

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2102

By: Gilbert

COMMITTEE SUBSTITUTE

An Act relating to children; amending 10 O.S. 2001, Section 21.1, which relates to order of preference for custody of a child; adding to list of reasons for not granting custody of a child; amending 10 O.S. 2001, Section 1116.3, which relates to postadjudication review boards; requiring certain time period for reviewing certain custody placements; amending 10 O.S. 2001, Sections 7002-1.1 and 7004-3.4, which relate to the Oklahoma Children's Code; giving certain courts primary jurisdiction for certain actions; making jurisdiction of other courts secondary; providing for consent for transfer of jurisdiction; requiring compliance with certain orders; modifying and adding duties to the Advocate General; requiring confidentiality; providing exceptions; providing for penalty; authorizing and limiting use of confidential information; providing exceptions; providing certain access to certain information; prohibiting use of certain privileges; removing certain duties; amending 10 O.S. 2001, Section 7208, which relates to certain visits; clarifying certain time limitations; making certain hearing informal; amending 43 O.S. 2001, Sections 107.1, 107.3, 112 and 112.2, which relate to certain divorce proceedings; adding to list of exemptions for certain waiting periods; modifying definitions; clarifying language; making certain action of a party for divorce not in best interest of child for purposes of custody, guardianship or visitation; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 2001, 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 including but not limited to a foster parent; 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~~ Subject to subsection E of this section, when a parent having physical custody and providing support to a child becomes deceased or when the custody is judicially removed from such parent, the court may only deny the noncustodial parent custody of the child or guardianship of the child if:

1. a. For a period of at least twelve (12) months out of the last fourteen (14) months immediately preceding the determination of custody or guardianship action, the noncustodial parent has willfully failed, refused, or neglected to contribute to the child's support:

(1) in substantial compliance with a support provision or an order entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support, or

(2) according to such parent's financial ability to contribute to the child's support if no provision for support is provided in a decree of divorce or an order of modification subsequent thereto, and

b. The denial of custody or guardianship is in the best interest of the child;

2. The noncustodial parent has abandoned the child as such term is defined by Section 7006-1.1 of this title; ~~or~~

3. The parental rights of the noncustodial parent have been terminated;

4. The noncustodial parent has been convicted of any crime defined by the Oklahoma Child Abuse Reporting and Prevention Act or any crime against public decency and morality pursuant to Title 21 of the Oklahoma Statutes;

5. The child has been adjudicated deprived pursuant to the Oklahoma Children's Code as a result of the actions of the noncustodial parent and such parent has not successfully completed any required service or treatment plan required by the court; or

6. 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~~ the 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. 1. 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:

a. 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, or

- b. is residing with a person who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state.

2. 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. a person who is or has been subject to ~~or previously~~ ~~subject to~~ the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state, or
- b. a person who is residing with an individual who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state.

SECTION 2. AMENDATORY 10 O.S. 2001, Section 1116.3, is amended to read as follows:

Section 1116.3 A. Postadjudication review boards shall function in an advisory capacity to the district court and, in accordance with the provisions of subsection C of this section, the district planning and coordination boards for services to children and youth of the Oklahoma Commission on Children and Youth.

The duties of a review board shall be to:

- 1. Review the case of every adjudicated deprived child at least once every six (6) months and submit to the court within ten (10) days of any review hearing its findings and recommendations.
 - a. Such review shall include, but not be limited to, consideration and evaluation of:
 - (1) the appropriateness of the goals and objectives of the treatment and service plan,

(2) the appropriateness of the goals and objectives of the permanency plan and permanency planning, and

(3) the appropriateness of the services provided to the child, and to the parent, stepparent, or other adult living in the home of the child, or legal guardian, or custodian.

b. Reviews of cases and reports to the court shall be scheduled to ensure that the court receives the findings and recommendations of the review board prior to each regularly scheduled six-month review of the case by the court;

