

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 1466

By: Echols

7 COMMITTEE SUBSTITUTE

8 An Act relating to criminal procedure; amending 22  
9 O.S. 2011, Section 60.4, as last amended by Section  
10 1, Chapter 281, O.S.L. 2016 (22 O.S. Supp. 2016,  
11 Section 60.4), which relates to the Protection from  
12 Domestic Abuse Act; authorizing transfer of wireless  
13 telephone number or numbers and household utility  
14 account under certain circumstances; requiring  
15 inclusion of certain information on transfer order;  
16 prohibiting release of contact information; directing  
17 transmission of final protective order to wireless  
18 service provider and public utility provider;  
19 requiring notice when wireless service provider or  
20 public utility provider cannot effectuate transfer  
21 order; assigning financial responsibility of  
22 transferred number or numbers and utility account and  
23 associated costs to petitioner; authorizing wireless  
24 service providers and public utility providers to  
apply account requirements for transferred numbers,  
devices and utility account; providing liability  
exemption for providers; defining terms; and  
providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2011, Section 60.4, as  
last amended by Section 1, Chapter 281, O.S.L. 2016 (22 O.S. Supp.  
2016, Section 60.4), is amended to read as follows:

1       Section 60.4 A. 1. A copy of a petition for a protective  
2 order, notice of hearing and a copy of any emergency ex parte order  
3 issued by the court shall be served upon the defendant in the same  
4 manner as a bench warrant. In addition, if the service is to be in  
5 another county, the court clerk may issue service to the sheriff by  
6 facsimile or other electronic transmission for service by the  
7 sheriff. Any fee for service of a petition for protective order,  
8 notice of hearing, and emergency ex parte order shall only be  
9 charged pursuant to subsection C of Section 60.2 of this title and,  
10 if charged, shall be the same as the sheriff's service fee plus  
11 mileage expenses.

12       2. Emergency ex parte orders shall be given priority for  
13 service and can be served twenty-four (24) hours a day when the  
14 location of the defendant is known. When service cannot be made  
15 upon the defendant by the sheriff, the sheriff may contact another  
16 law enforcement officer or a private investigator or private process  
17 server to serve the defendant.

18       3. An emergency ex parte order, a petition for protective  
19 order, and a notice of hearing shall have statewide validity and may  
20 be transferred to any law enforcement jurisdiction to effect service  
21 upon the defendant.

22       4. The return of service shall be submitted to the sheriff's  
23 office in the court where the petition, notice of hearing or order  
24 was issued.

1           5. When the defendant is a minor child who is ordered removed  
2 from the residence of the victim, in addition to those documents  
3 served upon the defendant, a copy of the petition, notice of hearing  
4 and a copy of any ex parte order issued by the court shall be  
5 delivered with the child to the caretaker of the place where such  
6 child is taken pursuant to Section 2-2-101 of Title 10A of the  
7 Oklahoma Statutes.

8           B. 1. Within fourteen (14) days of the filing of the petition  
9 for a protective order, the court shall schedule a full hearing on  
10 the petition, if the court finds sufficient grounds within the scope  
11 of the Protection from Domestic Abuse Act stated in the petition to  
12 hold such a hearing, regardless of whether an emergency ex parte  
13 order has been previously issued, requested or denied. Provided,  
14 however, when the defendant is a minor child who has been removed  
15 from the residence pursuant to Section 2-2-101 of Title 10A of the  
16 Oklahoma Statutes, the court shall schedule a full hearing on the  
17 petition within seventy-two (72) hours, regardless of whether an  
18 emergency ex parte order has been previously issued, requested or  
19 denied.

20           2. The court may schedule a full hearing on the petition for a  
21 protective order within seventy-two (72) hours when the court issues  
22 an emergency ex parte order suspending child visitation rights due  
23 to physical violence or threat of abuse.

24

1           3. If service has not been made on the defendant at the time of  
2 the hearing, the court shall, at the request of the petitioner,  
3 issue a new emergency order reflecting a new hearing date and direct  
4 service to issue.

