

ENGROSSED HOUSE
BILL NO. 2397

By: Vaughn of the House

and

Williamson of the Senate

(marriage and family - amending seven sections in
Title 43 - divorce - custody of children - guardian
ad litem - equitable divisions of property - burden
of proof - repealing 43 O.S., Section 107 - bills
of particular - codification -
effective date)

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

SECTION 1. AMENDATORY 43 O.S. 2001, Section 102, is amended to read as follows:

Section 102. ~~Either~~ A. Except as otherwise provided by subsection B of this section, the plaintiff petitioner or the defendant respondent in an action for divorce or annulment of a marriage must have been an actual resident, in good faith, of the state, for six (6) months ~~next~~ immediately preceding the filing of the petition.

~~Provided, any~~ B. Any person who has been a resident of any United States army post or military reservation within the State of Oklahoma, for six (6) months ~~next~~ immediately preceding the filing of the petition, may bring action for divorce or annulment of a marriage or may be sued for divorce or annulment of a marriage.

SECTION 2. AMENDATORY 43 O.S. 2001, Section 103, is amended to read as follows:

Section 103. A. The venue of ~~actions~~ any action for divorce, annulment of ~~marriages, and separate maintenance~~ a marriage or legal separation may be in the following counties:

1. An action for divorce or annulment of a marriage may be filed in the county in which the ~~plaintiff~~ petitioner has been a resident for the thirty (30) days immediately preceding the filing of the petition or in the county in which the ~~defendant~~ respondent is a resident; provided, the action may be assigned for trial in any county within the judicial district by the chief judge of the district; and

2. An action for ~~separate maintenance~~ legal separation may be brought in the county in which either party is a resident at the time of the filing of the petition.

B. The court may, upon application of a party, transfer an action for divorce, annulment of marriage or ~~separate maintenance~~ legal separation at any time after filing of the petition to any county where venue would be proper under subsection A of this section if the requirements of subsection C or D of this section are met.

C. The court shall grant a party's application for change of venue when the other party is not a resident of this state at the time the application for change of venue is filed, or the plaintiff has departed from this state and has been absent for more than six (6) months preceding the date the application for change of venue is filed, and transfer is requested to the county where the applying party resides in this state.

D. The court shall grant a party's application for change of venue when the court determines that it is an inconvenient forum under the circumstances and the court in another county is a more appropriate forum consistent with the factors in subsection B of Section 551-207 of the Uniform Child Custody Jurisdiction and Enforcement Act after substitution of the word "county" for the word

"state" in such section of the act, and transfer is requested to the county where the applying party resides in the state.

SECTION 3. AMENDATORY 43 O.S. 2001, Section 105, is amended to read as follows:

Section 105. A. A proceeding for dissolution of marriage, annulment of a marriage, or legal separation shall be titled "In re the Marriage of _____ and _____".

B. The initial pleading in all proceedings under this title shall be denominated a petition. The person filing the petition shall be called the petitioner. A responsive pleading shall be denominated a response. The person filing the responsive pleading shall be called the respondent. Other pleadings shall be denominated as provided in the Rules of Civil Procedure, except as otherwise provided in this section.

C. The petition must be verified as true, by the affidavit of the ~~plaintiff~~ petitioner.

D. A summons may issue thereon, and shall be served, or publication made, as in other civil cases.

SECTION 4. AMENDATORY 43 O.S. 2001, Section 106, is amended to read as follows:

Section 106. A. The ~~defendant~~ respondent, in his or her answer, may allege a cause for a divorce, annulment of the marriage or legal separation against the ~~plaintiff~~ petitioner, and may have the same relief thereupon as he or she would be entitled to for a like cause if he or she were ~~plaintiff~~ the petitioner.

B. When new matter is set up in the answer, it shall be verified as to such new matter by the affidavit of the ~~defendant~~ respondent.

