

COMMITTEE AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB1277 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by
inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Travis Dunlap

Adopted: _____

Reading Clerk

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

PROPOSED COMMITTEE
SUBSTITUTE
FOR
HOUSE BILL NO. 1277

By: Dunlap

PROPOSED COMMITTEE SUBSTITUTE

An Act relating to marriage; amending 43 O.S. 2011, Section 101, as amended by Section 1, Chapter 428, O.S.L. 2014, 107.2, as last amended by Section 1, Chapter 385, O.S.L. 2015, 110 and 121, as last amended by Section 1, Chapter 334, O.S.L. 2012 (43 O.S. Supp. 2016, Sections 101, 107.2 and 121), which relate to dissolution of marriage; modifying the use of incompatibility as a ground for divorce; requiring counseling and completion of a waiting period; prescribing shorter waiting period in specified cases; permitting written objection; adding habitual substance abuse as a ground; specifying date of applicability; raising maximum cost of educational program; requiring parties to pay their own expenses in certain cases; providing exception; requiring unequal division of marital property if certain conditions are met; and providing an effective date.

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

SECTION 1. AMENDATORY 43 O.S. 2011, Section 101, as amended by Section 1, Chapter 428, O.S.L. 2014 (43 O.S. Supp. 2016, Section 101), is amended to read as follows:

1 Section 101. The district court may grant a divorce for any of
2 the following causes:

3 ~~First.~~ 1. Abandonment for one (1) year-;

4 ~~Second.~~ 2. Adultery-;

5 ~~Third.~~ 3. Impotency-;

6 ~~Fourth.~~ 4. When the wife at the time of her marriage was
7 pregnant by another than her husband-;

8 ~~Fifth.~~ 5. Extreme cruelty-;

9 ~~Sixth.~~ 6. Fraudulent contract-;

10 ~~Seventh.~~ 7. Incompatibility. Provided, however, where the
11 interest of a child under eighteen (18) years of age is involved,
12 where the parties have been married ten (10) years or longer or
13 where one party objects in writing, the adult parties shall complete
14 a waiting period of one hundred eighty (180) days, during which time
15 the adult parties shall attend an educational program concerning the
16 impact of divorce on children as provided in subsection B of Section
17 107.2 of this title-, as well as meet with a licensed family
18 counselor, either separately or together, for a minimum of twelve
19 (12) hours and provide documentation of such meetings to the court.
20 Where the interest of a child under eighteen (18) years of age is
21 not involved, where the parties have been married less than ten (10)
22 years and where neither party objects in writing, both parties shall
23 complete a waiting period of thirty (30) days at the conclusion of
24 which both parties shall affirm in writing their continued absence

1 of any objection to divorce on the ground of incompatibility.
2 Should either party object in writing during the thirty-day waiting
3 period, the parties shall complete a waiting period of one hundred
4 eighty (180) days beginning on the day either party objects in
5 writing, during which time both parties shall attend an educational
6 program concerning the impact of divorce as provided in subsection B
7 of Section 107.2 of this title, as well as meet with a licensed
8 family counselor, either separately or together, for a minimum of
9 twelve (12) hours and provide documentation of such meetings to the
10 court;

11 ~~Eighth.~~ 8. Habitual drunkenness- or habitual substance abuse;

12 ~~Ninth.~~ 9. Gross neglect of duty-;

13 ~~Tenth.~~ 10. Imprisonment of the other party in a state or
14 federal penal institution under sentence thereto for the commission
15 of a felony at the time the petition is filed-;

16 ~~Eleventh.~~ 11. The procurement of a final divorce decree without
17 this state by a husband or wife which does not in this state release
18 the other party from the obligations of the marriage-; and

19 ~~Twelfth.~~ 12. Insanity for a period of five (5) years, the
20 insane person having been an inmate of a state institution for the
21 insane in the State of Oklahoma, or inmate of a state institution
22 for the insane in some other state for such period, or of a private
23 sanitarium, and affected with a type of insanity with a poor
24 prognosis for recovery; provided, that no divorce shall be granted