2. Review the case of every child alleged to be deprived and held in an out-of-home placement six (6) months after removal and every six (6) months thereafter until adjudication occurs or the child is released from out-of-home placement and submit to the court within ten (10) days of any scheduled hearing its findings and recommendations. Such review shall include, but not be limited to, consideration and evaluation of:

a. whether the continued out-of-home placement is in the best interests of the child in light of the child's need for permanency and recognizing that permanency is in the best interests of the child,

b. the appropriateness of the continued out-of-home placement, and

c. in the absence of a court-ordered treatment and service plan, the appropriateness of the services provided to the child and any family members or other adult living in the home of the child;

3. Review the case of every child adjudicated deprived pursuant to the laws of another state or territory, when the child is currently residing in Oklahoma and the Department of Human Services

has been notified of the change of residence by the other state or territory and has agreed to provide services to the child pursuant to the Interstate Compact on the Placement of Children or other agreement concerning the child. The Department shall notify the proper review board of the location of the child and shall provide such review board with information received by the Department from the other state concerning the child or placement along with any reports made by the Department concerning the child or placement. The review board shall report its findings to the Department and may report such findings to the agency or court in the state having jurisdiction for the custody of the child. The child and the custodian of the child may be required to be present at the review board's meeting regarding the child.

4. If approved by the court, review the case of any juvenile adjudicated delinquent or in need of supervision. Such review shall include, but not be limited to, consideration and evaluation of:

- a. the appropriateness of the placement,
- b. the appropriateness of the services provided to the child and any family members or other adult living in the home of the child, and
- c. the appropriateness of the goals and objectives of the treatment and service plan; and

5. Forward copies of the findings and recommendations of the review board to the court having jurisdiction of the case, the parent, legal guardian, attorney representing the child, custodian of the child, agency supervising the case or legal custodian of the child and to any other interested party as determined by the court. It shall be the duty of the court clerk to ensure that all documents filed pertaining to the case of an adjudicated child are properly noted and affixed in the file of the child prior to the commencement of the review process by the review board. The bailiff or bailiffs of the judges having juvenile docket responsibility within the

district shall transmit the information necessary for the case reviews to the review board for that district.

B. The review board's report of its findings and recommendations shall be admitted into evidence in any dispositional hearing, and may be relied upon to the extent of its probative value, even though not competent for purposes of an adjudicatory hearing.

C. In addition to its reviewing function, a review board, as directed by the Oklahoma Commission on Children and Youth and in coordination with the district planning and coordination boards shall:

1. Promote and encourage all child placement agencies to maximize family stability and continuity for a child by discouraging unnecessary changes in placement and by recruiting persons to provide placement who may be suitable and willing to adopt;

2. Review the efforts of agencies and institutions to find permanent placement for eligible children and report to the court;

3. Encourage a meeting between the various responsible public and private agencies, institutions, and officers of the court in order to facilitate cooperation and coordination of efforts; and

4. Assess community resources, and develop, if not already available, a directory of responsible persons, agencies, and institutions.

D. A review board may solicit the attendance at its meetings of persons known to the board with information concerning the case of any child subject to its review. However, no employee of the Office of Juvenile Affairs shall be required to attend a review board meeting.

E. A review board shall report annually its findings, recommendations, and assessments of the effectiveness of sections of law pertaining to individual treatment plans, information to accompany deprived children placed outside the home, and

dispositional orders and Sections 1116.2 through 1116.6 of this title to the Administrator of the Courts, the Supreme Court, to the court having jurisdiction of the case, to the State Postadjudication Review Advisory Board, and the Oklahoma Commission on Children and Youth and provide such other reports as deemed proper or that may be requested from time to time by the Oklahoma Commission on Children and Youth, the Governor, the Legislature, or the Supreme Court.

F. It shall be the duty of the court having jurisdiction of the case to acknowledge the receipt of the recommendations of the review board and note to the review board the actions of the court regarding the recommendations submitted by the review board.

