

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 HOUSE BILL 1622

By: Mize

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5
6 AS INTRODUCED

7 An Act relating to victim protective orders; amending
8 22 O.S. 2011, Section 60.4, as last amended by
9 Section 3, Chapter 113, O.S.L. 2019 (22 O.S. Supp.
10 2020, Section 60.4), which relates to the Protection
11 from Domestic Abuse Act; making certain acts
12 unlawful; providing penalty; and providing an
13 effective date.

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

15 SECTION 1. AMENDATORY 22 O.S. 2011, Section 60.4, as
16 last amended by Section 3, Chapter 113, O.S.L. 2019 (22 O.S. Supp.
17 2020, Section 60.4), is amended to read as follows:

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

1 a petition for protective order, notice of hearing, and emergency ex
2 parte order shall only be charged pursuant to subsection C of
3 Section 60.2 of this title and, if charged, shall be the same as the
4 sheriff's service fee plus mileage expenses.

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

12 3. An emergency temporary order, emergency ex parte order, a
13 petition for protective order, and a notice of hearing shall have
14 statewide validity and may be transferred to any law enforcement
15 jurisdiction to effect service upon the defendant. The sheriff may
16 transmit the document by electronic means.

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

20 5. When the defendant is a minor child who is ordered removed
21 from the residence of the victim, in addition to those documents
22 served upon the defendant, a copy of the petition, notice of hearing
23 and a copy of any temporary order or ex parte order issued by the
24 court shall be delivered with the child to the caretaker of the

1 place where such child is taken pursuant to Section 2-2-101 of Title
2 10A of the Oklahoma Statutes.

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

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

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

23 4. A petition for a protective order shall, upon the request of
24 the petitioner, renew every fourteen (14) days with a new hearing

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

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

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

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

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

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

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

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

23 3. Should the plaintiff choose to undergo treatment or
24 participate in court-approved counseling services for victims of

1 domestic abuse, the court may order the defendant to pay all or any
2 part of the cost of such treatment or counseling services if the
3 court determines that payment by the defendant is appropriate.

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

10 G. 1. Any protective order issued on or after November 1,
11 2012, pursuant to subsection C of this section shall be:

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

22 b. continuous upon a specific finding by the court of one
23 of the following:
24

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

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

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

22 3. Upon the filing of a motion by either party to modify,
23 extend, or vacate a protective order, a hearing shall be scheduled
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1 and notice given to the parties. At the hearing, the issuing court
2 may take such 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 4. Whoever makes a statement or allegation in a petition for a
2 protective order but does not believe the statement or allegation is
3 true, or knows that the statement or allegation is not true, or
4 intends thereby to avoid or obstruct the ascertainment of the truth
5 shall, upon conviction, be guilty of perjury punishable by
6 imprisonment in the custody of the Department of Corrections for a
7 term not exceeding five (5) years.

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

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

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

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

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

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

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

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

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

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

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

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

19 9. As used in this subsection:

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

23 b. "public utility provider" means every corporation
24 organized or doing business in this state that owns,

1 operates or manages any plant or equipment for the
2 manufacture, production, transmission, transportation,
3 delivery or furnishing of water, heat or light with
4 gas or electric current for heat, light or power, for
5 public use in this state, and

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

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

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

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

18 a. the court makes specific findings that:

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

22 (2) each party acted primarily as aggressors,

23 b. the defendant filed a petition with the court for a
24 protective order no less than three (3) days, not

1 including weekends or holidays, prior to the first
2 scheduled full hearing on the petition filed by the
3 plaintiff, and

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

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

13 SECTION 2. This act shall become effective November 1, 2021.

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