1 because of insanity until after a thorough examination of such
2 insane person by three physicians, one of whom shall be a
3 superintendent of the hospital or sanitarium for the insane in which
4 the insane defendant is confined, and the other two to be appointed
5 by the court before whom the action is pending, and any two of such
6 physicians shall agree that such insane person, at the time the
7 petition in the divorce action is filed, has a poor prognosis for
8 recovery; provided~~7~~ further, however, that no divorce shall be
9 granted on this ground to any person whose husband or wife is an
10 inmate of a state institution in any other than the State of
11 Oklahoma, unless the person applying for such divorce shall have
12 been a resident of the State of Oklahoma for at least five (5) years
13 prior to the commencement of an action; and provided further, that a
14 decree granted on this ground shall not relieve the successful party
15 from contributing to the support and maintenance of the defendant.
16 The court shall appoint a guardian ad litem to represent the insane
17 defendant, which appointment shall be made at least ten (10) days
18 before any decree is entered.

19 SECTION 2. AMENDATORY 43 O.S. 2011, Section 107.2, as
20 last amended by Section 1, Chapter 385, O.S.L. 2015 (43 O.S. Supp.
21 2016, Section 107.2), is amended to read as follows:

22 Section 107.2 A. Except as provided in subsection B of this
23 section, in all actions for divorce, separate maintenance,
24 guardianship, paternity, custody or visitation, including

1 modifications or enforcements of a prior court order, where the
2 interest of a child under eighteen (18) years of age is involved,
3 the court may require all adult parties to attend an educational
4 program concerning, as appropriate, the impact of separate parenting
5 and coparenting on children, the implications for visitation and
6 conflict management, development of children, separate financial
7 responsibility for children and such other instruction as deemed
8 necessary by the court. The program shall be educational in nature
9 and not designed for individual therapy.

10 B. In actions for divorce based upon incompatibility filed on
11 or after November 1, ~~2014~~ 2017, ~~where the interest of a child under~~
12 ~~eighteen (18) years of age is involved~~ as provided in paragraph 7 of
13 Section 101 of this title, the adult parties shall attend, either
14 separately or together, an educational program concerning the impact
15 of divorce ~~on children~~. The program shall include the following
16 components:

- 17 1. Short-term and longitudinal effects of divorce on child
18 well-being;
- 19 2. Reconciliation as an optional outcome;
- 20 3. Effects of family violence;
- 21 4. Potential child behaviors and emotional states during and
22 after divorce including information on how to respond to the child's
23 needs;

1 5. Communication strategies to reduce conflict and facilitate
2 cooperative coparenting; and

3 6. Area resources, including but not limited to nonprofit
4 organizations or religious entities available to address issues of
5 substance abuse or other addictions, family violence, behavioral
6 health, individual and couples counseling, and financial planning.

7 Program attendees shall be required to pay a fee of not less
8 than Ten Dollars (\$10.00) and not more than ~~Sixty Dollars (\$60.00)~~
9 Two Hundred Dollars (\$200.00) to the program provider to offset the
10 costs of the program. The fee may be waived by the court if an
11 attendee uses a qualified program that is provided free of charge.
12 Nothing in this paragraph shall prohibit a third party from paying
13 the fee to the program provider for an attendee. A certificate of
14 completion shall be issued upon satisfying the attendance and fee
15 requirements of the program, and the certificate of completion shall
16 be filed with the court. The program provider shall carry general
17 liability insurance and maintain an accurate accounting of all
18 business transactions and funds received in relation to the program.
19 The program shall be completed prior to the temporary order or
20 within forty-five (45) days of receiving a temporary order.
21 However, and in all events, a final disposition of child custody
22 shall not be granted until the parties complete the program required
23 by this subsection. The court may waive attendance of the program
24 for good cause shown which shall include, but not be limited to,

1 where domestic violence, stalking or harassment as defined by
2 paragraph 2 of subsection I of Section 109 of this title occurred
3 during the marriage.