G. A review board member may attend any court hearing concerning the case of any child subject to review by the board.

SECTION 3. AMENDATORY 10 O.S. 2001, Section 7002-1.1, is amended to read as follows:

Section 7002-1.1 A. 1. Upon the filing of a petition, or upon the assumption of custody pursuant to the provisions of Article III of the Oklahoma Children's Code, the district court of the county in which an alleged deprived child:

- a. resides,
- b. is found, or
- c. where the alleged acts of deprivation occurred,

shall have primary jurisdiction of any child who is or is alleged to be deprived, shall have jurisdiction of the parent, legal guardian, custodian or stepparent of such child, regardless of where such parent, legal guardian, custodian, or stepparent is found, and shall have jurisdiction of any other adult person living in the home of such child.

2. When primary jurisdiction has been obtained over a child who is or is alleged to be a deprived child, such jurisdiction may be retained until the child becomes eighteen (18) years of age. The jurisdiction of any other district court, including another division

within the same district court, with an action pending or thereafter commenced concerning custody or visitation of the child, shall be secondary to the jurisdiction being exercised by the court with primary jurisdiction; provided, the court with primary jurisdiction may consent in writing to the exercise of jurisdiction over the child by another court. Any order concerning custody and visitation of a child entered by a court with secondary jurisdiction of the child shall be subject to the custody and visitation orders entered by the court with primary jurisdiction of the child.

3. ~~For the convenience of the parties and in the interest of justice, a~~ A proceeding under this chapter may be transferred to the another district court in any other county.

4. ~~When~~ within the state or within another division of the same district court, when it is in the best interests of the child, ~~the court shall transfer a proceeding under this chapter to the district court in another county.~~

B. The district court in which a petition is filed which alleges that a child is deprived or which assumes custody pursuant to Article III of this Code may issue any temporary order or grant any interlocutory relief authorized by this chapter in an emergency, regardless of whether another district court within the state has jurisdiction of the child or has jurisdiction to determine the custody or support of the child.

C. If the district court in which a petition is filed pursuant to subsection B of this section sustains the petition or assumes custody pursuant to Article III of this Code, that district court shall have the jurisdiction to make a final determination on the matter or to transfer the proceedings to a court having prior jurisdiction over the child. If the judges to whom the cases have been assigned are unable to agree on the procedure that should be followed, the determination of whether the proceeding should be

consolidated and, if consolidated, which judge shall try the issues shall be determined as follows:

1. If the other proceeding is pending in the same judicial district in which the petition is filed or custody is assumed, the determination shall be made by the chief judge of that judicial district;

2. If the other proceeding is pending in a different judicial district but within the same judicial administrative district in which the petition is filed or custody is assumed, the determination shall be made by the presiding judge of that judicial administrative district;

3. If the other proceeding is pending in a judicial district not within the same judicial administrative district in which the petition is filed or custody is assumed, the determination shall be made by the chief judge of the judicial district where the other proceeding is pending.

SECTION 4. AMENDATORY 10 O.S. 2001, Section 7004-3.4, is amended to read as follows:

Section 7004-3.4 A. The Commission for Human Services ~~shall establish and maintain a fair, simple and expeditious system for resolution of grievances of all children in the custody of the Department of Human Services regarding the substance or application of any written or unwritten policy or rule of the Department or of an agent of the Department or any decision or action by an employee or an agent of the Department, or of any child in the custody of the Department.~~

~~B. The Commission~~ is authorized and directed to establish the Office of Client Advocacy within the Department and to employ such personnel as may be necessary to carry out the purposes of ~~subsection A~~ of this section and the duties listed in this ~~subsection~~ section. Such personnel may be dismissed only for cause.

1. The chief administrative officer of the Office of Client Advocacy shall be the Advocate General, who shall be an attorney selected from a list of three names submitted by the Oklahoma Commission on Children and Youth. The Advocate General shall be a member of the Oklahoma Bar Association and shall have a minimum of three (3) years' experience as an attorney. The compensation of the Advocate General shall be no less than that of the classification of Attorney III as established in the Merit System of Personnel Administration classification and compensation plan, but shall be an unclassified position.

