

EHB 1358

THE STATE SENATE  
Thursday, March 20, 2003

ENGROSSED

House Bill No. 1358

As Amended

ENGROSSED HOUSE BILL NO. 1358 - By: VAUGHN of the House and  
WILLIAMSON of the Senate.

[ marriage and divorce - amending 43 O.S., Sections 105, 106  
and 110 - dissolution of marriage proceedings - amending 43  
O.S., Sections 120.1, 120.2, 120.3, 120.4, 120.5 and 120.6 -  
Parenting Coordinator Act - name of act - emergency ]

SECTION 1. AMENDATORY 43 O.S. 2001, Section 105, as  
amended by Section 3, Chapter 400, O.S.L. 2002 (43 O.S. Supp. 2002,  
Section 105), is amended to read as follows:

Section 105. A. A proceeding for ~~dissolution of marriage~~  
divorce, an annulment of a marriage, or a 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.

1 C. The petition must be verified as true, by the affidavit of  
2 the petitioner.

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

5 SECTION 2. AMENDATORY 43 O.S. 2001, Section 106, as  
6 amended by Section 4, Chapter 400, O.S.L. 2002 (43 O.S. Supp. 2002,  
7 Section 106), is amended to read as follows:

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

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

15 SECTION 3. AMENDATORY 43 O.S. 2001, Section 110, as  
16 amended by Section 6, Chapter 400, O.S.L. 2002 (43 O.S. Supp. 2002,  
17 Section 110), is amended to read as follows:

18 Section 110. A. 1. ~~Upon~~ Except as otherwise provided by this  
19 subsection, upon the filing of a petition for ~~dissolution of~~  
20 ~~marriage~~ divorce, annulment of a marriage, ~~or~~ or legal separation by  
21 the petitioner and upon personal service of the petition and summons  
22 on the respondent, or upon waiver and acceptance of service by the  
23 respondent, an automatic temporary injunction shall be in effect

1 against both parties pursuant to the provisions of this section  
2 ~~unless the automatic temporary injunction has been waived pursuant~~  
3 ~~to this section:~~

4 a. restraining the parties from transferring,  
5 encumbering, concealing, or in any way disposing of,  
6 without the written consent of the other party or an  
7 order of the court, any marital property, except in  
8 the usual course of business, for the purpose of  
9 retaining an attorney for the case or for the  
10 necessities of life and requiring each party to notify  
11 the other party of any proposed extraordinary  
12 expenditures and to account to the court for all  
13 extraordinary expenditures made after the injunction  
14 is in effect,

15 b. restraining the parties from:

16 (1) intentionally or knowingly damaging or destroying  
17 the tangible property of the parties, or of  
18 either of them, including, but not limited to,  
19 any document that represents or embodies anything  
20 of value,

21 (2) making any withdrawal for any purpose from any  
22 retirement, profit-sharing, pension, death, or  
23 other employee benefit plan or employee savings

- 1 plan or from any individual retirement account or  
2 Keogh account,
- 3 (3) withdrawing or borrowing in any manner all or any  
4 part of the cash surrender value of any life  
5 insurance policies on either party or their  
6 children,
- 7 (4) changing or in any manner altering the  
8 beneficiary designation on any life insurance  
9 policies on the life of either party or any of  
10 their children,
- 11 (5) canceling, altering, or in any manner affecting  
12 any casualty, automobile, or health insurance  
13 policies insuring the parties' property or  
14 persons,
- 15 (6) opening or diverting mail addressed to the other  
16 party, and
- 17 (7) signing or endorsing the other party's name on  
18 any negotiable instrument, check, or draft, such  
19 as tax refunds, insurance payments, and  
20 dividends, or attempting to negotiate any  
21 negotiable instruments payable to either party  
22 without the personal signature of the other  
23 party,

- 1           c.    requiring the parties to maintain all presently  
2                   existing health, property, life and other insurance  
3                   which ~~he or she~~ the individual is presently carrying  
4                   on any member of this family unit, and to cooperate as  
5                   necessary in the filing and processing of claims. Any  
6                   employer-provided health insurance currently in  
7                   existence shall remain in full force and effect for  
8                   all family members,
- 9           d.    enjoining both parties from molesting or disturbing  
10                   the peace of the other party or of the children to the  
11                   marriage,
- 12           e.    restraining both parties from disrupting or  
13                   withdrawing their children from an educational  
14                   facility and programs where the children historically  
15                   have been enrolled, or day care,
- 16           f.    restraining both parties from hiding or secreting  
17                   their children from the other party, and
- 18           g.    restraining both parties from removing the minor  
19                   children of the parties, if any, beyond the  
20                   jurisdiction of the State of Oklahoma, acting directly  
21                   or in concert with others, except for vacations of two  
22                   (2) weeks or less duration, without the prior written

1 consent of the other party, which shall not be  
2 unreasonably withheld.

