

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1466

By: Hall and Biggs

7
8 COMMITTEE SUBSTITUTE

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

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

1 SECTION 1. AMENDATORY 22 O.S. 2011, Section 60.4, as
2 last amended by Section 1, Chapter 281, O.S.L. 2016 (22 O.S. Supp.
3 2016, Section 60.4), is amended to read as follows:

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

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

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

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

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

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

23 2. The court may schedule a full hearing on the petition for a
24 protective order within seventy-two (72) hours when the court issues

1 an emergency ex parte order suspending child visitation rights due
2 to physical violence or threat of abuse.

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

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

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

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

22 C. 1. At the hearing, the court may impose any terms and
23 conditions in the protective order that the court reasonably
24 believes are necessary to bring about the cessation of domestic

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

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

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

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

1 counseling, family counseling, parenting classes or joint victim-
2 offender counseling sessions.

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

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

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

17 G. 1. Any protective order issued on or after November 1,
18 2012, pursuant to subsection C of this section shall be:

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

1 full force and effect during the period of
2 incarceration. The period of incarceration, in any
3 jurisdiction, shall not be included in the calculation
4 of the five-year time limitation, or

5 b. continuous upon a specific finding by the court of one
6 of the following:

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

9 (2) the person has previously been convicted of a
10 violent felony offense,

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

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

17 Further, the court may take into consideration whether the person
18 has a history of domestic violence or a history of other violent
19 acts. The protective order shall remain in effect until modified,
20 vacated or rescinded upon motion by either party or if the court
21 approves any consent agreement entered into by the plaintiff and
22 defendant. If the defendant is incarcerated, the protective order
23 shall remain in full force and effect during the period of
24 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.
24

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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14 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CRIMINAL JUSTICE AND
15 CORRECTIONS, dated 02/09/2017 - DO PASS, As Amended and Coauthored.
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