5           4. A petition for a protective order shall, upon the request of  
6 the petitioner, renew every fourteen (14) days with a new hearing  
7 date assigned until the defendant is served. A petition for a  
8 protective order shall not expire unless the petitioner fails to  
9 appear at the hearing or fails to request a new order. A petitioner  
10 may move to dismiss the petition and emergency or final order at any  
11 time; however, a protective order must be dismissed by court order.

12           5. Failure to serve the defendant shall not be grounds for  
13 dismissal of a petition or an ex parte order unless the victim  
14 requests dismissal or fails to appear for the hearing thereon.

15           6. A final protective order shall be granted or denied within  
16 six (6) months of service on the defendant unless all parties agree  
17 that a temporary protective order remain in effect; provided, a  
18 victim shall have the right to request a final protective order  
19 hearing at any time after the passage of six (6) months.

20           C. 1. At the hearing, the court may impose any terms and  
21 conditions in the protective order that the court reasonably  
22 believes are necessary to bring about the cessation of domestic  
23 abuse against the victim or stalking or harassment of the victim or  
24 the immediate family of the victim but shall not impose any term and

1 condition that may compromise the safety of the victim including,  
2 but not limited to, mediation, couples counseling, family  
3 counseling, parenting classes or joint victim-offender counseling  
4 sessions. The court may order the defendant to obtain domestic  
5 abuse counseling or treatment in a program certified by the Attorney  
6 General at the expense of the defendant pursuant to Section 644 of  
7 Title 21 of the Oklahoma Statutes.

8 2. If the court grants a protective order and the defendant is  
9 a minor child, the court shall order a preliminary inquiry in a  
10 juvenile proceeding to determine whether further court action  
11 pursuant to the Oklahoma Juvenile Code should be taken against a  
12 juvenile defendant.

13 D. Final protective orders authorized by this section shall be  
14 on a standard form developed by the Administrative Office of the  
15 Courts.

16 E. 1. After notice and hearing, protective orders authorized  
17 by this section may require the defendant to undergo treatment or  
18 participate in the court-approved counseling services necessary to  
19 bring about cessation of domestic abuse against the victim pursuant  
20 to Section 644 of Title 21 of the Oklahoma Statutes but shall not  
21 order any treatment or counseling that may compromise the safety of  
22 the victim including, but not limited to, mediation, couples  
23 counseling, family counseling, parenting classes or joint victim-  
24 offender counseling sessions.

1           2. The defendant may be required to pay all or any part of the  
2 cost of such treatment or counseling services. The court shall not  
3 be responsible for such cost.

4           3. Should the plaintiff choose to undergo treatment or  
5 participate in court-approved counseling services for victims of  
6 domestic abuse, the court may order the defendant to pay all or any  
7 part of the cost of such treatment or counseling services if the  
8 court determines that payment by the defendant is appropriate.

9           F. When necessary to protect the victim and when authorized by  
10 the court, protective orders granted pursuant to the provisions of  
11 this section may be served upon the defendant by a peace officer,  
12 sheriff, constable, or policeman or other officer whose duty it is  
13 to preserve the peace, as defined by Section 99 of Title 21 of the  
14 Oklahoma Statutes.

15           G. 1. Any protective order issued on or after November 1,  
16 2012, pursuant to subsection C of this section shall be:

17           a. for a fixed period not to exceed a period of five (5)  
18 years unless extended, modified, vacated or rescinded  
19 upon motion by either party or if the court approves  
20 any consent agreement entered into by the plaintiff  
21 and defendant; provided, if the defendant is  
22 incarcerated, the protective order shall remain in  
23 full force and effect during the period of  
24 incarceration. The period of incarceration, in any

1 jurisdiction, shall not be included in the calculation  
2 of the five-year time limitation, or

3 b. continuous upon a specific finding by the court of one  
4 of the following:

5 (1) the person has a history of violating the orders  
6 of any court or governmental entity,

7 (2) the person has previously been convicted of a  
8 violent felony offense,

9 (3) the person has a previous felony conviction for  
10 stalking as provided in Section 1173 of Title 21  
11 of the Oklahoma Statutes, or

12 (4) a court order for a final Victim Protection Order  
13 has previously been issued against the person in  
14 this state or another state.