SECTION 5. AMENDATORY 43 O.S. 2001, Section 107.3, is amended to read as follows:

Section 107.3 A. 1. In any proceeding ~~for the disposition of children~~ pursuant to this title where the custody or visitation of a

minor child or 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.

2. The guardian ad litem may be appointed to objectively advocate on behalf of the child and act as an officer of the court to investigate all matters concerning the best interests of the child. In addition to other duties required by the court and as specified by the court, a guardian ad litem shall have the following responsibilities:

- a. review documents, reports, records and other information relevant to the case, meet with and observe the child in appropriate settings, and interview parents, caregivers and health care providers and any other person with knowledge relevant to the case including, but not limited to, teachers, counselors and child care providers,
- b. advocate for the child's best interests by participating in the case, attending any hearings in the matter and advocating for appropriate services for the child when necessary,
- c. monitor the child's best interests throughout any judicial proceeding,
- d. present written reports to the parties and court prior to trial or at any other time as specified by the court on the child's best interests that include conclusions and recommendations and the facts upon which they are based, and
- e. the GAL shall, as much as possible, maintain confidentiality of information related to the case and is not subject to discovery pursuant to the Oklahoma Discovery Code.

3. 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" 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 6. AMENDATORY 43 O.S. 2001, Section 110, is amended to read as follows:

Section 110. A. 1. Upon the filing of a petition for dissolution of marriage, annulment of a marriage, legal separation by the petitioner and upon personal service of the petition and summons on the respondent, or upon waiver and acceptance of service by the respondent, an automatic temporary injunction shall be in effect against both parties pursuant to the provisions of this section:

- a. restraining both parties from transferring, encumbering, concealing, or in any way disposing of, without the written consent of the other party or an order of the court, any marital property, except in the usual course of business, for the purpose of retaining an attorney for the case or for the necessities of life and requiring each party to notify

the other party of any proposed extraordinary expenditures and to account to the court for all extraordinary expenditures made after the injunction is in effect,

b. restraining the parties from:

- (1) intentionally or knowingly damaging or destroying the tangible property of the parties, or of either of them, including, but not limited to, any document that represents or embodies anything of value,
- (2) making any withdrawal for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan or from any individual retirement account or Keogh account,
- (3) withdrawing or borrowing in any manner all or any part of the cash surrender value of any life insurance policies on either party or their children,
- (4) changing or in any manner altering the beneficiary designation on any life insurance policies on the life of either party or any of their children,
- (5) canceling, altering, or in any manner affecting any casualty, automobile, or health insurance policies insuring the parties' property or persons,
- (6) opening or diverting mail addressed to the other party, and
- (7) signing or endorsing the other party's name on any negotiable instrument, check, or draft, such as tax refunds, insurance payments, and

dividends, or attempting to negotiate any negotiable instruments payable to either party without the personal signature of the other party,

- c. requiring the parties to maintain all presently existing health, property, life and other insurance which he or she is presently carrying on any member of this family unit, and to cooperate as necessary in the filing and processing of claims. Any employer-provided health insurance currently in existence shall remain in full force and effect for all family members,
- d. enjoining both parties from molesting or disturbing the peace of the other party or of the children to the marriage,
- e. restraining both parties from disrupting or withdrawing their children from an educational facility and programs where the children historically have been enrolled, or day care,
- f. restraining both parties from hiding or secreting their children from the other party, and
- g. restraining both parties from removing the minor children of the parties, if any, beyond the jurisdiction of the State of Oklahoma, acting directly or in concert with others, except for vacations of two (2) weeks or less duration, without the prior written consent of the other party, which shall not be unreasonably withheld.

2. The provisions of the automatic temporary injunction shall be printed as an attachment to the summons and the petition and entitled "Temporary Injunction Notice". The injunction shall become an order of the court upon fulfillment of the requirements of

paragraph 1 of this subsection. Nothing in this subsection shall preclude either party from applying to the court for further temporary orders, pursuant to this section, an expanded automatic temporary injunction, or modification or revocation thereto.