3 2. a. The provisions of the automatic temporary injunction  
4 ~~may be waived by the parties if both parties have~~  
5 ~~indicated on the automatic temporary injunction notice~~  
6 ~~in the space provided that the parties have both~~  
7 ~~agreed to waive the automatic temporary injunction.~~  
8 ~~Each party must sign his or her own name on the notice~~  
9 ~~in the space provided~~ shall be printed as an  
10 attachment to the summons and the petition and  
11 entitled "Automatic Temporary Injunction Notice".

12 b. The automatic temporary injunction notice shall  
13 contain a provision which will allow the parties to  
14 waive the automatic temporary injunction. In  
15 addition, the provision must state that unless both  
16 parties have agreed and have signed their names in the  
17 space provided, that the automatic temporary  
18 injunction will be effective. Along with the waiver  
19 provision, the notice shall contain a check box and  
20 space available for the signatures of the parties.

21 3. ~~The provisions of the automatic temporary injunction shall~~  
22 ~~be printed as an attachment to the summons and the petition and~~  
23 ~~entitled "Automatic Temporary Injunction Notice".~~ The automatic

1 temporary injunction shall become an order of the court upon  
2 fulfillment of the requirements of paragraph 1 of this subsection  
3 unless and until:

4 a. the automatic temporary injunction is waived by the  
5 parties. Both parties must indicate on the automatic  
6 temporary injunction notice in the space provided that  
7 the parties have both agreed to waive the automatic  
8 temporary injunction. Each party must sign his or her  
9 own name on the notice in the space provided, or

10 b. a party, ~~within~~ no later than three (3) days ~~of~~ after  
11 service on the party, files an objection to the  
12 injunction and requests a hearing,~~or~~

13 ~~b. the automatic temporary injunction is waived as~~  
14 ~~provided in paragraph 2 of this subsection.~~ Provided,  
15 the automatic temporary injunction shall remain in  
16 effect until the hearing and a judge orders the  
17 injunction removed.

18 4. The automatic temporary injunction shall be dissolved upon  
19 the granting of the divorce, final order of legal separation or  
20 other final order.

21 5. Nothing in this subsection shall preclude either party from  
22 applying to the court for further temporary orders, pursuant to this

1 section, an expanded automatic temporary injunction, or modification  
2 or revocation thereto.

3 ~~5.~~ 6. With regard to an automatic temporary injunction, when a  
4 petition for ~~dissolution of marriage~~ divorce, annulment of a  
5 marriage, or a legal separation is filed and served:

6 ~~a.~~ a peace officer shall use every reasonable means to  
7 enforce the injunction which enjoins both parties from  
8 molesting or disturbing the peace of the other party  
9 or the children of the marriage against a petitioner  
10 or respondent, whenever:

11 a. there is exhibited by a respondent or by the  
12 petitioner to the peace officer a copy of the petition  
13 or summons, with an attached Temporary Injunction  
14 Notice, duly filed and issued pursuant to this  
15 section, together with a certified copy of the  
16 affidavit of service of process or a certified copy of  
17 the waiver and acceptance of service, and

18 b. the peace officer has cause to believe that a  
19 violation of the automatic temporary injunction has  
20 occurred. A peace officer shall not be held civilly  
21 or criminally liable for his or her action pursuant to  
22 this paragraph if his or her action is in good faith  
23 and without malice.

1           B. After a petition has been filed in an action for divorce or  
2 legal separation either party may request the court to issue:

3           1. A temporary order:

- 4           a. regarding child custody, support or visitation,
- 5           b. regarding spousal maintenance,
- 6           c. regarding payment of debt,
- 7           d. regarding possession of property,
- 8           e. regarding attorney fees, and
- 9           f. providing other injunctive relief proper in the  
10           circumstances.

11           All applications for temporary orders shall set forth the  
12 factual basis for the application and shall be verified by the party  
13 seeking relief. The application and a notice of hearing shall be  
14 served on the other party in any manner provided for in the Rules of  
15 Civil Procedure.

16           The court shall not issue a temporary order until at least five  
17 (5) days' notice of hearing is given to the other party.

18           After notice and hearing, a court may issue a temporary order  
19 granting the relief as provided by this paragraph; and/or

20           2. A temporary restraining order. If the court finds on the  
21 basis of a verified application and testimony of witnesses that  
22 irreparable harm will result to the moving party, or a child of a  
23 party if no order is issued before the adverse party or attorney for

1 the adverse party can be heard in opposition, the court may issue a  
2 temporary restraining order which shall become immediately effective  
3 and enforceable without requiring notice and opportunity to be heard  
4 to the other party. If a temporary restraining order is issued  
5 pursuant to this paragraph, the motion for a temporary order shall  
6 be set within ten (10) days.

