

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)
CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 122

By: Smith of the Senate

and

Steidley of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to family support; amending 10 O.S. 1991, Sections 89, as amended by Section 5, Chapter 356, O.S.L. 1994, and 1104.2, as last amended by Section 32, Chapter 290, O.S.L. 1994 (10 O.S. Supp. 1994, Sections 89 and 1104.2), which relate to paternity actions and certification of child as adult; clarifying which law governs determination of jurisdiction of certain actions; adding certain crime to certain list requiring adult certification; amending 43 O.S. 1991, Sections 110, as amended by Section 1, Chapter 252, O.S.L. 1992, Section 48, Chapter 160, O.S.L. 1994, and Section 3, Chapter 185, O.S.L. 1994 (43 O.S. Supp. 1994, Sections 110, 601-701 and 700.2), which relate to orders concerning property, children, support and expenses and proceedings to determine parentage and the Domestic Relations Recodification Committee; increasing types of actions in which parties may request the court to issue a temporary order; allowing certain parties to request the court to issue certain order requiring genetic testing; stating contents of certain application; providing for certain notice of hearing; clarifying which law governs certain actions; changing members' term; amending 63 O.S. 1991, Section 1-311, as amended by Section 7, Chapter 356, O.S.L. 1994, and Section 9, Chapter 356, O.S.L. 1994 (63 O.S. Supp. 1994, Sections 1-311 and 1-311.3), which relate to birth certificates and affidavits acknowledging paternity; deleting language providing for putative father affidavit; requiring certain information to be provided to certain persons and certain agencies; requiring certain filing of certain birth certificates; providing for noncodification; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 89, as amended by Section 5, Chapter 356, O.S.L. 1994 (10 O.S. Supp. 1994, Section 89), is amended to read as follows:

Section 89. A. The mother, putative father, guardian or custodian of the child, the Department of Human Services, a public or private agency or authority chargeable with the support of the child, or the child may bring an action in a civil proceeding in district court or by an administrative action through the Department of Human Services, to determine paternity and the amount of child support due and owing for the maintenance of the child.

B. Venue of an action to determine the paternity of a child pursuant to this section shall be, at the option of the plaintiff, in either the county where the putative father, mother, or child resides. If the mother or child or both the mother and child reside out-of-state, venue of an action to determine the paternity of a child pursuant to this section, at the option of the plaintiff, may be in the county where the putative father resides.

C. A court may exercise personal jurisdiction over a person, whether or not a resident of this state, who is the subject of a paternity action. When ~~the~~ a person who is subject to the jurisdiction of the court is outside the state, ~~he~~ the person may be served outside of the state by any method that is authorized by the statutes of this state. In an action brought in this state to determine paternity and which also seeks a support order, jurisdiction shall be determined pursuant to the Uniform Interstate Family Support Act.

D. The petition shall be verified as true by the affidavit of the plaintiff. A summons may be issued thereon and shall be served or publication made as in other civil cases.

E. The practice, pleading, and proceedings in such action shall conform to the rules prescribed by the code of civil procedure as far as the same may be applicable.

F. If the defendant fails to answer the petition of the plaintiff or appear for show cause hearing, then the court shall proceed to determine issues of paternity, support, custody and visitation in the same manner as provided for in actions for divorce.

G. Attorneys for the Department of Human Services may appear or initiate an action brought under this section on behalf of:

1. A recipient of Aid to Families with Dependent Children; or
2. A person not receiving Aid to Families with Dependent Children, including but not limited to the putative father, upon the request of such person and proper application pursuant to rules and regulations adopted by the Department. A reasonable fee and costs may be assessed for the services by the Department.

H. In a proceeding brought under subsection G of this section by the Department of Human Services, the court may, and unless it is not in the best interests of the child, shall, limit the issues in that proceeding to issues of paternity and support, unless issues of custody and visitation are specifically and affirmatively pled by the father.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 1104.2, as last amended by Section 32, Chapter 290, O.S.L. 1994 (10 O.S. Supp. 1994, Section 1104.2), is amended to read as follows:

Section 1104.2 A. Any person sixteen (16) or seventeen (17) years of age who is charged with murder, kidnapping, robbery with a dangerous weapon, robbery in the first degree, rape in the first degree, rape by instrumentation, use of firearm or other offensive weapon while committing a felony, arson in the first degree, burglary with explosives, burglary in the first or second degree after three or more adjudications for committing either burglary in the first degree or burglary in the second degree, shooting with intent to kill, discharging a firearm, crossbow or other weapon from a vehicle pursuant to subsection B of Section 652 of Title 21 of the Oklahoma Statutes, intimidating a witness, manslaughter in the first degree, sodomy, trafficking in illegal drugs, manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense a controlled dangerous substance, or assault and battery with a deadly weapon, shall be considered as an adult.

