

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

HOUSE BILL HB2397

By: Vaughn

AS INTRODUCED

An Act relating to marriage and family; providing for title of certain proceedings; amending 43 O.S. 2001, Sections 107.3 and 112, which relate to guardian ad litem and care and custody of children; adding duties and responsibilities for guardian ad litem; modifying definitions; making certain changes to permanent residence of a child grounds for change for modification of custody; requiring completion of a declaration of common law marriage as evidence of a marriage in certain proceedings; providing for contents; specifying certain requirements; requiring notary; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 105.1 of Title 43, unless there is created a duplication in numbering, reads as follows:

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

B. A decree of dissolution, legal separation, or annulment, if made, shall not be awarded to one of the parties, but shall provide that it affects the status previously existing between the parties in the manner decreed.

SECTION 2. 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 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.

2. The guardian ad litem shall 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, health care providers and any other person with knowledge relevant to the case,
- 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, and
- d. present written reports on the child's best interests that include conclusions and recommendations and the facts upon which they are based.

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,~~
- ~~e. 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 3. 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. a. In making an order for custody, the court may specify that:

~~a.~~ (1) 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.~~ (2) the noncustodial parent is to notify the custodial parent if the noncustodial parent plans to change permanent residence, and

b. A change of the permanent residence of a child to an out-of-state location by the custodial parent may be determined by the court to be contrary to the best interests of the child and as such may be ground for modification of the child custody order.

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 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4.1 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. On and after November 1, 2002, in a judicial, administrative, or other proceeding, the common law marriage of a man and woman must be proved by evidence that a declaration of common law marriage has been signed as provided by this section.

B. Any common law marriage recognized as valid by an Oklahoma court of competent jurisdiction in this state prior to November 1, 2002, shall continue to be recognized as valid in this state.

C. Except for a common law marriage recognized as valid by an out-of-state court of competent jurisdiction prior to November 1, 2002, a common law marriage recognized in another state on or after November 1, 2002, shall not be recognized as valid and binding for purposes of judicial, administrative or other proceedings in this

state in accordance with paragraph (3) of subsection (b) of Section 713 of Title 12 of the Oklahoma Statutes unless a declaration of common law marriage has been signed as provided by this section.

D. A person under eighteen (18) years of age may not:

1. Be a party to a common law marriage; or
2. Execute a declaration of common law marriage pursuant to this section.

E. 1. A declaration of common law marriage must be substantially in the following form. Each party to the declaration shall provide the information required in the form.

2. The declaration form must contain:

- a. a heading entitled "Declaration of Common Law Marriage, _____ County, Oklahoma,
- b. spaces for each party's full name, including the woman's maiden surname, address, date of birth, place of birth, including city, county, and state, and social security number, if any,
- c. printed boxes for each party to check "true" or "false" in response to the following statement:
 - (1) "The other party is not related to me as:
 - (a) an ancestor or descendant, by blood or by adoption,
 - (b) a brother or sister, of the whole or half blood or by adoption,
 - (c) a parent's brother or sister, of the whole or half blood or by adoption, or
 - (d) a son or daughter of a brother or sister, of the whole or half blood or by adoption."
 - (2) I am eighteen (18) years of age or older,
 - (3) a printed declaration and oath reading:

I SOLEMNLY SWEAR (OR AFFIRM) THAT WE, THE
UNDERSIGNED, ARE MARRIED TO EACH OTHER BY VIRTUE

OF THE FOLLOWING FACTS: ON OR ABOUT (DATE) WE AGREED TO BE MARRIED, AND AFTER THAT DATE WE LIVED TOGETHER AS HUSBAND AND WIFE AND IN THIS STATE WE REPRESENTED TO OTHERS THAT WE WERE MARRIED. SINCE THE DATE OF MARRIAGE TO THE OTHER PARTY I HAVE NOT BEEN MARRIED TO ANY OTHER PERSON. THIS DECLARATION IS TRUE AND THE INFORMATION IN IT WHICH I HAVE GIVEN IS CORRECT.”,

- (4) spaces immediately below the printed declaration and oath for the parties' signatures, and
- (5) the declaration must be notarized and dated.

SECTION 5. This act shall become effective November 1, 2002.

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