7 C. Any temporary orders and the automatic temporary injunction,  
8 or specific terms thereof, may be vacated or modified prior to or in  
9 conjunction with a final decree on a showing by either party of  
10 facts necessary for vacation or modification. Temporary orders and  
11 the automatic temporary injunction terminate when the final judgment  
12 on all issues, except attorney fees and costs, is rendered or when  
13 the action is dismissed. The court may reserve jurisdiction to rule  
14 on an application for a contempt citation for a violation of a  
15 temporary order or the automatic temporary injunction which is filed  
16 any time prior to the time the temporary order or injunction  
17 terminates.

18 D. Upon granting a decree of divorce, annulment of a marriage,  
19 or legal separation, the court may require either party to pay such  
20 reasonable expenses of the other as may be just and proper under the  
21 circumstances.

22 E. The court may in its discretion make additional orders  
23 relative to the expenses of any such subsequent actions, including

1 but not limited to writs of habeas corpus, brought by the parties or  
2 their attorneys, for the enforcement or modification of any  
3 interlocutory or final orders in the divorce action made for the  
4 benefit of either party or their respective attorneys.

5 SECTION 4. AMENDATORY 43 O.S. 2001, Section 120.1, is  
6 amended to read as follows:

7 Section 120.1 Sections ~~8~~ 120.1 through ~~12~~ 120.5 of this ~~act~~  
8 title shall be known and may be cited as the "~~Parenting Family~~  
9 Coordinator Act".

10 SECTION 5. AMENDATORY 43 O.S. 2001, Section 120.2, is  
11 amended to read as follows:

12 Section 120.2 As used in the ~~Parenting Family~~ Family Coordinator Act:

13 1. "~~Parenting Family~~ Family Coordinator" means ~~a neutral~~ an impartial  
14 third party qualified pursuant to subsection A of Section ~~13~~ 120.6  
15 of this ~~act to hear and decide issues of dispute authorized in an~~  
16 ~~order by the court appointing the parenting coordinator~~ title  
17 appointed by the court to assist parties in resolving issues and  
18 deciding disputed issues pursuant to the provisions of the Family  
19 Coordinator Act relating to parenting and other family issues in any  
20 action for divorce, paternity, or guardianship where a minor  
21 ~~children are~~ child is involved; and

1           2. "High-conflict case" means any action for divorce,  
2 paternity, or guardianship where minor children are involved and the  
3 parties demonstrate a pattern of ongoing:

- 4           a. litigation,
- 5           b. anger and distrust,
- 6           c. verbal abuse,
- 7           d. physical aggression or threats of physical aggression,
- 8           e. difficulty in communicating about and cooperating in  
9           the care of their children, or
- 10          f. conditions that in the discretion of the court warrant  
11           the appointment of a ~~parenting~~ family coordinator.

12           SECTION 6.           AMENDATORY           43 O.S. 2001, Section 120.3, is  
13 amended to read as follows:

14           Section 120.3 A. In any action for divorce, paternity, or  
15 guardianship where minor children are involved, the court may, upon  
16 its own motion, or by motion or agreement of the parties, appoint a  
17 ~~parenting~~ family coordinator to ~~hear and decide disputed issues~~  
18 ~~relating to the minor children~~ assist the parties in resolving  
19 issues and decide disputed issues pursuant to the provisions of the  
20 Family Coordinator Act related to parenting or other family issues  
21 in the case except as provided in subsection B of this section, and  
22 subsection A of Section ~~12~~ 120.5 of this ~~act~~ title.

1 B. The court shall not appoint a ~~parenting~~ family coordinator  
2 if any party objects, unless:

3 1. The court makes specific findings that the case is a high-  
4 conflict case; ~~or~~ and

5 2. The court makes specific findings that the appointment of a  
6 ~~parenting~~ family coordinator is in the best interest of ~~the~~ any  
7 minor child in the case.

8 C. 1. The authority of a ~~parenting~~ family coordinator shall be  
9 specified in the order appointing the ~~parenting~~ family coordinator  
10 and limited to matters that ~~aid in the communication of the parties~~  
11 ~~and the enforcement of~~ will aid the parties in:

12 a. identifying disputed issues,

13 b. reducing misunderstandings,

14 c. clarifying priorities,

15 d. exploring possibilities for compromise,

16 e. developing methods of collaboration in parenting, and

17 f. complying with the court's order of custody,

18 visitation, or guardianship.

19 2. The appointment of a family coordinator shall not divest the  
20 court of its exclusive jurisdiction to determine fundamental issues  
21 of custody, visitation, and support, and the authority to exercise  
22 management and control of the case.

