

1 STATE OF OKLAHOMA

2 1st Session of the 47th Legislature (1999)

3 COMMITTEE SUBSTITUTE  
4 FOR  
5 HOUSE BILL NO. 1802

By: Graves

6  
7 COMMITTEE SUBSTITUTE

8 An Act relating to marriage and family; amending 10  
9 O.S. 1991, Section 21.1, as amended by Section 1,  
10 Chapter 386, O.S.L. 1997 (10 O.S. Supp. 1998, Section  
11 21.1), which relates to priority for custody of a  
12 child; amending 43 O.S. 1991, Sections 112, as last  
13 amended by Section 7, Chapter 323, O.S.L. 1998, and  
14 113 (43 O.S. Supp. 1998, Section 112), which relate  
15 to custody of a child; making certain activity of a  
16 parent rebuttable presumption not to have custody of  
17 a child; clarifying language; and providing an  
18 effective date.

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

20 SECTION 1. AMENDATORY 10 O.S. 1991, Section 21.1, as  
21 amended by Section 1, Chapter 386, O.S.L. 1997 (10 O.S. Supp. 1998,  
22 Section 21.1), is amended to read as follows:

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

26 1. A parent or to both parents jointly except as otherwise  
27 provided in subsection B of this section;

28 2. A grandparent;

29 3. A person who was indicated by the wishes of a deceased  
30 parent;

31 4. A relative of either parent;

32 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.

1 B. 1. When a parent having physical custody and providing  
2 support to a child becomes deceased, in awarding custody or  
3 appointing as guardian of the child the noncustodial parent, the  
4 court may deny the custody or guardianship only if:

5 ~~1.~~ a. the noncustodial parent has willfully failed, refused,  
6 or neglected to contribute to the support of the child  
7 for a period of at least twelve (12) months immediately  
8 preceding the determination of custody or guardianship  
9 action:

10 ~~a.~~ (1) in substantial compliance with a support  
11 provision contained in a decree of divorce, or a  
12 decree of separate maintenance or an order  
13 adjudicating responsibility to support in a  
14 reciprocal enforcement of support proceeding,  
15 paternity action, juvenile proceeding,  
16 guardianship proceeding, or orders of  
17 modification to such decree, or other lawful  
18 orders of support entered by a court of competent  
19 jurisdiction adjudicating the duty, amount, and  
20 manner of support, or

21 ~~b.~~ (2) according to such parent's financial ability to  
22 contribute to such child's support if no  
23 provision for support is provided in a decree of  
24 divorce or an order of modification subsequent  
25 thereto~~†~~

26 ~~2.~~ b. the noncustodial parent has abandoned the child~~†~~ or

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

30 2. If it is established that a parent of the child is engaging  
31 in homosexual activity, there shall be a rebuttable presumption that  
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1 it is not in the best interests of the child to have custody of the  
2 child granted to that parent.

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

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

14 E. In every case involving the custody of, guardianship of or  
15 visitation with a child, the court shall determine whether any  
16 individual seeking custody of, guardianship of or visitation with a  
17 child is or has previously been subject to the registration  
18 requirements of the Oklahoma Sex Offenders Registration Act or any  
19 similar act in any other state. There shall be a rebuttable  
20 presumption that it is not in the best interests of the child to  
21 have custody, guardianship or unsupervised visitation granted to a  
22 person subject to or previously subject to the registration  
23 requirements of the Oklahoma Sex Offenders Registration Act or any  
24 similar act in any other state.

25 SECTION 2. AMENDATORY 43 O.S. 1991, Section 112, as last  
26 amended by Section 7, Chapter 323, O.S.L. 1998 (43 O.S. Supp. 1998,  
27 Section 112), is amended to read as follows:

28 Section 112. A. A petition or cross-petition for a divorce,  
29 legal separation, or annulment must state whether or not the parties  
30 have minor children of the marriage. If there are minor children of  
31 the marriage, the court:

1        1. Shall make provision for guardianship, custody, medical  
2 care, support and education of the children;

3        2. Unless not in the best interests of the children, may  
4 provide for the visitation of the noncustodial parent with any of  
5 the children of the noncustodial parent; and

6        3. May modify or change any order whenever circumstances render  
7 the change proper either before or after final judgment in the  
8 action; provided, that the amount of the periodic child support  
9 payment shall not be modified retroactively or payment of all or a  
10 portion of the past due amount waived, except by mutual agreement of  
11 the obligor and obligee, or if the obligee has assigned child  
12 support rights to the Department of Human Services or other entity,  
13 by agreement of the Department or other entity. Unless the parties  
14 agree to the contrary, a completed child support computation form  
15 provided for in Section 120 of this title shall be required to be  
16 filed with the child support order.

