECTIVE* 2-3 (1977), cited in 13 U. TOL. L. REV. 353 (Winter 1982).

42. 22 OKLA. STAT. § 836 (1981).

43. *Id.* § 16.

44. Currently, Oklahoma's only statewide telecommunications center is the FBI's National Crime Information Center. Although violations may be filed in this computer, it is doubtful that the protective orders could be.

be sent. Because the Act requires the court clerk to send a copy of the protective order to "the police department with appropriate jurisdiction to enforce the order,"⁴⁵ someone must determine which police department has appropriate jurisdiction. Such a determination may prove to be difficult.

To illustrate, assume that a battered wife in Garvin County comes to the Norman shelter for battered women in Cleveland County. While in the shelter the woman learns of the Protection from Domestic Violence Act. She goes to the District Court of Cleveland County, files for and obtains a protective order. The court clerk has twenty-four hours to send a copy of the order to the police department with appropriate jurisdiction to enforce the order.

Unanswered by the Act is the question of who—the judge, the court clerk, or the victim—determines which police department has appropriate jurisdiction to enforce the order. Obviously the victim is most qualified because she knows where she will usually be when in need of protection. However, so long as the Act is silent, the decision is likely to be made by the court clerk since he is the one who is required to send the order. In the above illustration the order was issued by the District Court of Cleveland County in Norman, so a court clerk who is unaware that the victim is not a permanent Norman resident would likely assume that the Norman Police Department is the police department with appropriate jurisdiction. However, the Norman police would be of little use to the woman when she returns to her home in Garvin County.

Even if the order is forwarded to the victim's permanent hometown, if that town is, as in the example, in a county other than the county whose district court issued the order, the order may not be enforceable. The Oklahoma Supreme Court in *Cooper v. Cooper*⁴⁶ held that the district court in one county had no jurisdiction to cite a person for contempt when the order that had been disobeyed had been rendered by a district court within another county. That is, only the court whose order is defied has power to punish the contempt.⁴⁷ It is hoped that violation of a protective order will nevertheless constitute a misdemeanor regardless of where the violation occurs. In any event, the problem can be avoided by amending the Act to provide specifically that all protective orders issued under the Act shall have statewide validity.

Another problem is that Oklahoma has many small towns that do not have police departments. For plaintiffs from such towns, a copy of the protective order should be sent to the county sheriff's office. A different problem occurs in Oklahoma City where there are multiple police jurisdictions. A victim in the Oklahoma City area is likely to cross jurisdictional lines on a daily basis. Both of these problems can be eliminated by amending the language presently used in the Act to read "all law enforcement agencies with appropriate jurisdiction to enforce the order."⁴⁸

A further inadequacy in the Act's enforcement provision is the absence of

45. 22 OKLA. STAT. § 60.5 (Supp. 1982).

46. 616 P.2d 1154 (Okla. 1980).

47. *Id.* at 1156.

48. The language presently used is "the police department with appropriate jurisdiction to enforce the order." 22 OKLA. STAT. § 60.5 (Supp. 1982).

a statewide registry of protection orders. This would cause problems, for example, for the woman in the earlier illustration. Assume that after she returns to her home in Garvin County where there is no police department, the defendant violates the order after 5 P.M. The woman calls the county sheriff for enforcement. When the sheriff asks where the order is on file, all the woman can tell him is that she filed the petition in Cleveland County District Court. The sheriff checks with the Norman Police Department, which has no record of the order. The court clerk's office is closed, so the sheriff cannot ascertain where the order was sent. In effect, the sheriff's hands have been tied.

A statewide registry system that would reflect current, accurate information on the status of all protective orders in the state would eliminate this problem.⁴⁹ This information should be readily accessible twenty-four hours a day, seven days a week. Until such a system is devised, it is essential that the court impress upon the plaintiff the necessity of knowing and remembering where the order will be filed so that she can accurately inform the peace officer requested to enforce the order.