3. With regard to an automatic temporary injunction, when a petition for dissolution of marriage, annulment of a marriage, or a legal separation is filed and served:

- a. a peace officer shall use every reasonable means to enforce the injunction against a petitioner or respondent, whenever there is exhibited by a respondent or by the petitioner to the peace officer a copy of the petition or summons, with an attached Temporary Injunction Notice, duly filed and issued pursuant to this section, together with a certified copy of the affidavit of service of process or a certified copy of the waiver and acceptance of service, and
- b. the peace officer has cause to believe that a violation of the automatic temporary injunction has occurred. A peace officer shall not be held civilly or criminally liable for his or her action pursuant to this paragraph if his or her action is in good faith and without malice.

B. After a petition has been filed in an action for divorce or separate maintenance either party may request the court to issue:

1. A temporary order:
 - a. regarding child custody, support or visitation,
 - b. regarding spousal maintenance,
 - c. regarding payment of debt,
 - d. regarding possession of property,
 - e. regarding attorney fees, and

- ~~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.~~ C. Any temporary orders and the automatic temporary injunction, or specific terms thereof, may be vacated or modified prior to or in conjunction with a final decree on a showing by either party of facts necessary for vacation or modification. Temporary orders and the automatic temporary injunction 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 a violation of a temporary order or the automatic temporary injunction which is filed any time prior to the time the temporary order or injunction terminates.

~~C.~~ D. Upon granting a decree of divorce, annulment of a marriage, or ~~separate maintenance~~ legal separation, 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 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.2 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. For purposes of Sections 7 through 13 of this act:

1. "Property" means an interest in something of value, or a liability, present or future, legal or equitable, vested or contingent, regardless of transferability; and

2. "Acquired during the marriage" means property acquired from money earned or labor performed between the date of the marriage and the date a proceeding is commenced for dissolution of the marriage.

B. The provisions of Sections 7 through 13 of this act are subject to valid antenuptial agreements and valid marital property agreements and to valid settlement agreements.

C. Subject to a valid antenuptial agreement and valid marital property agreement and the provisions of Sections 7 through 13 of this act, property that the spouses hold as joint tenants or as tenants in common is marital property.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.3 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. In a proceeding for dissolution of marriage, legal separation, nonretroactive decrees of annulment, or disposition of property following a decree of dissolution of the marriage or legal separation by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall assign each spouse's separate property and liabilities to that spouse.

B. The court shall divide the marital property and liabilities, regardless of title, in accordance with the provisions of Sections 7 through 13 of this act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.4 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. 1. A marital property agreement must be a document signed during the marriage by both spouses.

2. A marital property agreement is enforceable without consideration; however, it shall contain a statement of the underlying purpose or intent for entering into the agreement.

B. A marital property agreement shall not affect custody or support of children.

C. In a marital property agreement, spouses may agree with respect to:

1. Rights and obligations in any of their property whenever and wherever acquired or located;

2. Management and control of any of their property;

3. Disposition of any of their property on dissolution, death, or the occurrence or nonoccurrence of any other event;

4. Making a will, trust, or other arrangement to carry out the agreement;

5. Choice of law governing construction of the agreement; and

6. Any other matter affecting their property not in violation of public policy or a statute imposing a criminal penalty.

D. A marital property agreement may be amended or revoked only by a later marital property agreement, or by a valid agreement. The amended agreement or the revocation is enforceable without consideration.

E. A marital property agreement is not enforceable if the spouse against whom enforcement is sought proves that:

1. The agreement was unconscionable when made;

2. The spouse did not execute the agreement voluntarily;

3. The spouse, before execution of the agreement:

a. was not provided a fair and reasonable disclosure of the property or financial obligations of the other spouse,

b. did not voluntarily sign a written consent expressly waiving any right to disclosure of the property or financial obligations of the other spouse beyond the disclosure provided, and

c. did not have a general understanding of the property or financial obligations of the other spouse; or

4. The agreement does not contain a statement of purpose as specified in subsection A of this section.

F. The issue of unconscionability of a marital property agreement shall be determined by the court as a matter of law.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.5 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided by this section, all property and liabilities acquired during the marriage shall be presumed to be marital property. The presumption may be overcome by proving, by a preponderance of the evidence, that the property is separate property.