2. The duties and responsibilities of the Advocate General are as follows:

a. supervise personnel assigned to the Office of Client Advocacy,

b. monitor and review grievance procedures and hearings,

c. ~~investigate unresolved grievances of children in the custody of the Department, and staff grievances on behalf of any such child~~ establish and maintain a fair, simple and expeditious system for resolution of grievances of:

(1) all children in the custody of the Department of Human Services regarding the substance or application of any written or unwritten policy or rule of the Department or of an agent of the Department or any decision or action by an employee or an agent of the Department, or of any child in the custody of the Department,

(2) foster parents relating to the provision of foster care services pursuant to this section and Section 7204.1 of this title, and

(3) all persons receiving services from the
Developmental Disabilities Services Division of
the Department of Human Services,

~~d. investigate grievances of foster parents related to
the provision of foster care services pursuant to this
section and Section 7204.1 of this title,~~

~~e. investigate allegations of abuse ~~or~~, neglect, sexual
abuse, and sexual exploitation, as those terms are
defined in the Oklahoma Child Abuse Reporting and
Prevention Act, by a caretaker of children, regardless
of custody;~~

(1) residing outside their own homes other than
children in foster care,

~~f. investigate allegations of abuse or neglect of any
child~~

(2) in a day treatment program as defined in Section
175.20 of this title, and submit a report of the
results of the investigation to the appropriate
district attorney and to the State Department of
Health,

(3) receiving services from a community services
worker as that term is defined in Section 1025.1
of Title 56 of the Oklahoma Statutes, and

(4) residing in a state institution listed in Section
1406 of this title,

e. establish a system for investigating allegations of
caretaker misconduct not rising to the level of abuse,
neglect, sexual abuse or sexual exploitation with
regard to any child or resident listed in subsection d
of this section,

~~g. f. coordinate any hearings or meetings of Departmental
administrative review committees conducted as a result~~

of unresolved grievances or as a result of investigations,

~~h.~~ g. make recommendations to the Director, and provide regular or special reports regarding grievance procedures, hearings and investigations to the Director, the Commission, the Office of Juvenile System Oversight and other appropriate persons as necessary,

~~i.~~ h. forward to the Office of Juvenile Systems Oversight, for the information of the Director of that office, a copy of the final report of any grievance which is not resolved in the favor of the complainant,

~~j.~~ i. perform such other duties as required by the Director of the Department or the Commission, and

~~k.~~ j. develop policies and procedures as necessary to implement the duties and responsibilities assigned to the Office of Client Advocacy.

~~C. The Department shall promptly report to the appropriate district attorney any act or omission committed by an agent or employee of a public or private residential home, institution, facility or day treatment program as defined in Section 175.20 of this title, or allowed to be perpetrated or committed by any such person, upon a child receiving services in a day treatment program or residing outside the child's own home, other than a child in foster care, when such act or omission, upon conviction, would constitute a criminal offense. Copies of all such reports shall be forwarded to the Attorney General~~ B. The Office of Client Advocacy shall make a complete written report of their investigations. The investigation report, together with its recommendations, shall be submitted to the appropriate district attorney's office.

C. Except as otherwise provided by the Oklahoma Child Abuse Reporting and Prevention Act, the reports required by Section 7103

of this title or any other information acquired pursuant to the Oklahoma Child Abuse Reporting and Prevention Act shall be confidential and may be disclosed only as provided in Section 7111 of this title and the Oklahoma Children's Code.

1. Except as otherwise provided by the Oklahoma Child Abuse Reporting and Prevention Act, any violation of the confidentiality requirements of the Oklahoma Child Abuse Reporting and Prevention Act shall, upon conviction, be a misdemeanor punishable by up to six (6) months in jail, by a fine of Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

2. Any records or information disclosed as provided by this subsection shall remain confidential. The use of any information shall be limited to the purpose for which disclosure is authorized. Rules promulgated by the Commission for Human Services provide for disclosure of relevant information concerning Office of Client Advocacy investigations to persons or entities acting in an official capacity with regard to the subject of the investigation.