B. Any person thirteen (13), fourteen (14) or fifteen (15) years of age who is charged with murder in the first degree shall be considered as an adult.

C. Upon the arrest and detention, such accused person shall have all the statutory and constitutional rights and protections of an adult accused of a crime, but shall be detained in a jail cell or ward entirely separate from prisoners who are eighteen (18) years of age or over.

D. 1. Upon the filing of an information against such accused person, a warrant shall be issued which shall set forth the rights of the accused person, and the rights of the parents, guardian or next friend of the accused person to be present at the preliminary hearing, to have an attorney present and to make application for certification of such accused person as a child to the juvenile division of the district court. The warrant shall be personally served together with a certified copy of the information on the accused person and on a custodial parent, guardian or next friend of the accused person.

2. When personal service of a custodial parent, guardian or next friend of the accused person cannot be effected, service may be made by certified mail to such person's last-known address, requesting a return receipt from the addressee only. If delivery is refused, notice may be given by mailing the warrant and a copy of the information on the accused person by regular first class mail to the address where the person to be notified refused delivery of the notice sent by certified mail. Where the address of a custodial parent, guardian or next friend is not known, or if the mailed warrant and copy of the information on the accused person is returned for any reason other than refusal of the addressee to accept delivery, after a distinct and meaningful search of all reasonably available sources to ascertain the whereabouts of a custodial parent, guardian or next friend has been conducted, the court may order that notice of the hearing be given by publication one time in a newspaper of general circulation in the county. In addition, the court may order other means of service of notice that the court deems advisable or in the interests of justice.

3. Before service by publication is ordered, the court shall conduct an inquiry to determine whether a distinct and meaningful

search has been made of all reasonably available sources to ascertain the whereabouts of any party for whom notice by publication is sought.

E. The accused person shall file a motion for certification as a child before the start of the criminal preliminary hearing. Upon the filing of such motion, the complete juvenile record of the accused shall be made available to the district attorney and the accused person.

At the conclusion of the state's case at the criminal preliminary hearing, the accused person may offer evidence to support the motion for certification as a child.

The court shall rule on the certification motion of the accused person before ruling on whether to bind the accused over for trial. When ruling on the certification motion of the accused person, the court shall give consideration to the following guidelines, listed in order of importance:

1. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
2. Whether the offense was against persons or property, greater weight being given for retaining the accused person within the adult criminal system for offenses against persons, especially if personal injury resulted;
3. The record and past history of the accused person, including previous contacts with law enforcement agencies and juvenile or criminal courts, prior periods of probation and commitments to juvenile institutions; and
4. The prospects for adequate protection of the public if the accused person is processed through the juvenile system.

The court, in its decision on the certification motion of the accused person, need not detail responses to each of the above considerations, but shall state that the court has considered each of the guidelines in reaching its decision.

F. Upon completion of the criminal preliminary hearing, if the accused person is certified as a child to the juvenile division of the district court, then all adult court records relative to the accused person and this charge shall be expunged

and any mention of the accused person shall be removed from public record.

G. An order certifying a person as a child or denying the request for certification as a child pursuant to subsection F of this section shall be a final order, appealable when entered.

SECTION 3. AMENDATORY 43 O.S. 1991, Section 110, as amended by Section 1, Chapter 252, O.S.L. 1992 (43 O.S. Supp. 1994, Section 110), is amended to read as follows:

Section 110. A. After a petition has been filed in an action for divorce, grandparental visitation or separate maintenance either party may request the court to issue:

1. A temporary order:

- a. regarding child custody, support, or visitation including but not limited to grandparental visitation,
- b. regarding spousal maintenance,
- c. regarding payment of debt,
- d. regarding possession of property,
- e. regarding attorney fees,
- f. restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring such person to notify the other party reasonably in advance of any proposed extraordinary expenditures made after the order is issued,
- g. enjoining a party from molesting or disturbing the peace of the other party or of any child,
- h. excluding a party from the family home or from the home of the other party,
- i. enjoining a party from removing a child from the jurisdiction of the court, and
- j. providing other injunctive relief proper in the circumstances.

All applications for temporary orders shall set forth the factual basis for the application and shall be verified by the party seeking relief. The application and a notice of hearing shall be served on the other party in any manner provided for in the Rules of Civil Procedure.

The court shall not issue a temporary order until at least five (5) days' notice of hearing is given to the other party.

After notice and hearing, a court may issue a temporary order granting the relief as provided by this paragraph; ~~and/or~~

2. A temporary restraining order. If the court finds on the basis of a verified application and testimony of witnesses that irreparable harm will result to the moving party, or a child of a party if no order is issued before the adverse party or attorney for the adverse party can be heard in opposition, the court may issue a temporary restraining order which shall become immediately effective and enforceable without requiring notice and opportunity to be heard to the other party. If a temporary restraining order is issued pursuant to this paragraph, the motion for a temporary order shall be set within ten (10) days.