B. Each spouse has an interest in the marital property which vests at the time a dissolution proceeding is commenced and continues only during the pendency of the action.

C. Any such interest in marital property shall not encumber that property so as to restrict its transfer, assignment, or conveyance by the title holder unless such title holder is restrained from making such transfer, assignment, or conveyance.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.6 of Title 43, unless there is created a duplication in numbering, reads as follows:

For purposes of Sections 7 through 13 of this act, separate property shall consist of:

1. Assets acquired and liabilities incurred by either party prior to marriage;

2. Assets acquired and liabilities incurred by either party from money earned or labor performed after the commencement of a dissolution proceeding;

3. Property acquired by either party in such party's own name by bequest, devise, or descent;

4. Property acquired by either party in such party's own name by a noninterspousal gift. Interspousal gifts purchased with marital funds are marital property unless:

- a. the recipient demonstrates by clear and convincing evidence that the donor intended to relinquish a marital interest, or
- b. the subject matter of the gift is intended to be used exclusively by the receiving party. Gifts of wearing apparel, jewelry, and other items of a personal nature are presumed to be separate property of the receiving spouse;

5. Assets acquired or liabilities incurred by either party that are proved by clear and convincing evidence to be in exchange for separate property;

6. Income from separate property to the extent the income is not attributable to the personal effort of either spouse;

7. An increase in value of separate property to the extent the increase is not attributable to the personal effort of either spouse; and

8. Any judgment, or property obtained by judgment, awarded to a spouse from the other spouse.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.7 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. The court shall place a value on the items of marital property.

B. 1. Marital property shall be valued as of the effective date of the domestic relations judgment.

2. If the value of the marital property has fluctuated between the date of the commencement of a dissolution proceeding and the effective date of the domestic relations order due to the labor and

effort of one of the spouses, the court may select a different valuation date.

3. The court shall make specific written findings of fact setting forth why a different valuation date was selected.

C. If equitable, the court may select a valuation date which apportions the increase or decrease in value between the spouses.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.8 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. The court shall distribute between the parties, the marital assets and liabilities in such proportions as are equitable, after considering all relevant factors, including:

1. The contribution to the marriage by each spouse including, but not limited to, contributions to the care and education of the children and services as homemaker;

2. The economic circumstances of the parties;

3. The duration of the marriage;

4. Any interruption of personal careers or educational opportunities of either party;

5. The contribution of one spouse to the personal career or educational opportunity of the other spouse;

6. The desirability of retaining any asset, including an interest in a business, corporation, or professional practice, intact and free from any claim or interference by the other party; and

7. The contribution of each spouse to the acquisition, enhancement, and production of income or the improvement of, or the incurring of liabilities related to, both the marital assets and the nonmarital assets of the parties.

B. The court shall not allow any of the marital property to remain jointly titled.

C. The court, after considering all the circumstances, may award a money judgment to one spouse to effect an equitable division of the marital estate. The money judgment shall specifically state that it is a payment pertaining to the division of property. The court shall state that the payments pertaining to a division of property shall continue until completed. Payments pertaining to a division of property are irrevocable and not subject to modification by the court making the award.

D. The decree of dissolution shall operate as a bar to any claim of either party in or to the property of the other, except in cases where actual fraud was committed by or on behalf of the successful party.

SECTION 14. 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~~

shall require compliance with Section 15 of this act.

