

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

HOUSE BILL 2715

By: Teague

AS INTRODUCED

An Act relating to protective orders; amending 22 O.S. 2011, Sections 60.2, as amended by Section 1, Chapter 198, O.S.L. 2013 and 60.4, as last amended by Section 1, Chapter 173, O.S.L. 2017 (22 O.S. Supp. 2017, Sections 60.2 and 60.4), which relate to the Protection from Domestic Abuse Act; authorizing victims to file petitions and requests for protective orders electronically; directing the Administrative Office of the Courts to promulgate certain rules; authorizing victims to file certain motions electronically; and declaring an emergency.

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

SECTION 1. AMENDATORY 22 O.S. 2011, Section 60.2, as amended by Section 1, Chapter 198, O.S.L. 2013 (22 O.S. Supp. 2017, Section 60.2), is amended to read as follows:

Section 60.2 A. A victim of domestic abuse, a victim of stalking, a victim of harassment, a victim of rape, any adult or emancipated minor household member on behalf of any other family or household member who is a minor or incompetent, or any minor age sixteen (16) or seventeen (17) years may seek relief under the provisions of the Protection from Domestic Abuse Act.

1 1. The person seeking relief may file a petition for a
2 protective order with the district court in the county in which the
3 victim resides, the county in which the defendant resides, or the
4 county in which the domestic violence occurred. If the person
5 seeking relief is a victim of stalking but is not a family or
6 household member or an individual who is or has been in a dating
7 relationship with the defendant, the person seeking relief must file
8 a complaint against the defendant with the proper law enforcement
9 agency before filing a petition for a protective order with the
10 district court. The person seeking relief shall provide a copy of
11 the complaint that was filed with the law enforcement agency at the
12 full hearing if the complaint is not available from the law
13 enforcement agency. Failure to provide a copy of the complaint
14 filed with the law enforcement agency shall constitute a frivolous
15 filing and the court may assess attorney fees and court costs
16 against the plaintiff pursuant to paragraph 2 of subsection C of
17 this section. The filing of a petition for a protective order shall
18 not require jurisdiction or venue of the criminal offense if either
19 the plaintiff or defendant resides in the county. If a petition has
20 been filed in an action for divorce or separate maintenance and
21 either party to the action files a petition for a protective order
22 in the same county where the action for divorce or separate
23 maintenance is filed, the petition for the protective order may be
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1 heard by the court hearing the divorce or separate maintenance
2 action if:

3 a. there is no established protective order docket in
4 such court, or

5 b. the court finds that, in the interest of judicial
6 economy, both actions may be heard together; provided,
7 however, the petition for a protective order,
8 including, but not limited to, a petition in which
9 children are named as petitioners, shall remain a
10 separate action and a separate order shall be entered
11 in the protective order action. Protective orders may
12 be dismissed in favor of restraining orders in the
13 divorce or separate maintenance action if the court
14 specifically finds, upon hearing, that such dismissal
15 is in the best interests of the parties and does not
16 compromise the safety of any petitioner.

17 If the defendant is a minor child, the petition shall be filed
18 with the court having jurisdiction over juvenile matters.

19 2. When the abuse occurs when the court is not open for
20 business, such person may request an emergency temporary order of
21 protection as authorized by Section 40.3 of this title.

22 B. The petition forms shall be provided by the clerk of the
23 court. The Administrative Office of the Courts shall develop a
24 standard form for the petition.

1 C. 1. Except as otherwise provided by this section, no filing
2 fee, service of process fee, attorney fees or any other fee or
3 costs shall be charged the plaintiff or victim at any time for
4 filing a petition for a protective order whether a protective order
5 is granted or not granted. The court may assess court costs,
6 service of process fees, attorney fees, other fees and filing fees
7 against the defendant at the hearing on the petition, if a
8 protective order is granted against the defendant; provided, the
9 court shall have authority to waive the costs and fees if the court
10 finds that the party does not have the ability to pay the costs and
11 fees.

12 2. If the court makes specific findings that a petition for a
13 protective order has been filed frivolously and no victim exists,
14 the court may assess attorney fees and court costs against the
15 plaintiff.

