

An Act

ENROLLED HOUSE
BILL NO. 1466

By: Hall, Biggs, West (Josh),
Munson and Baker of the
House

and

Griffin of the Senate

An Act relating to criminal procedure; amending 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), which relates to the Protection from Domestic Abuse Act; authorizing transfer of wireless telephone number or numbers and household utility account under certain circumstances; requiring inclusion of certain information on transfer order; prohibiting release of contact information; directing transmission of final protective order to wireless service provider and public utility provider; requiring notice when wireless service provider or public utility provider cannot effectuate transfer order; assigning financial responsibility of transferred number or numbers and utility account and associated costs to petitioner; authorizing wireless 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.

SUBJECT: Protection from Domestic Abuse Act

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:

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

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

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

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

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

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

Oklahoma Statutes, the court shall schedule a full hearing on the petition within seventy-two (72) hours, regardless of whether an emergency ex parte order has been previously issued, requested or denied.

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

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

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

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

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

C. 1. At the hearing, the court may impose any terms and conditions in the protective order that the court reasonably believes are necessary to bring about the cessation of domestic abuse against the victim or stalking or harassment of the victim or the immediate family of the victim but shall not impose any term and condition that may compromise the safety of the victim including, but not limited to, mediation, couples counseling, family counseling, parenting classes or joint victim-offender counseling sessions. The court may order the defendant to obtain domestic abuse counseling or treatment in a program certified by the Attorney General at the expense of the defendant pursuant to Section 644 of Title 21 of the Oklahoma Statutes.

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

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

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

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

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

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

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

- a. for a fixed period not to exceed a period of five (5) years unless extended, modified, vacated or rescinded upon motion by either party or if the court approves any consent agreement entered into by the plaintiff

and defendant; provided, if the defendant is incarcerated, the protective order shall remain in full force and effect during the period of incarceration. The period of incarceration, in any jurisdiction, shall not be included in the calculation of the five-year time limitation, or

- b. continuous upon a specific finding by the court of one of the following:
 - (1) the person has a history of violating the orders of any court or governmental entity,
 - (2) the person has previously been convicted of a violent felony offense,
 - (3) the person has a previous felony conviction for stalking as provided in Section 1173 of Title 21 of the Oklahoma Statutes, or
 - (4) a court order for a final Victim Protection Order has previously been issued against the person in this state or another state.

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

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

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

4. If a child has been removed from the residence of a parent or custodial adult because of domestic abuse committed by the child, the parent or custodial adult may refuse the return of such child to

the residence unless, upon further consideration by the court in a juvenile proceeding, it is determined that the child is no longer a threat and should be allowed to return to the residence.

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

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

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

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

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

J. 1. In order to ensure that a petitioner can maintain an existing wireless telephone number or household utility account, the court, after providing notice and a hearing, may issue an order directing a wireless service provider or public utility provider to

transfer the billing responsibility for and rights to the wireless telephone number or numbers of any minor children in the care of the petitioning party or household utility account to the petitioner if the petitioner is not the wireless service or public utility account holder.

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

3. Upon issuance, a copy of the final order of protection shall be transmitted, either electronically or by certified mail, to the registered agent of the wireless service provider or public utility provider listed with the Secretary of State or Corporation Commission of Oklahoma or electronically to the email address provided by the wireless service provider or public utility provider. Such transmittal shall constitute adequate notice for the wireless service provider or public utility provider.

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

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

5. Upon transfer of billing responsibility for and rights to a wireless telephone number or numbers or household utility account to the petitioner under the provisions of this subsection by a wireless service provider or public utility provider, the petitioner shall assume all financial responsibility for the transferred wireless

telephone number or numbers or household utility account, monthly service and utility billing costs and costs for any mobile device associated with the wireless telephone number or numbers. The wireless service provider or public utility provider shall have the right to pursue the original account holder for purposes of collecting any past due amounts owed to the wireless service provider or public utility provider.

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

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

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

9. As used in this subsection:

- a. "wireless service provider" means a provider of commercial mobile service under Section 332(d) of the federal Telecommunications Act of 1996,
- b. "public utility provider" means every corporation organized or doing business in this state that owns, operates or manages any plant or equipment for the manufacture, production, transmission, transportation, delivery or furnishing of water, heat or light with gas or electric current for heat, light or power, for public use in this state, and
- c. "household utility account" shall include utility services for water, heat, light, power or gas that are provided by a public utility provider.

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

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

3. The court may only consolidate a hearing if:

a. the court makes specific findings that:

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

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

b. the defendant filed a petition with the court for a protective order no less than three (3) days, not including weekends or holidays, prior to the first scheduled full hearing on the petition filed by the plaintiff, and

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

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

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

Passed the House of Representatives the 21st day of February,
2017.

Presiding Officer of the House
of Representatives

Passed the Senate the 25th day of April, 2017.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____

Approved by the Governor of the State of Oklahoma this _____
day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____