4 C. Each judicial district may adopt its own local rules
5 governing the programs.

6 D. The Administrative Office of the Courts may enter into a
7 memorandum of understanding with a state entity or other
8 organization in order to compile data including but not limited to
9 the number of actions for divorce that were dismissed after
10 participating in the program, the number of programs that were
11 completed and the number of program participants for each fiscal
12 year. The report shall include data collected from each judicial
13 district. The report shall be published on the Administrative
14 Office of the Courts website and distributed to the Governor,
15 Speaker of the House of Representatives, Minority Leader of the
16 House of Representatives, President Pro Tempore of the Senate and
17 Minority Leader of the Senate.

18 SECTION 3. AMENDATORY 43 O.S. 2011, Section 110, is
19 amended to read as follows:

20 Section 110. A. 1. Except as otherwise provided by this
21 subsection, upon the filing of a petition for dissolution of
22 marriage, annulment of a marriage or legal separation by the
23 petitioner and upon personal service of the petition and summons on
24 the respondent, or upon waiver and acceptance of service by the

1 respondent, an automatic temporary injunction shall be in effect
2 against both parties pursuant to the provisions of this section:

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

14 b. restraining the parties from:

- 15 (1) intentionally or knowingly damaging or destroying
16 the tangible property of the parties, or of
17 either of them, specifically including, but not
18 limited to, any electronically stored materials,
19 electronic communications, social network data,
20 financial records, and any document that
21 represents or embodies anything of value,
22 (2) making any withdrawal for any purpose from any
23 retirement, profit-sharing, pension, death, or
24 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,
24

- 1 c. requiring the parties to maintain all presently
2 existing health, property, life and other insurance
3 which the individual is presently carrying on any
4 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,
- 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
23 consent of the other party, which shall not be
24 unreasonably withheld, and

1 h. requiring, unless otherwise agreed upon by the parties
2 in writing, the delivery by each party to the other
3 within thirty (30) days from the earlier of either the
4 date of service of the summons or the filing of an
5 initial pleading by the respondent, the following
6 documents:

7 (1) the federal and state income tax returns of each
8 party for the past two (2) years and any
9 nonpublic, limited partnership and privately held
10 corporate returns for any entity in which either
11 party has an interest, together with all
12 supporting documentation for the tax returns,
13 including but not limited to W-2 forms, 1099
14 forms, K-1 forms, Schedule C and Schedule E. If
15 a return is not completed at the time of
16 disclosure, the parties shall provide the
17 documents necessary to prepare the tax return of
18 the party, to include W-2 forms, 1099 forms, K-1
19 forms, copies of extension requests and estimated
20 tax payments,

21 (2) two (2) months of the most recent pay stubs from
22 each employer for whom the party worked,

23 (3) statements for the past six (6) months for all
24 bank accounts held in the name of either party

1 individually or jointly, or in the name of
2 another person for the benefit of either party,
3 or held by either party for the benefit of the
4 minor child or children of the parties,

5 (4) documentation regarding the cost and nature of
6 available health insurance coverage for the
7 benefit of either party or the minor child or
8 children of the parties,

9 (5) documentation regarding the cost and nature of
10 employment or educationally related child care
11 expenses incurred for the benefit of the minor
12 child or children of the parties, and

13 (6) documentation regarding all debts in the name of
14 either party individually or jointly, showing the
15 most recent balance due and payment terms.

16 2. If either party is not in possession of a document required
17 pursuant to subparagraph h of paragraph 1 of this subsection or has
18 not been able to obtain the document in a timely fashion, the party
19 shall state in verified writing, under the penalty of perjury, the
20 specific document which is not available, the reasons the document
21 is not available, and what efforts have been made to obtain the
22 document. As more information becomes available, there is a
23 continuing duty to supplement the disclosures.
24

1 3. Nothing in this subsection shall prohibit a party from
2 conducting further discovery pursuant to the Oklahoma Discovery
3 Code.

4 4. a. The provisions of the automatic temporary injunction
5 shall be printed as an attachment to the summons and
6 the petition and entitled "Automatic Temporary
7 Injunction Notice".