Constitutional Issues

The most obvious question concerning the constitutionality of the Act is whether an *ex parte* order granting the plaintiff possession of the residence to the exclusion of the defendant is an unconstitutional taking of property without due process of law. Similar statutes in other states have already survived both this and other constitutional challenges.⁵⁰

In the Pennsylvania case of *Boyle v. Boyle*,⁵¹ the court held Pennsylvania's Protection from Abuse Act to be constitutional. The provisions of the Pennsylvania statute applicable to the challenge are substantially the same as those in Oklahoma's Act, i.e., an order is issued after an *ex parte* hearing at which

49. The information filed in the statewide registry system would only have to reflect the agency where the order was filed. Then the inquiring police officer or judge could check with that agency to determine whether the order is valid and still in effect, whether the defendant was served, and the terms of the order.

50. In *Ohio v. Heyl*, *Clearing House Rev.* 426-27 (Aug.-Sept. 1980) (Hamilton County, Ohio, Municipal Ct., 1979), the defendant challenged the issuance of a temporary protective order as a condition of bail. The court denied the defendant's motion without opinion.

In *People v. Cameron*, 53 Cal. App. 3d 786, 126 Cal. Rptr. 44 (1975), the statute was challenged on the basis that it was limited to female victims and to married female victims and because it was impermissibly vague. The court upheld the law under the rational basis test.

In both *Williams v. Marsh*, 626 S.W.2d 223 (Mo. 1982) and *Boyle v. Boyle*, 5 FAM. L. REP. (BNA) 2916 (Pa. C.P., Allegheny County 1979), it was argued that the respective acts were void for vagueness. Both courts rejected this contention, finding the provisions of the respective acts to be constitutional in that the defendant is adequately notified as to what conduct on his part is criminal and what sanctions may be imposed if such conduct is pursued.

The court in *Williams* also held that provisions in the act permitting courts to issue *ex parte* orders excluding the defendant from contact with his children for a 15-day period did not deprive the defendant of due process where the act was necessary to secure important governmental interests in protection of victims of abuse and prevention of further abuse.

51. 5 FAM. L. REP. (BNA) 2916 (Pa. C.P., Allegheny County 1979).

good cause must be shown; a final hearing must be held within a certain number of days;⁵² the court has the power to grant exclusive possession of the home to the plaintiff, evicting the defendant during the interim between the ex parte and the full hearing; and the ex parte order does not affect the title to real property.

The lower court in *Boyle* granted the plaintiff-wife possession of the house after an ex parte hearing. The defendant-husband appealed, challenging the constitutionality of the Pennsylvania Act on the ground of violation of due process. The Pennsylvania Court of Common Pleas, Allegheny County, prefaced its discussion of the legal issues with an acknowledgment of the problem of domestic violence and the inadequacies of dealing with it in the legal system prior to the passage of this Act. The court stated that "this Act bears a real and substantial relationship to the objective of alleviating this situation and certainly is intended to be in the interest of the general public."⁵³

The court then turned to the issues presented in the case. It began with the premises that each tenant in common is entitled to possession of the whole and that property rights are subject to the legitimate use of the state's police power.

The court observed that the defendant's right to due process must be balanced against the state's interest in protecting its citizens. Acknowledging that notice and a hearing would better serve the fourteenth amendment, the court found that that would defeat the purpose of the Act, i.e., the "immediate temporary relief in a volatile situation where there is imminent danger of recurring or further abuse of the plaintiff. . . ."⁵⁴ Finding no acceptable alternative to the ex parte order, and taking into consideration that the exclusion without a hearing was for a short time, the court concluded that the Pennsylvania Act was not repugnant to the Constitution. There were no dissenting opinions.

The Supreme Court of Missouri in *Williams v. Marsh*⁵⁵ reached the same conclusion in holding that provisions in its act permitting courts to issue ex parte orders of protection excluding respondents from their homes for a fifteen-day period did not deprive respondent of due process where necessary to secure important governmental interests in protection of victims of abuse and prevention of further abuse.