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 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 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 112.3 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Change of residence address" means a change in the primary residence of an adult;

2. "Child" means a child under the age of eighteen (18) who has not been judicially emancipated;

3. "Person entitled to custody of or visitation with a child" means a person so entitled by virtue of a court order or by an express agreement that is subject to court enforcement;

4. "Principal residence of a child" means:

a. the location designated by a court to be the primary residence of the child,

b. in the absence of a court order, the location at which the parties have expressly agreed that the child will primarily reside, or

c. in the absence of a court order or an express agreement, the location, if any, at which the child, preceding the time involved, lived with the child's parents, a parent, or a person acting as parent for at least six (6) consecutive months and, in the case of a child less than six (6) months old, the location at which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six-month or other period; and

5. "Relocation" means a change in the principal residence of a child for a period of sixty (60) days or more, but does not include a temporary absence from the principal residence.

B. 1. Except as otherwise provided by this section, a person who has the right to establish the principal residence of the child shall notify every other person entitled to visitation with the child of a proposed relocation of the child's principal residence as required by this section.

2. Except as otherwise provided by this section, an adult entitled to visitation with a child shall notify every other person entitled to custody of or visitation with the child of an intended change in the primary residence address of the adult as required by this section.

C. 1. Except as provided by this section, notice of a proposed relocation of the principal residence of a child or notice of an intended change of the primary residence address of an adult must be given:

a. by mail to the last-known address of the person to be notified, and

b. no later than:

(1) the sixtieth day before the date of the intended move or proposed relocation, or

(2) the tenth day after the date that the person knows the information required to be furnished pursuant to this subsection, if the person did not know and could not reasonably have known the information in sufficient time to comply with the sixty-day notice, and it is not reasonably possible to extend the time for relocation of the child.

2. Except as provided by this section, the following information, if available, must be included with the notice of intended relocation of the child or change of primary residence of an adult:

- a. the intended new residence, including the specific address, if known,
- b. the mailing address, if not the same,
- c. the home telephone number, if known,
- d. the date of the intended move or proposed relocation,
- e. a brief statement of the specific reasons for the proposed relocation of a child, if applicable,
- f. a proposal for a revised schedule of visitation with the child, if any, and
- g. a warning to the nonrelocating parent that an objection to the relocation must be made within thirty (30) days or the relocation will be permitted.

3. A person required to give notice of a proposed relocation or change of residence address under this subsection has a continuing duty to provide a change in or addition to the information required by this subsection as that information becomes known.

D. After the effective date of this act, an order issued by a court directed to a person entitled to custody of or visitation with a child shall include the following or substantially similar terms:

"You, as a party in this action, are ordered to notify every other party to this action of a proposed relocation of the child, change of your primary residence address, and the following information:

1. The intended new residence, including the specific address, if known;
2. The mailing address, if not the same;
3. The home telephone number, if known;
4. The date of the intended move or proposed relocation;
5. A brief statement of the specific reasons for the proposed relocation of a child, if applicable; and
6. A proposal for a revised schedule of visitation with the child, if any.

You are further ordered to give notice of the proposed relocation or change of residence address on or before the sixtieth day before a proposed change. If you do not know and could not have reasonably known of the change in sufficient time to provide a sixty-day notice, you are ordered to give notice of the change on or before the tenth day after the date that you know of the change.

Your obligation to furnish this information to every other party continues as long as you, or any other person, by virtue of this order, are entitled to custody of or visitation with a child covered by this order.

Your failure to obey the order of this court to provide every other party with notice of information regarding the proposed relocation or change of residence address may result in further litigation to enforce the order, including contempt of court.

In addition, your failure to notify of a relocation of the child may be taken into account in a modification of custody of, visitation with, possession of or access to the child. Reasonable costs and attorney's fees also may be assessed against you if you fail to give the required notice.

If you, as the nonrelocating parent, do not file a proceeding seeking a temporary or permanent order to prevent the relocation within thirty (30) days after receipt of notice of the intent of the other party to relocate the residence of the child, relocation is authorized."