3. Nothing in this section shall be construed as prohibiting the Office of Client Advocacy or the Department from disclosing such confidential information as may be necessary to secure appropriate care, treatment or protection of a child alleged to be abused or neglected.

D. 1. The Office of Client Advocacy shall investigate any complaint alleging an employee of the Department or of a child-placing agency has threatened a foster parent with removal of a child from the foster parent, harassed a foster parent, or refused to place a child in a licensed or certified foster home, or disrupted a child placement as retaliation or discrimination towards a foster parent who has:

- a. filed a grievance pursuant to Section 7213 of this title,

- b. provided information to any state official or Department employee, or
- c. testified, assisted, or otherwise participated in an investigation, proceeding or hearing against the Department or child-placing agency.

2. The provisions of this subsection shall not apply to any complaint by a foster parent regarding the result of a criminal, administrative or civil proceeding for a violation of any law, rule or contract provision by that foster parent, or the action taken by the Department or a child-placement agency in conformity with the result of any such proceeding.

3. The Office of Client Advocacy shall at all times be granted access to any foster home or any child-placing agency which is certified, authorized or funded by the Department.

SECTION 5. AMENDATORY 10 O.S. 2001, Section 7208, is amended to read as follows:

Section 7208. A. In making placements in foster care, the Department of Human Services, the Department of Juvenile Justice and any child-placing agency shall, if possible, arrange for a preplacement visit for any child five (5) years of age or older with the persons who will be providing foster care. Persons involved in the preplacement visits should make every effort to discuss with the child how the care, supervision, and guidance, including, but not limited to, parental substitute authority, shall be achieved.

B. If a child placed in the custody of a child-placing agency or in the custody of a state agency by the court has resided with a foster parent for three (3) or more months:

1. Except in an emergency, the state agency or child-placing agency shall:

- a. give a minimum of five (5) judicial days' advance notice to the foster care family and to the court before removing a child from such family's care, and

- b. at the time of such notification, provide the foster family with a written statement of the reasons for removing a child; and

2. The foster parent shall be entitled to submit to the court written reports or present testimony concerning the strengths, needs, behavior, important experiences, and relationships of the child, in addition to such other information the court may request.

C. When a child, under the jurisdiction of a court pursuant to the Oklahoma Children's Code, is placed in the custody of the Department of Human Services, or a child, under the jurisdiction of a court pursuant to the Juvenile Justice Code is placed in the custody of the Department of Juvenile Justice, or is placed in the custody of any child-placing agency, the state agency or child-placing agency shall have discretion to determine an appropriate foster placement for the child. Except as provided in this section, the state agency or child-placing agency may remove a child in its custody from a foster placement whenever the state agency or child-placing agency determines that removal is in the best interests of the deprived child, or the delinquent child or the child in need of supervision, consistent with the state's interest in the protection of the public.

D. 1. In order to promote stability for foster children and limit repeated movement of such children from one foster placement to another, the state agency or child-placing agency, except as otherwise provided by this subsection, shall not change the foster home placement of a child without the approval of the court in the following circumstances:

- a. the child has been moved once since the last court hearing, as provided in Section 7003-5.4a of this title, or
- b. a foster parent with whom the child has resided for more than six (6) months objects, in writing pursuant

to the provisions of this subsection, after notice of the removal of the child by the state agency or the child-placing agency.

2. The objection shall be filed with the court by the foster parent and served on the state agency or child-placing agency within five (5) judicial days after receipt of the notice from the state agency or child-placing agency regarding removal of the child. The court shall provide for notice to other parties in the case.

3. Timely filing and service of the objection shall stay removal of the child pending review of the court unless the state agency's or child-placing agency's stated reason for removal is:

a. an emergency situation. As used in this subparagraph, "emergency situation" means a removal that is:

(1) for emergency medical or mental health treatment,

(2) due to substantial noncompliance by the foster parent with applicable contract requirements and agreements such that the health, safety or welfare of the child is endangered, or

(3) due to a pending investigation of allegations of abuse or neglect of a child by a foster parent or other person residing in the foster family home, or

b. reunification with a parent that contributed to the child being deprived, with the prior approval of the court.