B. After a petition has been filed in a paternity action, either party may request the court to issue an order requiring the parties to submit to genetic testing. All applications for orders shall set forth the factual basis for the application and shall be verified by the party seeking relief. The application and a notice of hearing shall be served on the other party in any manner provided for in the Rules of Civil Procedure.

The court shall not issue the order until at least five (5) days' notice of hearing is given to the other party.

After notice and hearing, a court may issue an order granting the relief as provided by this paragraph.

C. Temporary orders may be vacated or modified before final decree on a showing by either party of facts necessary for vacation or modification. Temporary orders terminate when the final judgment on all issues, except attorney fees and costs, is rendered or when the action is dismissed. The court may reserve jurisdiction to rule on an application for a contempt citation for

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a violation of a temporary order which is filed any time prior to the time the temporary order terminates.

~~C.~~ D. Upon granting a decree of divorce or separate maintenance, the court may require either party to pay such reasonable expenses of the other as may be just and proper under the circumstances.

~~D.~~ E. 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.

SECTION 4. AMENDATORY Section 48, Chapter 160, O.S.L. 1994 (43 O.S. Supp. 1994, Section 601-701), is amended to read as follows:

Section 601-701. A. A tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought under ~~this act or a law substantially similar to this act~~ the Uniform Interstate Family Support Act, the Uniform Reciprocal Enforcement of Support Act, ~~or~~ the Revised Uniform Reciprocal Enforcement of Support Act, or a substantially similar law to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.

B. In a proceeding to determine parentage, a responding tribunal of this state shall apply the ~~Uniform Parentage Act~~; procedural and substantive law of this state, and the rules of this state on choice of law.

SECTION 5. AMENDATORY Section 3, Chapter 185, O.S.L. 1994 (43 O.S. Supp. 1994, Section 700.2), is amended to read as follows:

Section 700.2 A. The Domestic Relations Recodification Committee shall consist of fourteen (14) members appointed as follows:

1. One member shall be a presiding judge of a court having domestic relations jurisdiction, to be appointed by the Assembly of Presiding Judges;

2. One member shall be a professor of law from the University of Oklahoma Law Center, to be appointed by the Director of the Law Center;

3. One member shall be a professor of law from the University of Tulsa College of Law, to be appointed by the Dean of the College of Law;

4. One member shall be the Director of the Department of Human Services or his designee;

5. Three members shall be appointed by the President Pro Tempore of the Senate;

6. Three members shall be appointed by the Speaker of the House of Representatives;

7. One member shall be a judge or a justice of the Supreme Court of the State of Oklahoma, to be appointed by the justices of the Supreme Court of the State of Oklahoma; and

8. Three members shall be attorneys practicing in the area of family law and who are active members of the Family Law Section of the Oklahoma Bar Association, to be appointed by the chairman of the Family Law Section of the Oklahoma Bar Association.

B. Each member of the Domestic Relations Recodification Committee initially appointed shall make his appointment known to the President Pro Tempore of the Senate and the Speaker of the House of Representatives by August 1, 1994. Appointed members shall serve until June 30, ~~1996~~ 1997.

C. The Domestic Relations Recodification Committee may divide into subcommittees in furtherance of its purposes.

D. Any vacancies in the appointive membership of the Domestic Relations Recodification Committee shall be filled for the unexpired term in the same manner as the original appointment.

SECTION 6. AMENDATORY 63 O.S. 1991, Section 1-311, as amended by Section 7, Chapter 356, O.S.L. 1994 (63 O.S. Supp. 1994, Section 1-311), is amended to read as follows:

Section 1-311. A. A certificate of birth for each live birth which occurs in this state shall be filed with the local registrar of the district in which the birth occurs, within seven (7) days after such birth. Provided, that when a birth occurs on a moving

conveyance, a birth certificate shall be filed in the district in which the child was first removed from the conveyance.

B. When a birth occurs in an institution, the person in charge of the institution or his designated representative shall obtain the personal data, prepare the certificate, secure the signatures required by the certificate and file it with the local registrar. The physician in attendance shall certify to the facts of birth and provide the medical information required by the certificate within five (5) days after the birth.

C. When a birth occurs outside an institution, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

1. The physician in attendance at or immediately after the birth;

2. Any other person in attendance at or immediately after the birth; or

3. The father, the mother, or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred and present at the birth.

D. 1. If the mother was married at the time of conception and birth, the name of the husband shall be entered on the certificate as the father of the child unless paternity has been determined otherwise by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered.

