

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 SENATE BILL SB875

By: Brecheen

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5
6 AS INTRODUCED

7 An Act relating to extension of protective orders;
8 amending 22 O.S. 2011, Section 60.4, as last amended
9 by Section 2, Chapter 198, O.S.L. 2013 (22 O.S. Supp.
10 2015, Section 60.4), which relates to protective
11 orders; permitting electronic filing of certain
12 motions under certain circumstances; 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 2, Chapter 198, O.S.L. 2013 (22 O.S. Supp.
17 2015, 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, notice of hearing and a copy of any emergency ex parte order
20 issued by the court shall be served upon the defendant in the same
21 manner as a bench warrant. In addition, if the service is to be in
22 another county, the court clerk may issue service to the sheriff by
23 facsimile or other electronic transmission for service by the
24 sheriff. Any fee for service of a petition for protective order,
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.

24

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

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

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

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

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

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

21 F. When necessary to protect the victim and when authorized by
22 the court, protective orders granted pursuant to the provisions of
23 this section may be served upon the defendant by a peace officer,
24 sheriff, constable, or policeman or other officer whose duty it is

1 to preserve the peace, as defined by Section 99 of Title 21 of the
2 Oklahoma Statutes.

3 G. 1. Any protective order issued on or after November 1,
4 2012, pursuant to subsection C of this section shall be:

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

15 b. continuous upon a specific finding by the court of one
16 of the following:

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

19 (2) the person has previously been convicted of a
20 violent felony offense,

21 (3) the person has a previous felony conviction for
22 stalking as provided in Section 1173 of Title 21
23 of the Oklahoma Statutes, or
24

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

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

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

15 3. Upon the filing of a motion by either party to modify,
16 extend, or vacate a protective order, a hearing shall be scheduled
17 and notice given to the parties. When necessary to protect the
18 victim, the court shall authorize the victim to file a motion to
19 modify or extend a protective order electronically. At the hearing,
20 the issuing court may take such action as is necessary under the
21 circumstances.

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

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

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

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

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

19 I. 1. A protective order issued under the Protection from
20 Domestic Abuse Act shall not in any manner affect title to real
21 property, purport to grant to the parties a divorce or otherwise
22 purport to determine the issues between the parties as to child
23 custody, visitation or visitation schedules, child support or
24 division of property or any other like relief obtainable pursuant to

1 Title 43 of the Oklahoma Statutes, except child visitation orders
2 may be temporarily suspended or modified to protect from threats of
3 abuse or physical violence by the defendant or a threat to violate a
4 custody order. Orders not affecting title may be entered for good
5 cause found to protect an animal owned by either of the parties or
6 any child living in the household.

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

12 J. 1. A court shall not issue any mutual protective orders.

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

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

21 a. the court makes specific findings that:

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

1 (2) each party acted primarily as aggressors, and
2 b. the defendant filed a petition with the court for a
3 protective order no less than three (3) days, not
4 including weekends or holidays, prior to the first
5 scheduled full hearing on the petition filed by the
6 plaintiff, and

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

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

16 SECTION 2. This act shall become effective November 1, 2016.

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