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

17 5. The automatic temporary injunction shall become an order of
18 the court upon fulfillment of the requirements of paragraph 1 of
19 this subsection unless and until:

20 a. the automatic temporary injunction is waived by the
21 parties. Both parties must indicate on the automatic
22 temporary injunction notice in the space provided that
23 the parties have both agreed to waive the automatic
24

1 temporary injunction. Each party must sign his or her
2 own name on the notice in the space provided, or

3 b. a party, no later than three (3) days after service on
4 the party, files an objection to the injunction and
5 requests a hearing. Provided, the automatic temporary
6 injunction shall remain in effect until the hearing
7 and a judge orders the injunction removed.

8 6. The automatic temporary injunction shall be dissolved upon
9 the granting of the dissolution of marriage, final order of legal
10 separation or other final order.

11 7. Nothing in this subsection shall preclude either party from
12 applying to the court for further temporary orders, pursuant to this
13 section, an expanded automatic temporary injunction, or modification
14 or revocation thereto.

15 8. a. With regard to an automatic temporary injunction, when
16 a petition for dissolution of marriage, annulment of a
17 marriage, or a legal separation is filed and served, a
18 peace officer shall use every reasonable means to
19 enforce the injunction which enjoins both parties from
20 molesting or disturbing the peace of the other party
21 or the children of the marriage against a petitioner
22 or respondent, whenever:

23 (1) there is exhibited by a respondent or by the
24 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

(2) the peace officer has cause to believe that a violation of the automatic temporary injunction has occurred.

b. 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 dissolution of marriage or legal separation 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. providing other injunctive relief proper in the circumstances.

1 All applications for temporary orders shall set forth the
2 factual basis for the application and shall be verified by the party
3 seeking relief. The application and a notice of hearing shall be
4 served on the other party in any manner provided for in the Rules of
5 Civil Procedure.

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

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

10 2. A temporary restraining order. If the court finds on the
11 basis of a verified application and testimony of witnesses that
12 irreparable harm will result to the moving party, or a child of a
13 party if no order is issued before the adverse party or attorney for
14 the adverse party can be heard in opposition, the court may issue a
15 temporary restraining order which shall become immediately effective
16 and enforceable without requiring notice and opportunity to be heard
17 to the other party. Provided, for the purposes of this section, no
18 minor child or children temporarily residing in a licensed,
19 certified domestic violence shelter in the state shall be removed by
20 an ex parte order. If a temporary restraining order is issued
21 pursuant to this paragraph, the motion for a temporary order shall
22 be set within ten (10) days.

23 C. Any temporary orders and the automatic temporary injunction,
24 or specific terms thereof, may be vacated or modified prior to or in

1 conjunction with a final decree on a showing by either party of
2 facts necessary for vacation or modification. Temporary orders and
3 the automatic temporary injunction terminate when the final judgment
4 on all issues, except attorney fees and costs, is rendered or when
5 the action is dismissed. The court may reserve jurisdiction to rule
6 on an application for a contempt citation for a violation of a
7 temporary order or the automatic temporary injunction which is filed
8 any time prior to the time the temporary order or injunction
9 terminates.

10 D. Upon granting a decree of dissolution of marriage, annulment
11 of a marriage, or legal separation, the court ~~may~~ shall require
12 ~~either party~~ the parties to pay ~~such reasonable~~ their own expenses
13 ~~of the other as may be just and proper under the circumstances,~~
14 including attorney fees, except as provided in subsection E of this
15 section and in Section 112.6 of this title.

16 E. Upon granting a decree of dissolution of marriage, annulment
17 of a marriage, or legal separation, where the court finds by a
18 preponderance of the evidence that one spouse caused the
19 dissolution, annulment or separation by committing at least one of
20 the grounds for divorce, other than incompatibility, listed in
21 Section 101 of this title, the court shall order that party to pay
22 the other party's expenses, including attorney fees.

23 F. The court may in its discretion make additional orders
24 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 dissolution of marriage action
4 made for the benefit of either party or their respective attorneys.

5 SECTION 4. AMENDATORY 43 O.S. 2011, Section 121, as last
6 amended by Section 1, Chapter 334, O.S.L. 2012 (43 O.S. Supp. 2016,
7 Section 121), is amended to read as follows:

8 Section 121. A. When a dissolution of marriage is granted, the
9 decree shall restore:

10 1. To the wife her maiden or former name, if her name was
11 changed as a result of the marriage and if she so desires;

12 2. To the husband his former name, if his name was changed as a
13 result of the marriage and if he so desires.