2. Except as otherwise provided by paragraph 3 of this subsection, if the mother was not married at the time of conception and birth, the name of the father shall be entered on the certificate of birth if:

a. a determination of paternity has been made by an administrative action through the Department of Human Services or a court of competent jurisdiction, in which case the name of the father shall be entered, or

b. the mother and father have signed an affidavit acknowledging paternity pursuant to Section ~~9~~ 1-

311.3 of this ~~act~~ title and filed it with the State Registrar of Vital Statistics.

~~3. Effective November 1, 1994:~~

- ~~a. If the mother was not married at the time of conception or birth and paternity has not been established or acknowledged as specified in paragraph 2 of this subsection, the name of the putative father shall be entered on a putative father affidavit attached to and maintained with the certificate of birth. The affidavit shall be prescribed by the State Department of Health in conjunction with the Department of Human Services and made available in such manner as birth certificate forms. The affidavit shall be prepared and filed by such persons and in such manner as birth certificates required by this section. The affidavit shall be signed by the mother and shall contain information identifying whether the mother wants the Department of Human Services to pursue child support for the child. The State Registrar of Vital Statistics shall maintain such affidavit in the birth certificate registry for each birth. Except as otherwise provided by subparagraph b of this paragraph, the State Registrar of Vital Statistics shall keep such affidavit confidential until paternity has been established or acknowledged in which case the name of the father shall be entered on the birth certificate.~~
- ~~b. The State Registrar of Vital Statistics shall make available upon request the name of the putative father to the Department of Human Services and to a court of competent jurisdiction for paternity actions, child support determinations or termination proceedings.~~
- ~~c. The State Registrar shall provide for the destruction of the putative father affidavit after~~

~~paternity has been legally established and the name of the father has been entered on the birth certificate. The Department and the State Registrar may enter into interagency agreement for implementation of this paragraph. If paternity has not been established within twelve (12) months from the date of birth, the State Registrar shall forward a certified copy of the Certificate of Birth and the original "putative father affidavit" to the Department of Human Services for filing.~~

~~d. The Department of Human Services shall give notice to such putative father as required by Section 6 of this act and provide for determination of paternity and child support.~~

E. Either of the parents of the child shall sign the certificate of live birth to attest to the accuracy of the personal data entered thereon, in time to permit its filing within the seven (7) days prescribed in this section.

SECTION 7. AMENDATORY Section 9, Chapter 356, O.S.L. 1994 (63 O.S. Supp. 1994, Section 1-311.3), is amended to read as follows:

Section 1-311.3 A. Upon the birth of a child to an unmarried woman, the person required by Section 1-311 of Title 63 of the Oklahoma Statutes to prepare and file a birth certificate shall:

1. Provide ~~an opportunity for~~ written materials to the child's mother and/or natural father ~~to complete~~ including an affidavit acknowledging paternity on a form prescribed by the Department of Human Services. The completed affidavit shall be filed with the local registrar. The affidavit shall contain ~~or~~ have attached:

- a. a ~~sworn~~ statement by the mother consenting to the assertion of paternity and stating that this is the father,
- b. a statement by the father that he is the natural father of the child, and

~~c. written information, furnished by the Department of Human Services, explaining the implications of signing, including parental rights and responsibilities, and~~

~~d. the social security numbers of both parents;~~

2. Provide written information, furnished by the Department of Human Services, to the mother:

a. explaining that the completed, notarized affidavit shall be filed with the local registrar,

b. regarding the benefits of having her child's paternity established and of the availability of paternity establishment services, including a request for support enforcement services, and

c. explaining the implications of signing, including parental rights and responsibilities; and

3. ~~Mail a copy of the~~ Provide the original affidavit acknowledging paternity to the Office of the State Registrar of Vital Statistics and copies shall be provided to the Department of Human Services Child Support Enforcement Division and to the mother and ~~putative~~ acknowledged father of the child. The Department of Human Services shall provide access to the affidavits acknowledging paternity via electronic means to the paternity registry created pursuant to Section 55.1 of Title 10 of the Oklahoma Statutes.

~~B. The person required by Section 1-311 of Title 63 of the Oklahoma Statutes to prepare and file a birth certificate is entitled to reimbursement for reasonable costs, which the State Board of Health shall establish by rule, when an affidavit acknowledging paternity is filed with the State Registrar of Vital Statistics.~~

~~C.~~ The Department of Human Services shall make such affidavits acknowledging paternity available at each county office of the Department and at the Office of the State Registrar of Vital Statistics and at the office of each local registrar.

SECTION 8. If birth certificates for births by unwed mothers were not accepted for filing by or not filed at the office of the
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State Registrar of Vital Statistics or at the office of a local registrar, as applicable, during the period of November, 1994, to the effective date of this act because a signed putative father affidavit was not received or completed, the Commissioner of Health is hereby required to provide for the filing of such birth certificates.

SECTION 9. NONCODIFICATION The provisions of Section 8 of this act shall not be codified in the Oklahoma Statutes.

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

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KSM