E. 1. On a finding by the court that the health, safety, or liberty of a person or a child would be unreasonably put at risk by the disclosure of the required identifying information in conjunction with a proposed relocation of the child or change of residence of an adult, the court may order that:

- a. the specific residence address and telephone number of the child or of the adult and other identifying information shall not be disclosed in the pleadings, other documents filed in the proceeding, or the final order, except for an in camera disclosure,
- b. the notice requirements provided by this article be waived to the extent necessary to protect confidentiality and the health, safety or liberty of a person or child, and
- c. any other remedial action that the court considers necessary to facilitate the legitimate needs of the parties and the best interest of the child.

2. If appropriate, the court may conduct an ex parte hearing pursuant to this subsection.

F. 1. The court may consider a failure to provide notice of a proposed relocation of a child as provided by this section as:

- a. a factor in making its determination regarding the relocation of a child,
- b. a factor in determining whether custody or visitation should be modified,
- c. a basis for ordering the return of the child if the relocation has taken place without notice, and

- d. sufficient cause to order the person seeking to relocate the child to pay reasonable expenses and attorney fees incurred by the person objecting to the relocation.

2. In addition to the sanctions provided by this subsection, the court may make a finding of contempt if a party violates the notice requirement required by this section and may impose the sanctions authorized for contempt of a court order.

G. 1. The person entitled to custody of a child may relocate the principal residence of a child after providing notice as provided by this section unless a parent entitled to notice files a proceeding seeking a temporary or permanent order to prevent the relocation within thirty (30) days after receipt of the notice.

2. A parent entitled by court order or written agreement to visitation with a child may file a proceeding objecting to a proposed relocation of the principal residence of a child and seek a temporary or permanent order to prevent the relocation.

3. If relocation of the child is proposed, a nonparent entitled by court order or written agreement to visitation with a child may file a proceeding to obtain a revised schedule of visitation, but may not object to the proposed relocation or seek a temporary or permanent order to prevent the relocation.

4. A proceeding filed pursuant to this subsection must be filed within thirty (30) days of receipt of notice of a proposed relocation.

H. 1. The court may grant a temporary order restraining the relocation of a child, or ordering return of the child if a relocation has previously taken place, if the court finds:

- a. the required notice of a proposed relocation of a child as provided by this section was not provided in a timely manner and the parties have not presented an

agreed-upon revised schedule for visitation with the child for the court's approval,

- b. the child already has been relocated without notice, agreement of the parties, or court approval, or
- c. from an examination of the evidence presented at the temporary hearing there is a likelihood that on final hearing the court will not approve the relocation of the primary residence of the child.

2. The court may grant a temporary order permitting the relocation of the child pending final hearing if the court:

- a. finds that the required notice of a proposed relocation of a child as provided by this section was provided in a timely manner and issues an order for a revised schedule for temporary visitation with the child, and
- b. finds from an examination of the evidence presented at the temporary hearing there is a likelihood that on final hearing the court will approve the relocation of the primary residence of the child.

I. A proposed relocation of a child may be a factor in considering a change of custody.

J. 1. In reaching its decision regarding a proposed relocation, the court shall consider the following factors:

- a. the nature, quality, extent of involvement, and duration of the child's relationship with the person proposing to relocate and with the nonrelocating person, siblings, and other significant persons in the child's life,
- b. the age, developmental stage, needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional

development, taking into consideration any special needs of the child,

- c. the feasibility of preserving the relationship between the nonrelocating person and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties,
- d. the child's preference, taking into consideration the age and maturity of the child,
- e. whether there is an established pattern of conduct of the person seeking the relocation, either to promote or thwart the relationship of the child and the nonrelocating person,
- f. whether the relocation of the child will enhance the general quality of life for both the custodial party seeking the relocation and the child, including but not limited to financial or emotional benefit or educational opportunity,
- g. the reasons of each person for seeking or opposing the relocation, and
- h. any other factor affecting the best interest of the child.

2. The court may not:

- a. give undue weight to the temporary relocation as a factor in reaching its final decision, if the court has issued a temporary order authorizing a party seeking to relocate a child to move before final judgment is issued, or
- b. consider whether the person seeking relocation of the child has declared that he or she will not relocate if relocation of the child is denied.