15 Further, the court may take into consideration whether the person  
16 has a history of domestic violence or a history of other violent  
17 acts. The protective order shall remain in effect until modified,  
18 vacated or rescinded upon motion by either party or if the court  
19 approves any consent agreement entered into by the plaintiff and  
20 defendant. If the defendant is incarcerated, the protective order  
21 shall remain in full force and effect during the period of  
22 incarceration.

1           2. The court shall notify the parties at the time of the  
2 issuance of the protective order of the duration of the protective  
3 order.

4           3. Upon the filing of a motion by either party to modify,  
5 extend, or vacate a protective order, a hearing shall be scheduled  
6 and notice given to the parties. At the hearing, the issuing court  
7 may take such action as is necessary under the circumstances.

8           4. If a child has been removed from the residence of a parent  
9 or custodial adult because of domestic abuse committed by the child,  
10 the parent or custodial adult may refuse the return of such child to  
11 the residence unless, upon further consideration by the court in a  
12 juvenile proceeding, it is determined that the child is no longer a  
13 threat and should be allowed to return to the residence.

14           H. 1. It shall be unlawful for any person to knowingly and  
15 willfully seek a protective order against a spouse or ex-spouse  
16 pursuant to the Protection from Domestic Abuse Act for purposes of  
17 harassment, undue advantage, intimidation, or limitation of child  
18 visitation rights in any divorce proceeding or separation action  
19 without justifiable cause.

20           2. The violator shall, upon conviction thereof, be guilty of a  
21 misdemeanor punishable by imprisonment in the county jail for a  
22 period not exceeding one (1) year or by a fine not to exceed Five  
23 Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

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1           3. A second or subsequent conviction under this subsection  
2 shall be a felony punishable by imprisonment in the custody of the  
3 Department of Corrections for a period not to exceed two (2) years,  
4 or by a fine not to exceed Ten Thousand Dollars (\$10,000.00), or by  
5 both such fine and imprisonment.

6           I. 1. A protective order issued under the Protection from  
7 Domestic Abuse Act shall not in any manner affect title to real  
8 property, purport to grant to the parties a divorce or otherwise  
9 purport to determine the issues between the parties as to child  
10 custody, visitation or visitation schedules, child support or  
11 division of property or any other like relief obtainable pursuant to  
12 Title 43 of the Oklahoma Statutes, except child visitation orders  
13 may be temporarily suspended or modified to protect from threats of  
14 abuse or physical violence by the defendant or a threat to violate a  
15 custody order. Orders not affecting title may be entered for good  
16 cause found to protect an animal owned by either of the parties or  
17 any child living in the household.

18           2. When granting any protective order for the protection of a  
19 minor child from violence or threats of abuse, the court shall allow  
20 visitation only under conditions that provide adequate supervision  
21 and protection to the child while maintaining the integrity of a  
22 divorce decree or temporary order.

23           J. 1. In order to ensure that a petitioner can maintain an  
24 existing wireless telephone number or household utility account, the

1 court, after providing notice and a hearing, may issue an order  
2 directing a wireless service provider or public utility provider to  
3 transfer the billing responsibility for and rights to the wireless  
4 telephone number and numbers of any minor children in the care of  
5 the petitioning party or household utility account to the petitioner  
6 if the petitioner is not the wireless service or public utility  
7 account holder.

8       2. The order transferring billing responsibility for and rights  
9 to the wireless telephone number or numbers or household utility  
10 account to the petitioner shall list the name and billing telephone  
11 number of the account holder, the name and contact information of  
12 the person to whom the telephone number or numbers or household  
13 utility account will be transferred and each telephone number or  
14 household utility to be transferred to that person. The court shall  
15 ensure that the contact information of the petitioner is not  
16 provided to the account holder in proceedings held under this  
17 subsection.

18       3. Upon issuance, a copy of the final order of protection shall  
19 be transmitted, either electronically or by certified mail, to the  
20 registered agent of the wireless service provider or public utility  
21 provider listed with the Secretary of State or Corporation  
22 Commission of Oklahoma or electronically to the email address  
23 provided by the wireless service provider or public utility  
24

1 provider. Such transmittal shall constitute adequate notice for the  
2 wireless service provider or public utility provider.

