

Cherokee Nation Code Annotated

Title 22: Criminal Procedure

Chapter 2: Prevention of Public Offenses

§ 60.4. Service of process—Ex parte orders—Hearing—Protective orders—Period of relief

Cite as: 22 CNCA § 60.4

1. A copy of the petition, notice of hearing and a copy of any ex parte order issued by the Court shall be served upon the defendant in the same manner as a summons. Ex parte orders shall be given priority for service by the Marshal and can be served twenty-four (24) hours a day.
 2. Emergency temporary orders, emergency ex parte orders and notice of hearings shall be given priority for service and can be served twenty-four (24) hours a day when the location of the defendant is known. When service cannot be made upon the defendant by the Marshal, the Marshal may contact another law enforcement officer or a private investigator or private process server to serve the defendant.
 3. If service has not been made on the defendant at the time of the hearing, the court shall, at the request of the petitioner, issue a new emergency order reflecting a new hearing date and direct service to issue.
 4. A petition for a protective order shall not expire unless the petitioner fails to appear at the hearing or fails to request a new order. A petitioner may move to dismiss the petition and emergency or final order at any time; however, a protective order must be dismissed by court order.
 5. Failure to serve the defendant shall not be grounds for dismissal of a petition or an ex parte order unless the victim requests dismissal or fails to appear for the hearing thereon.
 6. A final protective order shall be granted or denied within six (6) months of service on the defendant unless all parties agree that a temporary protective order remain in effect; provided, a victim shall have the right to request a final protective order hearing at any time after the passage of six (6) months.
- B. Within fourteen (14) days of the filing of the petition the Court shall schedule a full hearing on the petition, regardless of whether an emergency ex parte order has been previously issued, requested or denied.
- C. 1. At the hearing, the Court may grant any protective order to bring about the cessation of domestic abuse against the victim. At the hearing, the court may impose any terms and conditions in the protective order that the court reasonably believes are necessary to bring

about the cessation of domestic abuse against the victim or stalking or harassment of the victim or the immediate family of the victim but shall not impose any term and condition that may compromise the safety of the victim including, but not limited to, mediation, couples counseling, family counseling, parenting classes or joint victim-offender counseling sessions. The court may order the defendant to obtain domestic abuse counseling or treatment in a program approved by the Court at the expense of the defendant.

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

3. Final protective orders authorized by this section shall be on a standard form developed by the District Court.

D. 1. After notice and hearing, protective orders authorized by this section may require the defendant to undergo treatment or participate in the court-approved counseling services necessary to bring about cessation of domestic abuse against the victim, but shall not order any treatment or counseling that may compromise the safety of the victim including, but not limited to, mediation, couples counseling, family counseling, parenting classes or joint victim-offender counseling sessions.

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

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

E. When necessary to protect the victim and when authorized by the Court, protective orders granted pursuant to the provisions of this section may be served upon the defendant by a peace officer, marshal, sheriff, constable, or policeman or other officer whose duty it is to preserve the peace, as defined by 21 CNCA § 99.

F. Any protective order issued pursuant to subsection (C) of this section shall not be for a fixed period but shall be continuous until modified or rescinded upon motion by either party or if the Court approves any consent agreement entered into by the plaintiff and defendant. No order issued under the Protection from Domestic Abuse Act shall in any manner affect title to real property.

G. 1. Any protective order issued on or after the effective date of this Act, pursuant to subsection C of this section shall be:

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

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 under this Code or the laws of a tribe, state, or territory of the United States,

(4) a court order for a final Victim Protection Order has previously been issued against the person in the Nation, a state, or other tribe, or

(5) the victim provides proof that a continuous protective order is necessary for his or her protection.

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.

3. Upon the filing of a motion by either party to modify, extend, or vacate a protective order, a hearing shall be scheduled and notice given to the parties. At the hearing, the issuing court may take such action as is necessary under the circumstances. Notice of the motion and hearing date shall be served upon the opposing party by regular mail to the party's last known address, unless the court determines personal service of the motion and hearing date is appropriate under the facts of the case.

H. 1. It shall be unlawful for any person to knowingly and willfully seek a protective order against a spouse or ex-spouse pursuant to the Protection from Domestic Abuse Act for

purposes of harassment, undue advantage, intimidation, or limitation of child visitation rights in any divorce proceeding or separation action without justifiable cause.

2. The violator shall, upon conviction thereof, be guilty of a misdemeanor punishable by imprisonment in a penal institution not exceeding one (1) year, or by a fine of not more than Five Thousand Dollars (\$5,000.00), or both, at the discretion of the Court.

3. A second or subsequent conviction under this subsection shall be a felony punishable by imprisonment in a penal institution for a period not to exceed three (3) years, or by a fine not to exceed Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment.

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

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

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

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

3. Upon issuance, a copy of the final order of protection shall be transmitted, either electronically or by certified mail, to the registered agent of the wireless service provider or

public utility provider listed with the Secretary of State or Corporation Commission of Cherokee Nation and/or Oklahoma or electronically to the email address provided by the wireless service provider or public utility provider. Such transmittal shall constitute adequate notice for the wireless service provider or public utility provider.

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

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

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

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

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

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

9. As used in this subsection:

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

b. "public utility provider" means every corporation organized or doing business in this state that owns, operates or manages any plant or equipment for the manufacture, production, transmission, transportation, delivery or furnishing of water, heat or light with gas or electric current for heat, light or power, for public use in this state, and

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

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

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

3. The court may only consolidate a hearing if:

a. the court makes specific findings that:

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

(2) each party acted primarily as aggressors.

b. the defendant filed a petition with the court for a protective order no less than three (3) days, not including weekends or holidays, prior to the first scheduled full hearing on the petition filed by the plaintiff, and

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

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

Historical Data

LA 10–90, eff. November 13, 1990. Amended LA 12–18, eff. June 13, 2018. Amended LA 31–22, eff. September 22, 2022.