4. The court shall conduct a an informal hearing within fifteen (15) working days on any objection filed pursuant to this section. The court may order that the child remain in or be returned to the objecting foster parent's home if the court finds that the Department of Human Services or child-placing agency's decision to remove the child was arbitrary or was inconsistent with the child's treatment and service plan.

~~E.~~ 5. At the hearing, the Department of Human Services shall inform the court as to the reason why the foster child is being removed from the foster home. The Department of Human Services shall also inform the court as to the number of times a foster child has been moved within the foster family system.

~~F.~~ 6. The court, in the court record, shall explain the reasons why the removal of a foster child from the foster home is in the best interests of the foster child.

~~G.~~ E. The Department of Human Services shall not remove a foster child from a foster home solely on the grounds that a foster parent has exercised substitute parental authority.

SECTION 6. AMENDATORY 43 O.S. 2001, Section 107.1, is amended to read as follows:

Section 107.1 A. 1. In an action for divorce where there are minor children involved, the court shall not issue a final order thereon for at least ninety (90) days from the date of filing the petition which ninety (90) days may be waived by the court for good cause shown and without objection by either party.

2. The court may require that within the ninety-day period specified by paragraph 1 of this subsection, the parties attend and complete an educational program specified by Section § 107.2 of this ~~act~~ title.

B. This section shall not apply to divorces filed for any of the following causes:

1. Abandonment for one (1) year;
2. Extreme cruelty;
3. Habitual drunkenness;

4. Imprisonment of the other party in a state or federal penal institution under sentence thereto for the commission of a felony at the time the petition is filed;

5. The procurement of a final divorce decree outside this state by a husband or wife which does not in this state release the other party from the obligations of the marriage; ~~and~~

6. Insanity for a period of five (5) years, the insane person having been an inmate of a state institution for the insane in the State of Oklahoma, or an inmate of a state institution for the insane in some other state for such period, or an inmate of a private sanitarium, and affected with a type of insanity with a poor prognosis for recovery;

7. Conviction of any crime defined by the Oklahoma Child Abuse Reporting and Prevention Act committed upon a child of either party to the divorce by either party to the divorce; or

8. A child of either party has been adjudicated deprived, pursuant to the Oklahoma Children's Code, as a result of the actions of either party to the divorce and the party has not successfully completed the service and treatment plan required by the court.

C. After a petition has been filed in an action for divorce where there are minor children involved, the court may make any such order concerning property, children, support and expenses of the suit as provided for in Section 110 of this title, to be enforced during the pendency of the action, as may be right and proper.

D. The court may issue a final order in an action for divorce where minor children are involved before the ninety-day time period set forth in subsection A of this section has expired, if the parties voluntarily participate in marital or family counseling and the court finds reconciliation is unlikely.

SECTION 7. AMENDATORY 43 O.S. 2001, Section 107.3, is amended to read as follows:

Section 107.3 A. In any proceeding for the disposition of children where custody of minor children is contested by any party, the court may appoint an attorney at law as guardian ad litem on the court's motion or upon application of any party to appear for and

represent the minor children. Expenses, costs, and attorney's fees for the guardian ad litem may be allocated among the parties as determined by the court.

B. When property, separate maintenance, or custody is at issue, the court:

1. May refer the issue or issues to mediation if feasible unless a party asserts or it appears to the court that domestic violence or child abuse has occurred, in which event the court shall halt or suspend professional mediation unless the court specifically finds that:

a. the following three conditions are satisfied:

(1) the professional mediator has substantial training concerning the effects of domestic violence or child abuse on victims,

(2) a party who is or alleges to be the victim of domestic violence is capable of negotiating with the other party in mediation, either alone or with assistance, without suffering an imbalance of power as a result of the alleged domestic violence, and

(3) the mediation process contains appropriate provisions and conditions to protect against an imbalance of power between parties resulting from the alleged domestic violence or child abuse, or

b. in the case of domestic violence involving parents, the parent who is or alleges to be the victim requests mediation and the mediator is informed of the alleged domestic violence; and

2. When custody is at issue, the court may order, in addition to or in lieu of the provisions of paragraph 1 of this subsection, that each of the parties undergo individual counseling in a manner

that the court deems appropriate, if the court finds that the parties can afford the counseling.