3 4. If the wireless service provider or public utility provider  
4 cannot operationally or technically effectuate the order due to  
5 certain circumstances, the wireless service provider or public  
6 utility provider shall notify the petitioner. Such circumstances  
7 shall include, but not be limited to, the following:

- 8 a. the account holder has already terminated the account,
- 9 b. the differences in network technology prevent the  
10 functionality of a mobile device on the network, or
- 11 c. there are geographic or other limitations on network  
12 or service availability.

13 5. Upon transfer of billing responsibility for and rights to a  
14 wireless telephone number or numbers or household utility account to  
15 the petitioner under the provisions of this subsection by a wireless  
16 service provider or public utility provider, the petitioner shall  
17 assume all financial responsibility for the transferred wireless  
18 telephone number or numbers or household utility account, monthly  
19 service and utility billing costs and costs for any mobile device  
20 associated with the wireless telephone number or numbers. The  
21 wireless service provider or public utility provider shall have the  
22 right to pursue the original account holder for purposes of  
23 collecting any past due amounts owed to the wireless service  
24 provider or public utility provider.

1       6. The provisions of this subsection shall not preclude a  
2 wireless service provider or public utility provider from applying  
3 any routine and customary requirements for account establishment to  
4 the petitioner as part of this transfer of billing responsibility  
5 for a household utility account or for a wireless telephone number  
6 or numbers and any mobile devices attached to that number including,  
7 but not limited to, identification, financial information and  
8 customer preferences.

9       7. The provisions of this subsection shall not affect the  
10 ability of the court to apportion the assets and debts of the  
11 parties as provided for in law or the ability to determine the  
12 temporary use, possession and control of personal property.

13       8. No cause of action shall lie against any wireless service  
14 provider or public utility provider, its officers, employees or  
15 agents for actions taken in accordance with the terms of a court  
16 order issued under the provisions of this subsection.

17       9. As used in this subsection:

18           a. "wireless service provider" means a provider of  
19           commercial mobile service under Section 332(d) of the  
20           federal Telecommunications Act of 1996,

21           b. "public utility provider" means every corporation  
22           organized or doing business in this state that owns,  
23           operates or manages any plant or equipment for the  
24           manufacture, production, transmission, transportation,

1 delivery or furnishing of water, heat or light with  
2 gas or electric current for heat, light or power, for  
3 public use in this state, and

4 c. "household utility account" shall include utility  
5 services for water, heat, light, power or gas that are  
6 provided by a public utility provider.

7 K. 1. A court shall not issue any mutual protective orders.

8 2. If both parties allege domestic abuse by the other party,  
9 the parties shall do so by separate petitions. The court shall  
10 review each petition separately in an individual or a consolidated  
11 hearing and grant or deny each petition on its individual merits.  
12 If the court finds cause to grant both motions, the court shall do  
13 so by separate orders and with specific findings justifying the  
14 issuance of each order.

15 3. The court may only consolidate a hearing if:

16 a. the court makes specific findings that:

17 (1) sufficient evidence exists of domestic abuse,  
18 stalking, harassment or rape against each party,  
19 and

20 (2) each party acted primarily as aggressors, and

21 b. the defendant filed a petition with the court for a  
22 protective order no less than three (3) days, not  
23 including weekends or holidays, prior to the first  
24

1 scheduled full hearing on the petition filed by the  
2 plaintiff, and

3 c. the defendant had no less than forty-eight (48) hours  
4 of notice prior to the full hearing on the petition  
5 filed by the plaintiff.

6 ~~K.~~ L. The court may allow a plaintiff or victim to be  
7 accompanied by a victim support person at court proceedings. A  
8 victim support person shall not make legal arguments; however, a  
9 victim support person who is not a licensed attorney may offer the  
10 plaintiff or victim comfort or support and may remain in close  
11 proximity to the plaintiff or victim.

12 SECTION 2. This act shall become effective November 1, 2017.

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