In *Williams* the petitioner sought relief under Missouri's Adult Abuse Act, asking the court to restrain her husband from entering her dwelling. The trial court held that the Act was unconstitutional and dismissed the case. The Missouri Supreme Court reversed the lower court, finding that the ex parte orders "comply with due process requirements because they are a reasonable means to achieve the state's legitimate goal of preventing domestic violence,

52. In Oklahoma the final hearing must be held within twenty days after the ex parte order is issued. 22 OKLA. STAT. § 60.4 (Supp. 1982).

53. *Boyle v. Boyle*, 5 FAM. L. REP. (BNA) 2916, 2917 (Pa. C.P., Allegheny County 1979).

54. *Id.*

55. 626 S.W.2d 223 (Mo. 1982).

and afford adequate procedural safeguards, prior to and after any deprivation occurs.”⁵⁶ The court found that the interests affected by the ex parte order constitute significant liberty and property interests that fall within the purview of the due process clause, and, therefore, procedures available under the Act must meet the constitutional standard.⁵⁷

Next the court reviewed the United States Supreme Court cases to determine what procedural safeguards are required and whether the Missouri Act complies with them. First the court cited *Fuentes v. Shevin*⁵⁸ and *Boddie v. Connecticut*,⁵⁹ which stand for the proposition that notice and opportunity to be heard must be given before the deprivation of a protected interest. However, the rule is not necessarily the same when the deprivation is only temporary. Due process is a flexible concept.⁶⁰ Procedural requirements are dependent upon a balancing between the interests of the state and the private interests affected.⁶¹

The private interest affected in protection from domestic abuse statutes is the property interest in one’s home. The state’s interest is protection of the plaintiff from further abuse. If it is unsafe for both parties to remain in the home, the choice must be made whether to exclude the abuser or the victim. The Act gives the court the authority to choose to exclude the abuser.

In *Fuentes v. Shevin*⁶² the Supreme Court outlined three instances where outright seizures have been allowed: where seizure has been directly necessary to secure an important governmental or general public interest; where there has been a special need for prompt action; and finally, where the state has kept strict control over its monopoly of legitimate force.⁶³

Applying the *Fuentes* standards to the Act, the Missouri Supreme Court found that the Act met all three.⁶⁴ First, the Act is directly necessary to secure the important governmental interest of protecting victims from further abuse. Second, there is a special need for prompt action. Indeed, no ex parte order may be issued absent a showing of immediate and present danger. Third, the state has kept strict control over its monopoly of legitimate force by empowering only judges, in their discretion, to issue an ex parte order. Thus, where there is immediate and present danger of abuse, the temporary ex parte order evicting the defendant from his home is an exception to the general rule requiring notice and an opportunity to be heard prior to the deprivation.

From *Boyle* and *Williams* it appears that the governmental interest in protecting its citizens is so strong that the courts will uphold ex parte orders excluding defendants from the home, finding such orders to be a legitimate exercise of the state’s police power and therefore constitutional.

56. *Id.* at 232.

57. *Id.* at 230.

58. 407 U.S. 67 (1972).

59. 401 U.S. 371 (1971).

60. *Goss v. Lopez*, 419 U.S. 565, 578 (1975).

61. *Arnett v. Kennedy*, 416 U.S. 134, 167-68 (1974).

62. 407 U.S. 67 (1972).

63. *Id.* at 91.

64. *Williams v. Marsh*, 626 S.W.2d 223, 232 (Mo. 1982).

Recommended Amendments

Although the Protection from Domestic Abuse Act is a good beginning in the battle against domestic violence, there remain some problems that need to be addressed. Following are some suggestions for amendments to strengthen the impact of the Oklahoma Act and to clarify some of its ambiguities.

(1) Allow victims to file a petition in district courts of counties other than the county of residence, or in the alternative, define "resides" to include temporary residence.

