ENGROSSED HOUSE
BILL NO. 1802

By: Graves and Pope (Tim) of the House

and

Coffee of the Senate

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

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 21.1, as amended by Section 1, Chapter 386, O.S.L. 1997 (10 O.S. Supp. 1998, 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. 1. 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.~~ a. 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.~~ (1) 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.~~ (2) 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.~~ b. the noncustodial parent has abandoned the child~~;~~, or

~~3.~~ c. 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.

2. If it is established that a parent of the child is engaging in homosexual activity, there shall be a rebuttable presumption that

it is not in the best interests of the child to have custody of the child granted to that parent. As used in this paragraph:

a. "homosexual" means a person, regardless of sex, who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts, and includes the terms "gay" and "lesbian",

b. "bisexual" means a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual and heterosexual acts, and

c. "homosexual activity" means:

(1) any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires, and

(2) any bodily contact which a reasonable person would understand to demonstrate a propensity or intent to engage in an act described in division (1).

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.

E. In every case involving the custody of, guardianship of or visitation with a child, the court shall determine whether any individual seeking custody of, guardianship of or visitation with a

child is or has previously been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state. 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 a person subject to or previously subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state.

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

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

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

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

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

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

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

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

a. assure children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and

b. encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

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

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

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

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

4. In any action, there shall be neither a legal preference or a presumption for or against private or public school or home-

schooling in awarding the custody of a child, or in appointing a general guardian for the child.

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

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

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

6. If it is established that a parent of the child is engaging in homosexual activity, there shall be a rebuttable presumption that it is not in the best interests of the child to have custody of the child granted to that parent. As used in this paragraph:

a. "homosexual" means a person, regardless of sex, who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts, and includes the terms "gay" and "lesbian",

b. "bisexual" means a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual and heterosexual acts, and

c. "homosexual activity" means:

(1) any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires, and

(2) any bodily contact which a reasonable person would understand to demonstrate a propensity or intent to engage in an act described in division (1).

D. Any child shall be entitled to support by the parents until the child reaches eighteen (18) years of age. If a dependent child

is regularly and continuously attending high school, the child shall be entitled to support by the parents through the age of eighteen (18) years. No hearing shall be required to extend such support through the age of eighteen (18) if the child is regularly and continuously attending high school.

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

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

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

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

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

visitation. Provided, however, the court shall not be bound by the child's choice and may take other facts into consideration in awarding custody or limits of or period of visitation.

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

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

Passed the House of Representatives the 23rd day of February, 1999.

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Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1999.

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President of the Senate