16 D. The person seeking relief shall prepare the petition or, at
17 the request of the plaintiff, the court clerk or the victim-witness
18 coordinator, victim support person, and court case manager shall
19 prepare or assist the plaintiff in preparing the petition.

20 E. The person seeking a protective order may further request
21 the exclusive care, possession, or control of any animal owned,
22 possessed, leased, kept, or held by either the petitioner, defendant
23 or minor child residing in the residence of the petitioner or
24 defendant. The court may order the defendant to make no contact

1 with the animal and forbid the defendant from taking, transferring,
2 encumbering, concealing, molesting, attacking, striking,
3 threatening, harming, or otherwise disposing of the animal.

4 F. A court may not require the victim to seek legal sanctions
5 against the defendant including, but not limited to, divorce,
6 separation, paternity or criminal proceedings prior to hearing a
7 petition for protective order.

8 G. All documents filed by a victim pursuant to the provisions
9 of the Protection from Domestic Abuse Act relating to petitions for
10 protective orders and requests for emergency ex parte orders may be
11 filed electronically. The Administrative Office of the Courts shall
12 promulgate rules for the filing of documents transmitted by
13 electronic device.

14 SECTION 2. AMENDATORY 22 O.S. 2011, Section 60.4, as
15 last amended by Section 1, Chapter 173, O.S.L. 2017 (22 O.S. Supp.
16 2017, Section 60.4), is amended to read as follows:

17 Section 60.4 A. 1. A copy of a petition for a protective
18 order, notice of hearing and a copy of any emergency ex parte order
19 issued by the court shall be served upon the defendant in the same
20 manner as a bench warrant. In addition, if the service is to be in
21 another county, the court clerk may issue service to the sheriff by
22 facsimile or other electronic transmission for service by the
23 sheriff. Any fee for service of a petition for protective order,
24 notice of hearing, and emergency ex parte order shall only be

1 charged pursuant to subsection C of Section 60.2 of this title and,
2 if charged, shall be the same as the sheriff's service fee plus
3 mileage expenses.

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

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

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

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

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

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

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

21 4. A petition for a protective order shall, upon the request of
22 the petitioner, renew every fourteen (14) days with a new hearing
23 date assigned until the defendant is served. A petition for a
24 protective order shall not expire unless the petitioner fails to

1 appear at the hearing or fails to request a new order. A petitioner
2 may move to dismiss the petition and emergency or final order at any
3 time; however, a protective order must be dismissed by court order.

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

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

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

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

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

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

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

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

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

9 G. 1. Any protective order issued on or after November 1,
10 2012, pursuant to subsection C of this section shall be:

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

21 b. continuous upon a specific finding by the court of one
22 of the following:

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

- 1 (2) the person has previously been convicted of a
2 violent felony offense,
3 (3) the person has a previous felony conviction for
4 stalking as provided in Section 1173 of Title 21
5 of the Oklahoma Statutes, or
6 (4) a court order for a final Victim Protection Order
7 has previously been issued against the person in
8 this state or another state.

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

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

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

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

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

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

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

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

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

18 J. 1. In order to ensure that a petitioner can maintain an
19 existing wireless telephone number or household utility account, the
20 court, after providing notice and a hearing, may issue an order
21 directing a wireless service provider or public utility provider to
22 transfer the billing responsibility for and rights to the wireless
23 telephone number or numbers of any minor children in the care of the
24 petitioning party or household utility account to the petitioner if

1 the petitioner is not the wireless service or public utility account
2 holder.

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

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

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

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

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

20 6. The provisions of this subsection shall not preclude a
21 wireless service provider or public utility provider from applying
22 any routine and customary requirements for account establishment to
23 the petitioner as part of this transfer of billing responsibility
24 for a household utility account or for a wireless telephone number

1 or numbers and any mobile devices attached to that number including,
2 but not limited to, identification, financial information and
3 customer preferences.

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

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

12 9. As used in this subsection:

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

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,

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

10 SECTION 3. It being immediately necessary for the preservation
11 of the public peace, health or safety, an emergency is hereby
12 declared to exist, by reason whereof this act shall take effect and
13 be in full force from and after its passage and approval.

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