

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

HOUSE BILL 1466

By: Echols

AS INTRODUCED

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 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; requiring notice when service provider cannot effectuate transfer order; assigning financial responsibility of transferred number and associated costs to petitioner; authorizing service providers to apply account requirements for transferred numbers and devices; providing liability exemption for service providers; defining term; 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:

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

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

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

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

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

22 5. When the defendant is a minor child who is ordered removed
23 from the residence of the victim, in addition to those documents
24 served upon the defendant, a copy of the petition, notice of hearing

1 and a copy of any ex parte order issued by the court shall be
2 delivered with the child to the caretaker of the place where such
3 child is taken pursuant to Section 2-2-101 of Title 10A of the
4 Oklahoma Statutes.

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

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

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

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

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

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

16 C. 1. At the hearing, the court may impose any terms and
17 conditions in the protective order that the court reasonably
18 believes are necessary to bring about the cessation of domestic
19 abuse against the victim or stalking or harassment of the victim or
20 the immediate family of the victim but shall not impose any term and
21 condition that may compromise the safety of the victim including,
22 but not limited to, mediation, couples counseling, family
23 counseling, parenting classes or joint victim-offender counseling
24 sessions. The court may order the defendant to obtain domestic

1 abuse counseling or treatment in a program certified by the Attorney
2 General at the expense of the defendant pursuant to Section 644 of
3 Title 21 of the Oklahoma Statutes.

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

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

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

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

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

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

12 G. 1. Any protective order issued on or after November 1,
13 2012, pursuant to subsection C of this section shall be:

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

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

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

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

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

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

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

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

20 J. 1. In order to ensure that a petitioner can maintain an
21 existing wireless telephone number, the court, after providing
22 notice and a hearing, may issue an order directing a wireless
23 service provider to transfer the billing responsibility for and
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1 rights to the wireless telephone number to the petitioner if the
2 petitioner is not the wireless service accountholder.

3 2. The order transferring billing responsibility for and rights
4 to the wireless telephone number to the petitioner shall list the
5 name and billing telephone number of the accountholder, the name and
6 contact information of the person to whom the telephone number or
7 numbers will be transferred and each telephone number to be
8 transferred to that person. The court shall ensure that the contact
9 information of the petitioner is not provided to the accountholder
10 in proceedings held under this subsection.

11 3. Upon issuance, a copy of the final order of protection shall
12 be transmitted, either electronically or by certified mail, to the
13 registered agent of the wireless service provider listed with the
14 Secretary of State or electronically to the email address provided
15 by the wireless service provider. Such transmittal shall constitute
16 adequate notice for the wireless service provider.

17 4. If the wireless service provider cannot operationally or
18 technically effectuate the order due to certain circumstances, the
19 wireless service provider shall notify the petitioner within three
20 (3) business days. Such circumstances shall include, but not be
21 limited to, the following:

- 22 a. the accountholder has already terminated the account,
23 b. the differences in network technology prevent the
24 functionality of a device on the network, or

1 c. there are geographic or other limitations on network
2 or service availability.

3 5. Upon transfer of billing responsibility for and rights to a
4 wireless telephone number to the petitioner under the provisions of
5 this subsection by a wireless service provider, the petitioner shall
6 assume all financial responsibility for the transferred wireless
7 telephone number, monthly service costs and costs for any mobile
8 device associated with the wireless telephone number.

9 6. The provisions of this subsection shall not preclude a
10 wireless service provider from applying any routine and customary
11 requirements for account establishment to the petitioner as part of
12 this transfer of billing responsibility for a wireless telephone
13 number and any devices attached to that number including, but not
14 limited to, identification, financial information and customer
15 preferences.

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

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

1 9. As used in this subsection, a "wireless service provider"
2 means a provider of commercial mobile service under Section 332(d)
3 of the federal Telecommunications Act of 1996.

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

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

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

13 a. the court makes specific findings that:

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

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

18 b. the defendant filed a petition with the court for a
19 protective order no less than three (3) days, not
20 including weekends or holidays, prior to the first
21 scheduled full hearing on the petition filed by the
22 plaintiff, and
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1 c. the defendant had no less than forty-eight (48) hours
2 of notice prior to the full hearing on the petition
3 filed by the plaintiff.

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

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

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