1        3. The family coordinator shall not make any modification to  
2 any order, judgment or decree; however, the family coordinator may  
3 allow the parties to make minor temporary departures from a  
4 parenting plan if authorized by the court to do so. The appointment  
5 order should specifically specify those matters which the family  
6 coordinator is authorized to determine. The order shall specify  
7 which determinations will be immediately effective and which will  
8 require an opportunity for court review prior to taking effect.

9        D. The parties may limit the decision-making authority of the  
10 ~~parenting~~ family coordinator to specific issues or areas if the  
11 ~~parenting~~ family coordinator is being appointed pursuant to  
12 agreement of the parties.

13        E. Meetings between the ~~parenting~~ family coordinator and the  
14 parties need not follow any specific procedures and the meetings may  
15 be informal. All communication between the parties and the  
16 ~~parenting~~ family coordinator shall not be confidential.

17        F. Nothing in the ~~Parenting~~ Family Coordinator Act shall  
18 abrogate the custodial or noncustodial parent's rights or any court  
19 order visitation given to grandparents or other persons except as  
20 specifically addressed in the order appointing the ~~parenting~~ family  
21 coordinator.

1        G. 1. Except as otherwise provided by this subsection, the  
2 court shall reserve the right to remove the family coordinator in  
3 its own discretion.

4        2. The court **may** remove the family coordinator upon the request  
5 and agreement of both parties. Upon the motion of either party and  
6 good cause shown, the court **may** remove the family coordinator.

7        SECTION 7.        AMENDATORY        43 O.S. 2001, Section 120.4, is  
8 amended to read as follows:

9        Section 120.4 A. A report of the decisions and recommendations  
10 made by the ~~parenting~~ family coordinator shall be filed with the  
11 court within twenty (20) days, with copies of the report provided to  
12 the parties or their counsel. There shall be no ex parte  
13 communication with the court.

14        B. ~~The parenting coordinator's decision~~ Any decisions made by  
15 the family coordinator authorized by the court order and issued  
16 pursuant to the provisions of the Family Coordinator Act shall be  
17 binding on the parties until further order of the court.

18        C. 1. Any party may file with the court and serve on the  
19 ~~parenting~~ family coordinator and all other parties an objection to  
20 the ~~parenting~~ family coordinator's report within ten (10) days after  
21 the ~~parenting~~ family coordinator provides the report to the parties,  
22 or within another time as the court may direct.

1        2. Responses to the objections shall be filed with the court  
2 and served on the ~~parenting~~ family coordinator and all other parties  
3 within ten (10) days after the objection is served.

4        D. The court shall review any objections to the report and any  
5 responses submitted to those objections to the report and shall  
6 thereafter enter appropriate orders.

7        SECTION 8.        AMENDATORY        43 O.S. 2001, Section 120.5, is  
8 amended to read as follows:

9        Section 120.5 A. No ~~parenting~~ family coordinator shall be  
10 appointed unless the court finds that the parties have the means to  
11 pay the fees of the ~~parenting~~ family coordinator. This state shall  
12 assume no financial responsibility for payment of fees to the  
13 ~~parenting~~ family coordinator; except that, in cases of hardship, the  
14 court, if feasible, may appoint a ~~parenting~~ family coordinator to  
15 serve on a volunteer basis.

16        B. The ~~parenting~~ family coordinator's fees shall be allocated  
17 between the parties with the relative percentages determined  
18 pursuant to the child support guidelines. The court may allocate  
19 the fees between the parties differently upon a finding of good  
20 cause by the court or good cause set forth in the ~~parenting~~ family  
21 coordinator's report.

22        SECTION 9.        AMENDATORY        43 O.S. 2001, Section 120.6, is  
23 amended to read as follows:

1 Section 120.6 A. Each judicial district shall adopt local  
2 rules governing the qualifications of a ~~parenting~~ family  
3 coordinator; provided, the minimum qualifications for a family  
4 coordinator shall be as follows:

5 1. A master's degree in social work and one (1) year of  
6 experience in children's services;

7 2. A member of the Academy of Certified Social Workers (ACSW)  
8 and one (1) year of experience in children's services;

9 3. A master's degree in a behavioral or social science and two  
10 (2) years' experience in children's services;

11 4. A doctorate in a behavioral or social science and one (1)  
12 year of experience in children's services;

13 5. Is a member of the clergy with two (2) years of experience  
14 in family counseling; or

15 6. Is an attorney with at least two (2) years' experience in  
16 family law.

17 B. A ~~parenting~~ family coordinator who is not an attorney shall  
18 not constitute the practice of law without a license.

19 SECTION 10. It being immediately necessary for the preservation  
20 of the public peace, health and safety, an emergency is hereby  
21 declared to exist, by reason whereof this act shall take effect and  
22 be in full force from and after its passage and approval.

23 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-18-03 - DO  
24 PASS, As Amended.