K. The relocating person has the burden of proof that the proposed relocation is made in good faith. If that burden of proof

is met, the burden shifts to the nonrelocating person to show that the proposed relocation is not in the best interest of the child.

L. 1. After notice and a reasonable opportunity to respond, the court may impose a sanction on a person proposing a relocation of the child or objecting to a proposed relocation of a child if it determines that the proposal was made or the objection was filed:

- a. to harass a person or to cause unnecessary delay or needless increase in the cost of litigation,
- b. without being warranted by existing law or was based on frivolous argument, or
- c. based on allegations and other factual contentions which had no evidentiary support or, if specifically so identified, could not have been reasonably believed to be likely to have evidentiary support after further investigation.

2. A sanction imposed under this subsection shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. The sanction may include directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the other party of some or all of the reasonable attorney fees and other expenses incurred as a direct result of the violation.

M. If the issue of relocation is presented at the initial hearing to determine custody of and visitation with a child, the court shall apply the factors set forth in this section in making its initial determination.

N. 1. The provisions of this section apply to an order regarding custody of or visitation with a child issued:

- a. after the effective date of this act, and
- b. before the effective date of this act, if the existing custody order or enforceable agreement does not

expressly govern the relocation of the child or there is a change in the primary residence address of an adult affected by the order.

2. To the extent that a provision of this section conflicts with an existing custody order or enforceable agreement, this section does not apply to the terms of that order or agreement that govern relocation of the child or a change in the primary residence address of an adult.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 131.1 of Title 43, unless there is created a duplication in numbering, reads as follows:

The provisions of Sections 17 and 18 of this act are subject to valid antenuptial agreements and valid marital property agreements made pursuant to Title 43 of the Oklahoma Statutes.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 131.2 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. In a proceeding for dissolution of marriage, legal separation, a nonretroactive decree of annulment, or a proceeding for alimony following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may award alimony to either spouse if the court finds that the spouse seeking alimony:

1. Lacks sufficient income-producing property to provide for that spouse's reasonable needs;

2. Is unable to be self-supporting as a result of the lack of appropriate employment or the lack of earning ability;

3. Is the custodian of a child of the marriage whose age or needs are such that the custodian should not be required to seek employment outside the home; or

4. Had a marriage of long duration and is of an age which may preclude the likelihood of gaining employment adequate to be self-supporting;

B. An alimony award shall be in such amount and for such period of time as the court determines is equitable after considering all relevant factors, including:

1. The comparable age, education, employment history, earning ability, and the physical and emotional condition of the spouses;

2. The financial resources of the spouse seeking alimony, including income-producing property awarded to that spouse, and the ability of that spouse to meet such spouse's needs independently;

3. The time necessary to acquire sufficient education or training to enable the spouse seeking alimony to find appropriate employment and whether such education or training is readily available;

4. The length of the marriage;

5. The standard of living established during the marriage; and

6. The financial resources of the spouse from whom alimony is sought, including income-producing property awarded to that spouse, and the ability of that spouse to meet such spouse's needs while meeting those of the spouse seeking alimony.

C. The court may not consider marital misconduct in determining the alimony award.

D. The order providing for alimony need not provide for a sum certain amount.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 131.3 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. The court shall provide in the order for alimony that it shall terminate upon:

1. The death of either the recipient or the payor; or

2. The remarriage of the recipient. The alimony order must require the recipient to notify the payor of the recipient's remarriage.

B. An order for the payment of alimony may be modified or terminated upon proof of changed circumstances relating to the need for support or ability to support which are substantial and continuing. The court may determine that an order entered under this subsection is effective as of the date of the filing of the motion to terminate or modify the alimony.

SECTION 19. REPEALER 43 O.S. 2001, Section 107, is hereby repealed.

SECTION 20. This act shall become effective November 1, 2002.

Passed the House of Representatives the 7th day of March, 2002.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2002.

Presiding Officer of the Senate