Victims of abuse often flee from the home and seek refuge with family, friends, or in shelters for battered women. Sometimes nearby shelters are full, so victims are sent elsewhere. Victims often go to another city so that the abuser cannot find them. While temporarily out of the abusive situation, the victim may learn of the protective statute and may have the opportunity to file a petition. It would be helpful if the victim could file the petition in any county where she or he may be.⁶⁵

(2) Specifically provide that all orders that issue under this Act shall have statewide validity.

Not only would such a provision remove any doubt in the minds of the police officers, the district attorneys, and the courts that the protective order is valid and enforceable everywhere in the state, it would also make clear that violations of a protective order may be prosecuted anywhere in the state. Additionally, the provision would eliminate the reason for requiring the plaintiff to file the petition in the county where the victim resides and would avoid the need for filing in the new county of residence should the victim move while the order is still in effect.

(3) Devise a system for statewide registration of all protective orders issued under the Act, from which up-to-date accurate information concerning the status of the order and the provisions of the order may be obtained twenty-four hours a day, seven days a week.

This would allow peace officers to ascertain whether there is indeed a valid order still in effect, whether the order has been served upon the defendant, and the terms of that order. It would also be useful to the court in that it would provide a quick way to determine whether the defendant in the action had already obtained a protective order against the plaintiff now before the court.

(4) Amend section 60.4(B) to read as follows: "If the court issues an emergency ex parte order, such order shall provide that *should the defendant take issue with any provision of the order, he*⁶⁶ may appear on a date certain,

65. Presumably the defendant could have the case transferred to his county under the forum non conveniens doctrine.

66. Currently the italicized portion reads "instead of performing thereunder, the defendant. . . ."

not more than twenty (20) days thereafter, and show good cause as to why he should not comply with said order.”

Although the language presently used in this section is the standard show cause language used in the temporary orders in divorce actions,⁶⁷ it tends to negate the Act by giving the defendant the choice of obeying the order or attending the show cause hearing. It might also be advisable to shorten the twenty-day period to ensure that due process is not violated.⁶⁸

(5) Amend section 60.5 by changing “police department” to “all law enforcement agencies.”

As was noted above, this is simply to ensure that victims of abuse who live in small towns without police departments will have their protective orders on file somewhere.

(6) Amend sections 60.5 and 60.6 to state clearly that the protective order mentioned therein includes both *ex parte* and full protective orders.

Section 60.5 provides that the court clerk is to send a copy “of any protective order” to the appropriate police department. Section 60.6 provides that violation of “a protective order” which has been served constitutes a misdemeanor.

Although it seems obvious that *ex parte* orders as well as full orders were intended to be enforceable by procedures other than contempt, because contempt proceedings take too long to be helpful in an emergency situation, the courts and police departments so far are assuming that only the final order is enforceable; therefore, police officers will not make arrests for violations of *ex parte* orders. An alternative to this amendment is to empower the district courts to grant writs of assistance where the defendant refuses to leave the home pursuant to the *ex parte* protective order.

In any event, the Act should provide for a workable method of immediate enforcement; otherwise, the protective order is useful only to the extent that the defendant voluntarily complies with it. In other words, to ensure that a defendant so ordered actually vacates the premises, peace officers must have the authority to remove the defendant if he refuses to leave voluntarily.

(7) Strengthen the impact of the Act by requiring arrests to be made in certain situations, e.g., where the defendant stays at the residence in violation of the protective order, whether it be the *ex parte* or final order.

Again, the purpose is to ensure that the victim actually receives the protection conferred by order of the court.

(8) Provide that “all law enforcement officials shall be immune from civil

67. See 12 OKLA. STAT. § 1276 (1981).

68. Other states provide for a hearing in three to fifteen days from the date the *ex parte* order is issued. For details of similar statutes in other states, see J. HAMOS, *STATE DOMESTIC VIOLENCE LAWS AND HOW TO PASS THEM* (1980).