

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 425

BY: WRIGHT

AS INTRODUCED

AN ACT RELATING TO CHILDREN AND MARRIAGE AND FAMILY;
AMENDING SECTION 2, CHAPTER 269, O.S.L. 1983, AS
AMENDED BY SECTION 5, CHAPTER 238, O.S.L. 1988 (10
O.S. SUPP. 1990, SECTION 21.1), WHICH RELATES TO
CUSTODY AND GUARDIANSHIP OF CHILDREN; REQUIRING
CONSIDERATION OF EVIDENCE OF DOMESTIC ABUSE IN
CERTAIN CASES; DECLARING PRESUMPTION IF DOMESTIC
ABUSE IS SHOWN BY CLEAR AND CONVINCING EVIDENCE;
PROVIDING FOR CODIFICATION; AND PROVIDING AN
EFFECTIVE DATE.

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

SECTION 1. AMENDATORY Section 2, Chapter 269, O.S.L.
1983, as amended by Section 5, Chapter 238, O.S.L. 1988 (10 O.S.
Supp. 1990, Section 21.1), is amended to read as follows:

Section 21.1 A. Custody should be awarded or a guardian
appointed in the following order of preference according to the best
interests of the child to:

1. a parent or to both parents jointly except as otherwise
provided in subsection B of this section;

2. a grandparent;

3. a person who was indicated by the wishes of a deceased parent;

4. a relative of either parent;

5. the person in whose home the child has been living in a wholesome and stable environment; or

6. any other person deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

B. When a parent having physical custody and providing support to a child becomes deceased, in awarding custody or appointing as guardian of the child the noncustodial parent, the court may deny the custody or guardianship only if:

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

a. in substantial compliance with a support provision contained in a decree of divorce, or a decree of separate maintenance or an order adjudicating responsibility to support in a reciprocal enforcement of support proceeding, paternity action, juvenile proceeding, guardianship proceeding, or orders of modification to such decree, or other lawful orders of support entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support, or

b. according to such parent's financial ability to contribute to such child's support if no provision for support is provided in a decree of divorce or an order of modification subsequent thereto;

2. the noncustodial parent has abandoned the child; or

3. the court finds it would be detrimental to the health or safety of the child for the noncustodial parent to have custody or be appointed guardian.

C. The court may consider the preference of the child in awarding custody of said child if the child is of sufficient age to form an intelligent preference.

D. In every case involving the custody of, guardianship of or visitation with a child, the court shall consider evidence of ongoing domestic abuse which is properly brought before it. If the occurrence of ongoing domestic abuse is established by clear and convincing evidence, there shall be a presumption that it is not in the best interests of the child to have custody, guardianship or unsupervised visitation granted to the abusive person.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 112.2 of Title 43, unless there is created a duplication in numbering, reads as follows:

In every case involving the custody of, guardianship of or visitation with a child, the court shall consider evidence of ongoing domestic abuse which is properly brought before it. If the occurrence of ongoing domestic abuse is established by clear and convincing evidence, there shall be a presumption that it is not in the best interests of the child to have custody, guardianship or unsupervised visitation granted to the abusive person.

SECTION 3. This act shall become effective September 1, 1991.

43-1-240

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