17        The social security numbers of both parents and the child shall  
18 be included on the child support order summary form provided for in  
19 Section 120 of this title, which shall be filed with all child  
20 support orders.

21        B. In any action in which there are minor unmarried children in  
22 awarding the custody of the child or in appointing a general  
23 guardian for the child, the court shall be guided by the provisions  
24 of Section 21.1 of Title 10 of the Oklahoma Statutes and shall  
25 consider what appears to be in the best interests of the child.

26        C. 1. When it is in the best interests of a minor unmarried  
27 child, the court shall:

28            a. assure children of frequent and continuing contact  
29                with both parents after the parents have separated or  
30                dissolved their marriage, and  
31  
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1           b.    encourage parents to share the rights and  
2                   responsibilities of child rearing in order to effect  
3                   this policy.

4           2.    There shall be neither a legal preference nor a presumption  
5 for or against joint legal custody, joint physical custody, or sole  
6 custody.

7           3.    When in the best interests of the child, custody shall be  
8 awarded in a way which assures the frequent and continuing contact  
9 of the child with both parents.  When awarding custody to either  
10 parent, the court:

11           a.    shall consider, among other facts, which parent is  
12                   more likely to allow the child or children frequent  
13                   and continuing contact with the noncustodial parent,  
14                   and

15           b.    shall not prefer a parent as a custodian of the child  
16                   because of the gender of that parent.

17           4.    In any action, there shall be neither a legal preference or  
18 a presumption for or against private or public school or home-  
19 schooling in awarding the custody of a child, or in appointing a  
20 general guardian for the child.

21           5.    In making an order for custody, the court may specify that:

22           a.    unless there is a prior written agreement to change  
23                   the permanent residence of the child either parent  
24                   shall notify the other parent if the parent plans to  
25                   change the permanent residence of the child, and

26           b.    the noncustodial parent is to notify the custodial  
27                   parent if the noncustodial parent plans to change  
28                   permanent residence.

29           6.    If it is established that a parent of the child is engaging  
30 in homosexual activity, there shall be a rebuttable presumption that  
31 it is not in the best interests of the child to have custody of the  
32 child granted to that parent.

1 D. Any child shall be entitled to support by the parents until  
2 the child reaches eighteen (18) years of age. If a dependent child  
3 is regularly and continuously attending high school, the child shall  
4 be entitled to support by the parents through the age of eighteen  
5 (18) years. No hearing shall be required to extend such support  
6 through the age of eighteen (18) if the child is regularly and  
7 continuously attending high school.

8 E. In any case in which provision is made for the custody or  
9 support of a minor child or enforcement of such order, the court  
10 shall inquire whether public assistance money has been provided by  
11 the Department of Human Services for the benefit of each child. If  
12 public assistance money has been provided for the benefit of the  
13 child, the Department of Human Services shall be a necessary party  
14 for the just adjudication and establishment of the debt due and  
15 owing the State of Oklahoma, as defined in Section 238 of Title 56  
16 of the Oklahoma Statutes and for the just adjudication and  
17 establishment of current child support.

18 F. In any case in which a child support order or custody order  
19 or both is entered, enforced or modified, the court may make a  
20 determination of any arrearages of child support.

21 SECTION 3. AMENDATORY 43 O.S. 1991, Section 113, is  
22 amended to read as follows:

23 Section 113. A. 1. In any action for divorce, legal  
24 separation, or annulment in which a court must determine custody or  
25 limits of or period of visitation, the child may express a  
26 preference as to which of ~~its~~ the child's parents the child wishes  
27 to have custody.

28 2. The court may determine whether the best interest of the  
29 child will be served by the child's expression of preference as to  
30 which parent should have custody or limits of or period of  
31 visitation rights of either parent. If the court so finds, the  
32 child may express such preference or give other testimony. The

1 court may consider the expression of preference or other testimony  
2 of the child in determining custody or limits of or period of  
3 visitation. Provided, however, the court shall not be bound by the  
4 child's choice and may take other facts into consideration in  
5 awarding custody or limits of or period of visitation.

6 B. If the child expresses a preference or gives testimony, such  
7 preference or testimony may be taken by the court in chambers, with  
8 or without the parents or other parties present, at the court's  
9 discretion. If attorneys are not allowed to be present, the court  
10 shall state, for the record, the reasons for their exclusion. At  
11 the request of either party, a record shall be made of any such  
12 proceeding in chambers.

13 SECTION 4. This act shall become effective November 1, 1999.

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