

ENGROSSED HOUSE AMENDMENT

TO

ENGROSSED SENATE BILL NO. 425

BY: WRIGHT of the SENATE

and

SETTLE of the HOUSE

AN ACT RELATING TO CHILDREN AND MARRIAGE AND FAMILY;

AMENDING SECTION 2, CHAPTER 269, O.S.L. 1983, AS  
AMENDED BY SECTION 5, CHAPTER 238, O.S.L. 1988 (10  
O.S. SUPP. 1990, SECTION 21.1), WHICH RELATES TO  
CUSTODY AND GUARDIANSHIP OF CHILDREN; \* \* \*  
PROVIDING FOR CODIFICATION; AND PROVIDING AN  
EFFECTIVE DATE.

AUTHORS: Add the following House Coauthors: BENSON and VAUGHN  
(Ray)

AMENDMENT NO. 1. Strike the title, enacting clause and entire bill  
and insert

"AN ACT RELATING TO CHILDREN AND MARRIAGE AND FAMILY;  
AMENDING SECTION 2, CHAPTER 269, O.S.L. 1983, AS AMENDED  
BY SECTION 5, CHAPTER 238, O.S.L. 1988 (10 O.S. SUPP.  
1990, SECTION 21.1), WHICH RELATES TO CUSTODY AND  
GUARDIANSHIP OF CHILDREN; REQUIRING CONSIDERATION OF  
EVIDENCE OF DOMESTIC ABUSE IN CERTAIN CASES; DECLARING  
PRESUMPTION IF DOMESTIC ABUSE IS SHOWN BY CLEAR AND  
CONVINCING EVIDENCE; AMENDING 10 O.S. 1981, SECTION 60.4,  
WHICH RELATES TO ADOPTION PROCEEDINGS; MODIFYING VENUE;  
AMENDING 12 O.S. 1981, SECTIONS 1276, AS RENUMBERED BY  
SECTION 1, CHAPTER 333, O.S.L. 1989, AND 1289, AS LAST  
AMENDED BY SECTION 1, CHAPTER 130, O.S.L. 1987, AND AS  
RENUMBERED BY SECTION 1, CHAPTER 333, O.S.L. 1989 (43 O.S.  
SUPP. 1990, SECTIONS 110 AND 134), WHICH RELATE TO DIVORCE  
AND ALIMONY; MODIFYING COURT AUTHORITY TO ORDER PAYMENT OF  
CERTAIN EXPENSES; PROVIDING THAT ALIMONY FOR SUPPORT DOES  
NOT BECOME A LIEN ON REAL PROPERTY UNLESS ORDERED BY THE

COURT; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AMENDATORY Section 2, Chapter 269, O.S.L. 1983, as amended by Section 5, Chapter 238, O.S.L. 1988 (10 O.S. Supp. 1990, Section 21.1), is amended to read as follows:

Section 21.1 A. Custody should be awarded or a guardian appointed in the following order of preference according to the best interests of the child to:

1. a parent or to both parents jointly except as otherwise provided in subsection B of this section;
2. a grandparent;
3. a person who was indicated by the wishes of a deceased parent;
4. a relative of either parent;
5. the person in whose home the child has been living in a wholesome and stable environment; or
6. any other person deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

B. When a parent having physical custody and providing support to a child becomes deceased, in awarding custody or appointing as guardian of the child the noncustodial parent, the court may deny the custody or guardianship only if:

1. the noncustodial parent has willfully failed, refused, or neglected to contribute to the support of the child for a period of at least twelve (12) months immediately preceding the determination of custody or guardianship action:
  - a. in substantial compliance with a support provision contained in a decree of divorce, or a decree of separate maintenance or an order adjudicating responsibility to support in a reciprocal enforcement

of support proceeding, paternity action, juvenile proceeding, guardianship proceeding, or orders of modification to such decree, or other lawful orders of support entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support, or

b. according to such parent's financial ability to contribute to such child's support if no provision for support is provided in a decree of divorce or an order of modification subsequent thereto;

2. the noncustodial parent has abandoned the child; or

3. the court finds it would be detrimental to the health or safety of the child for the noncustodial parent to have custody or be appointed guardian.

C. The court may consider the preference of the child in awarding custody of said child if the child is of sufficient age to form an intelligent preference.

D. In every case involving the custody of, guardianship of or visitation with a child, the court shall consider evidence of ongoing domestic abuse which is properly brought before it. If the occurrence of ongoing domestic abuse is established by clear and convincing evidence, there shall be a rebuttable presumption that it is not in the best interests of the child to have custody, guardianship or unsupervised visitation granted to the abusive person.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 112.2 of Title 43, unless there is created a duplication in numbering, reads as follows:

In every case involving the custody of, guardianship of or visitation with a child, the court shall consider evidence of ongoing domestic abuse which is properly brought before it. If the occurrence of ongoing domestic abuse is established by clear and

convincing evidence, there shall be a rebuttable presumption that it is not in the best interests of the child to have custody, guardianship or unsupervised visitation granted to the abusive person.