14 B. The court shall enter its decree confirming in each spouse
15 the property owned by him or her before marriage and the undisposed-
16 of property acquired after marriage by him or her in his or her own
17 right. Either spouse may be allowed such alimony out of real and
18 personal property of the other as the court shall think reasonable,
19 having due regard to the value of such property at the time of the
20 dissolution of marriage. Alimony may be allowed from real or
21 personal property, or both, or in the form of money judgment,
22 payable either in gross or in installments, as the court may deem
23 just and equitable. As to such property, whether real or personal,
24 which has been acquired by the parties jointly during their

1 marriage, whether the title thereto be in either or both of said
2 parties, the court shall, subject to a valid antenuptial contract in
3 writing, make such division between the parties as may appear just
4 and reasonable, by a division of the property in kind, or by setting
5 the same apart to one of the parties, and requiring the other
6 thereof to be paid such sum as may be just and proper to effect a
7 fair and just division thereof. However, where the court finds by a
8 preponderance of the evidence that one spouse caused the dissolution
9 of marriage by committing at least one of the grounds for divorce,
10 other than incompatibility, listed in Section 101 of this title, the
11 court shall award only one-quarter (1/4) of the marital property to
12 that spouse and the other spouse shall retain the remaining three-
13 quarters (3/4) of the marital property. The court may set apart a
14 portion of the separate estate of a spouse to the other spouse for
15 the support of the children of the marriage where custody resides
16 with that spouse.

17 C. A servicemember's portion of Special Monthly Compensation
18 (SMC) awarded by or from the United States Department of Veterans
19 Affairs for service-connected loss or loss of use of specific organs
20 or extremities shall be separate property, not divisible as a
21 marital asset nor as community property. For purposes of
22 identifying SMC, it is the sole responsibility of the servicemember
23 to prove with competent evidence what amount of his or her
24 disability compensation is SMC.

1 D. A servicemember's portion of Combat-Related Special
2 Compensation (CRSC) shall be separate property, not divisible as a
3 marital asset nor as community property, if a specific dollar amount
4 of CRSC can be proved by the servicemember as compensation for
5 combat-related loss of limb or loss of bodily function and the CRSC
6 award was applied for and established prior to the date of the
7 filing of the dissolution of marriage action.

8 E. Pursuant to the federal Uniformed Services Former Spouses'
9 Protection Act, 10 U.S.C., Section 1408, a court may treat
10 disposable retired or retainer pay payable to a military member
11 either as property solely of the member or as property of the member
12 and the spouse of the member. If a state court determines that the
13 disposable retired or retainer pay of a military member is the sole
14 and separate property of the military member, the court shall submit
15 clear and concise written findings of such determination to be
16 included in the decree or final order. If a state court determines
17 that the disposable retired or retainer pay of a military member is
18 marital property, the court shall submit clear and concise written
19 findings of such determination to be included in the decree or final
20 order and shall award an amount consistent with the rank, pay grade,
21 and time of service of the member at the date of the filing of the
22 petition, unless the court finds a more equitable date due to the
23 economic separation of the parties.

1 F. Unless otherwise agreed to by the parties, any division of
2 an active duty military member's retirement or retainer pay shall
3 use the following language:

4 "The former spouse is awarded a percentage of the member's
5 disposable military retired pay, to be computed by multiplying fifty
6 percent (50%) times a fraction, the numerator of which is ____x____
7 months of marriage during the member's creditable military service,
8 divided by the member's total number of months of creditable
9 military service."

10 G. In the case of a member's retiring from reserve duty, unless
11 otherwise agreed by the parties, any division of a reservist's
12 retirement or retainer pay shall use the following language:

13 "The former spouse is awarded a percentage of the member's
14 disposable military retired pay, to be computed by multiplying fifty
15 percent (50%) times a fraction, the numerator of which is __X____
16 reserve retirement points earned during the period of the marriage,
17 divided by the member's total number of reserve retirement points
18 earned."

19 SECTION 5. This act shall become effective November 1, 2017.
20

21 56-1-6834 EK 02/16/17
22
23
24