C. As used in this section:

1. "Child abuse or neglect" means:

- a. ~~that a child has been physically, emotionally, or psychologically abused by a parent,~~
- b. ~~that a child has been:~~
 - (1) ~~sexually abused by a parent through criminal sexual penetration, incest, or criminal sexual contact of a minor as those acts are defined by state law, or~~
 - (2) ~~sexually exploited by a parent through allowing, permitting, or encouraging the child in obscene or pornographic photographing or filming or depicting a child for commercial purposes as those acts are defined by state law,~~
- c. ~~that a child has been knowingly or intentionally or negligently placed in a situation that may endanger the child's life or health, or~~
- d. ~~that a child has been knowingly or intentionally tortured, cruelly confined, or cruelly punished; provided, that nothing in this paragraph shall be construed to imply that a child who is or has been provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner of the church or denomination, is for that reason alone a victim of child abuse within the meaning of this paragraph~~

shall have the same meaning as such term is defined by the Oklahoma Child Abuse Reporting and Prevention Act or that the child has been

adjudicated deprived as a result of the actions or omission of either parent pursuant to the Oklahoma Children's Code; and

2. ~~"Domestic violence" means one parent causing or threatening physical harm or assault or inciting imminent fear of physical, emotional, or psychological harm to the other parent~~ has the same meaning as such term is defined by the Protection from Domestic Abuse Act.

D. During any proceeding concerning child custody, should it be determined by the court that a party has intentionally made a false or frivolous accusation to the court of child abuse or neglect against the other party, the court shall proceed with any or all of the following:

1. Find the accusing party in contempt for perjury and refer for prosecution;
2. Consider the false allegations in determining custody; and
3. Award the obligation to pay all court costs and legal expenses encumbered by both parties arising from the allegations to the accusing party.

SECTION 8. AMENDATORY 43 O.S. 2001, 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 or modifying 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.

D. 1. Except for good cause shown, a pattern of failure to allow court-ordered visitation may be determined to be contrary to the best interests of the child and as such may be grounds for modification of the child custody order.

2. For any action brought pursuant to the provisions of this section which the court determines to be contrary to the best interests of the child, the prevailing party shall be entitled to recover court costs, attorney fees and any other reasonable costs and expenses incurred with the action.

E. Any Except as otherwise provided by Section 112.1A of this title, 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, said 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.

F. 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 or medical support has been provided by the Department of Human Services for the benefit of each child. If public assistance money or medical support 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, for the just adjudication and establishment of paternity, current child support, and medical insurance coverage for the minor children in accordance with federal regulations.

G. 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 the arrearages of child support.

SECTION 9. AMENDATORY 43 O.S. 2001, Section 112.2, is amended to read as follows:

Section 112.2 A. In every case involving the custody of, guardianship of or visitation with a child, the court shall consider ~~evidence~~ for determining the custody of, guardianship of or the visitation with a child:

1. 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;

2. Evidence of child abuse as such term is defined by the Oklahoma Child Abuse Reporting and Prevention Act. If the parent requesting custody of a child has been convicted of any crime defined by the Oklahoma Child Abuse Reporting and Prevention Act or the child has been adjudicated deprived pursuant to the provisions of the Oklahoma Children's Code as a result of the acts of the parent requesting custody, there shall be a rebuttable presumption that it is not in the best interests of the child for such parent to have sole custody, guardianship or unsupervised visitation; and

3. Whether any person seeking custody of, guardianship of or visitation with a child:

- a. is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state, or
- b. is residing with an individual who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state.

B. 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 who is:

1. Subject to or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state; or

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

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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