SECTION 3. AMENDATORY 10 O.S. 1981, Section 60.4, is amended to read as follows:

Section 60.4 Proceedings for adoption ~~must~~ may be brought in the district court, or any specially created court having jurisdiction in the county where the petitioners or the child to be adopted reside.

SECTION 4. AMENDATORY 12 O.S. 1981, Section 1276, as renumbered by Section 1, Chapter 333, O.S.L. 1989 (43 O.S. Supp. 1990, Section 110), is amended to read as follows:

Section 110. After a petition has been filed in an action for divorce and alimony, or for alimony alone, the court, or a judge thereof in vacation, may make and enforce by attachment such order to restrain the disposition of the property of the parties or of either of them, and for the use, management, and control thereof, or for the control of the children and support of the wife or husband during the pendency of the action, as may be right and proper; and may also make such order relative to the expenses of the suit as will insure an efficient preparation of the case; and, on granting a divorce in favor of the wife or the husband, or both, the court may require the husband or wife to pay such reasonable expenses of the other in the prosecution or defense of the action as may be just and proper considering the respective parties and the means and property of each; provided further, that the court may in its discretion make additional orders relative to the expenses of any such subsequent actions, including but not limited to writs of habeas corpus, brought by the parties or their attorneys, for the enforcement or modification of any interlocutory or final orders in the divorce action made for the benefit of either party or their respective

attorneys. Provided, no ex parte orders shall be issued until the opposing party is granted an opportunity to be heard, unless such ex parte order provides that instead of performing thereunder the opposing party may appear on a date certain, not more than twenty (20) days thereafter, and show good cause as to why he should not comply with said order.

SECTION 5. AMENDATORY 12 O.S. 1981, Section 1289, as last amended by Section 1, Chapter 130, O.S.L. 1987, and as renumbered by Section 1, Chapter 333, O.S.L. 1989 (43 O.S. Supp. 1990, Section 134), is amended to read as follows:

Section 134. A. In any divorce decree which provides for periodic alimony payments, the court shall plainly state, at the time of entering the original decree, the dollar amount of all or a portion of each payment which is designated as support and the dollar amount of all or a portion of the payment which is a payment pertaining to a division of property. The court shall specify in the decree that the payments pertaining to a division of property shall continue until completed. Payments pertaining to a division of property are irrevocable and not subject to subsequent modification by the court making the award.

B. The court shall also provide in the divorce decree that upon the death or remarriage of the recipient, the payments for support, if not already accrued, shall terminate. The court shall order the judgment for the payment of support to be terminated, and the lien released upon the presentation of proper proof of death of the recipient unless a proper claim is made for any amount of past-due support payments by an executor, administrator, or heir within ninety (90) days from the date of death of the recipient. Upon proper application the court shall order payment of support terminated and the lien discharged after remarriage of the recipient, unless the recipient can make a proper showing that some amount of support is still needed and that circumstances have not

rendered payment of the same inequitable, provided the recipient commences an action for such determination, within ninety (90) days of the date of such remarriage.

C. An order for ~~continuing the payments of support~~ the payment of money pursuant to a divorce decree, whether designated as support or designated as pertaining to a division of property shall not be a lien against the real property of the person ordered to make such payments unless the court order specifically provides for a lien on real property. An arrearage in payments of support reduced to a judgment may be a lien against the real property of the person ordered to make such payments.

D. The voluntary cohabitation of a former spouse with a member of the opposite sex shall be a ground to modify provisions of a final judgment or order for alimony as support. If voluntary cohabitation is alleged in a motion to modify the payment of support, the court shall have jurisdiction to reduce or terminate future support payments upon proof of substantial change of circumstances of either party to the divorce relating to need for support or ability to support. As used in this subsection, the term cohabitation means the dwelling together continuously and habitually of a man and a woman who are in a private conjugal relationship not solemnized as a marriage according to law, or not necessarily meeting all the standards of a common-law marriage. The petitioner shall make application for modification and shall follow notification procedures used in other divorce decree modification actions. The court that entered the divorce decree shall have jurisdiction over the modification application.

E. Except as otherwise provided in subsection D of this section, the provisions of any divorce decree pertaining to the payment of alimony as support may be modified upon proof of changed circumstances relating to the need for support or ability to support which are substantial and continuing so as to make the terms of the

decree unreasonable to either party. Only those installments accruing subsequent to the motion for modification may be modified.

F. Pursuant to the federal Uniformed Services Former Spouse's Protection Act (PL 97-252), the provisions of subsection E of this section shall have retrospective and prospective application with regards to modifications for the purpose of obtaining support or payments pertaining to a division of property on divorce decrees which become final after June 26, 1981.

G. The provisions of subsections D and E of this section shall have retrospective and prospective application with regards to modifications of the provisions of a final judgment or order for alimony as support, or of a divorce decree pertaining to the payment of alimony as support, regardless of the date that the order, judgment, or decree was entered.

SECTION 6. This act shall become effective September 1, 1991."

Passed the House of Representatives the 3rd day of April, 1991.

Speaker of the House of  
Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 1991.

President of the Senate