

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2579

By: Boyd (Laura)

AS INTRODUCED

An Act relating to marriage and family; amending 43 O.S. 1991, Section 112.2, which relates to evidence of ongoing domestic abuse; modifying and clarifying language; defining terms; adding certain considerations for certain custodial and visitation proceedings; creating certain rebuttable presumptions; providing for findings of a change of circumstance; providing for awards of visitation to perpetrators of domestic abuse; providing certain restrictions and conditions; authorizing contents of certain orders; authorizing confidentiality of certain records; prohibiting certain orders; requiring certain guidelines; amending 10 O.S. 1991, Section 21.1, which relates to custody of children; clarifying language relating to ongoing domestic abuse; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 43 O.S. 1991, Section 112.2, is amended to read as follows:

Section 112.2 A. In every ~~case~~ proceeding 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 severe domestic abuse is established by clear and convincing evidence, there shall be a rebuttable presumption that it is not in the best interests of the child to ~~have custody, guardianship or unsupervised visitation granted to the abusive person~~ be placed in sole custody, joint legal custody or joint physical custody, with the perpetrator of the domestic abuse or to have guardianship or unsupervised visitation granted to the perpetrator of the domestic abuse. The absence of proof of direct physical harm or the threat of physical harm to a child or children does not, in and of itself, rebut the presumption created by this section.

B. For purposes of this section and Sections 2 through 5 of this act:

1. "Domestic abuse" means any act of physical harm, or the threat of imminent physical harm which is committed by an adult, emancipated minor, or minor sixteen (16) or seventeen (17) years of age, against another adult, emancipated minor or minor child who is a family or household member; and

2. "Family or household members" means spouses, ex-spouses, present spouses of ex-spouses, parents, children, persons otherwise related by blood or marriage, persons living in the same household or who formerly lived in the same household, or persons who are the biological parents of the same child, regardless of their marital status, or whether they have lived together at any time. This shall include the elderly and handicapped.

C. In determining the existence of "ongoing domestic abuse", the court may consider:

1. The severity and duration of the domestic abuse despite the lack of present overt acts;

2. Present continuing physical harm or threat of physical harm;

and

3. Previous acts of physical harm or threat of physical harm.

SECTION 2. 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:

In addition to other factors which a court must consider in a proceeding in which the custody of a child or visitation by a parent or other person entitled to visitation is at issue and in which the court has made a finding of domestic abuse:

1. The court shall consider as primary the safety and well-being of the child and of the parent of the child who is the victim of domestic abuse;

2. The court shall consider the perpetrator's history of causing physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault, to the parent of the child; and

3. If a parent of the child is absent or relocates because of an act of domestic abuse by the perpetrator, the absence or relocation is not a factor that weighs against the parent in determining custody or visitation.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 112.4 of Title 43, unless there is created a duplication in numbering, reads as follows:

In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the court that domestic abuse has occurred raises a rebuttable presumption that it is in the best interest of the child to reside with the parent who is not a perpetrator of domestic abuse in the location of that member's choice, within or outside the state.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 112.5 of Title 43, unless there is created a duplication in numbering, reads as follows:

In every proceeding in which there is at issue the modification of an order for custody or visitation of a child, the determination that domestic abuse has occurred constitutes a finding of a change of circumstances.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 112.6 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. A court may award visitation by a perpetrator of domestic abuse only if the court finds that adequate provision for the safety of the child and the parent of the child who is a victim of domestic abuse can be made.

B. In a visitation order, a court may:

1. Order an exchange that is protected;
2. Order visitation supervised by another person or agency;
3. Order the perpetrator of domestic abuse to attend a program of intervention for perpetrators or other designated counseling as a condition of the visitation;
4. Order the perpetrator of domestic abuse to abstain from possession or consumption of alcohol or controlled substances during the visitation and for twenty-four (24) hours preceding the visitation;
5. Order the perpetrator of domestic abuse to pay a fee to defray the costs of supervised visitation;
6. Prohibit overnight visitation;
7. Require a bond from the perpetrator of domestic abuse for the return and safety of the child; and
8. Impose any other condition to provide for the safety of the child, the victim of domestic abuse, or other family or household member.

C. Whether or not visitation is allowed, the court may keep the address of the child and the victim confidential.

D. The court shall not order a victim of domestic abuse to attend counseling relating to the victim's status or behavior as a victim, singly or with the perpetrator of domestic abuse as a condition of receiving custody of a child or as a condition of visitation.

E. If a court allows a family or household member to supervise visitation, the court shall establish guidelines and procedures for the supervisor to follow during visitation.

SECTION 6. AMENDATORY 10 O.S. 1991, 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 rebuttable presumption that it is not in the best interests of the child to have custody guardianship or unsupervised visitation granted to the abusive person pursuant to Section 112.2 of Title 43 of the Oklahoma Statutes.~~

SECTION 7. This act shall become effective September 1, 1994.

44-2-7558

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