

And

Fisher of the Senate

An Act relating to children; amending 10 O.S. 1991, Section 21.1, as amended by Section 1, Chapter 386, O.S.L. 1997 (10 O.S. Supp. 1998, Section 21.1), which relates to order of custody; updating language; modifying order of priority; modifying when noncustodial parent may obtain custody; providing for grandparental rights of custody to a child; setting conditions; making certain custody by operation of law or order of the court; specifying conditions for obtaining custody; amending 10 O.S. 1991, Section 26, as amended by Section 44, Chapter 415, O.S.L. 1998, and as renumbered by Section 51, Chapter 415, O.S.L. 1998 (10 O.S. Supp. 1998, Section 7202.1), which relates to right to custody; requiring court order for return of child relinquished to certain persons; amending 43 O.S. 1991, Section 112, as last amended by Section 7, Chapter 323, O.S.L. 1998 (43 O.S. Supp. 1998, Section 112), which relates to care and custody of children; authorizing court during certain actions to provide for grandparental custody or visitation; amending Section 12, Chapter 290, O.S.L. 1994, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 11, Chapter 293, O.S.L. 1997 (10 O.S. Supp. 1998, Section 7302-6.9), which relates to regimented juvenile training program; modifying eligibility requirements for program; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 21.1, as amended by Section 1, Chapter 386, O.S.L. 1997 (10 O.S. Supp. 1998, Section 21.1), is amended to read as follows:

Section 21.1 A. ~~Custody~~ Except as otherwise provided by this section and by law, 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. The person in whose home the child has been living in a wholesome and stable environment;

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

~~4.~~ 5. 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, for a period of twelve (12) consecutive months out of the last fourteen (14) months immediately preceding the death of the custodial 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~~ such minor:

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~~ an order 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.~~

Incidental or token visits or communications shall not be construed or considered in establishing whether a parent has maintained or contributed to the support of the child;

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. 1. It is presumed to be in the best interest of a child for a grandparent of the child to receive custody of the child if:

a. the child is abandoned and left in the physical custody of the grandparent by a parent or the parents of the child with no physical contact between the parents and the child for one (1) year or more, or

b. the custodial parent or parents have, for a period of twelve (12) consecutive months out of the last fourteen (14) months immediately preceding any petition for custody of the child, willfully failed, refused or neglected to contribute to the support of such minor:

(1) in substantial compliance with an order entered by a court of competent jurisdiction adjudicating the duty, amount and manner of support, or

(2) according to such parent's financial ability to contribute to such child's support if no provision for support is provided in an order.

Incidental or token visits or communications shall not be construed or considered in establishing whether a parent has maintained or contributed to the support of the child.

2. Such custody shall be by operation of law or by order of a court of competent jurisdiction.

D. 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.~~ E. 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.

~~E.~~ F. In every case involving the custody of, guardianship of or visitation with a child, the court shall determine whether any individual seeking custody of, guardianship of or visitation with a child is or has previously been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state. 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 a person subject to or previously subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 26, as amended by Section 44, Chapter 415, O.S.L. 1998, and as renumbered by Section 51, Chapter 415, O.S.L. 1998 (10 O.S. Supp. 1998, Section 7202.1), is amended to read as follows:

Section 7202.1 A. No person, other than the parents, or persons related to the child within the third degree of the child, the Department of Human Services, or a child-placing agency, may accept the permanent care and custody of a child except in accordance with the decree of a court of competent jurisdiction or as otherwise provided by the Oklahoma Children's Code, the Oklahoma

Adoption Code, the Oklahoma Guardianship and Conservatorship Act or the Oklahoma Child Care Facilities Licensing Act.

B. A child whose care and custody has been surrendered pursuant to the provisions of this section may not be recovered by the parents or other person who relinquished the child except through order of a court of competent jurisdiction, based on a finding that such order returning the child is in the best interests of the child.

SECTION 3. AMENDATORY 43 O.S. 1991, Section 112, as last amended by Section 7, Chapter 323, O.S.L. 1998 (43 O.S. Supp. 1998, 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 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. In making an order for custody, the court may specify that:

- a. 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. the noncustodial parent is to notify the custodial parent if the noncustodial parent plans to change permanent residence.

D. In any case involving the custody or visitation of a child, the court may award custody upon petition to any party with a legitimate interest therein, including, but not limited to, grandparents. The term "legitimate interest" shall be broadly construed to accommodate the best interests of the child.

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, the 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.

~~E.~~ 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 has been provided by the Department of Human Services for the benefit of each child. If public assistance money 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 and for the just adjudication and establishment of current child support.

~~F.~~ 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 any arrearages of child support.

SECTION 4. AMENDATORY Section 12, Chapter 290, O.S.L. 1994, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 11, Chapter 293, O.S.L. 1997 (10 O.S. Supp. 1998, Section 7302-6.9), is amended to read as follows:

Section 7302-6.9 A. It is the intent of the Legislature that the program established pursuant to this section benefit the state by providing a two-phase regimented juvenile training program under which certain adjudicated juveniles are subject to a controlled and regimented environment that affirms dignity of self and respect for others; promotes the value of education, work, and self-discipline; and develops useful skills and abilities that can be applied when the juvenile is reintegrated into the community.

B. 1. The Office of Juvenile Affairs through the Department of Juvenile Justice shall establish, maintain, and operate a regimented juvenile training program. Juveniles eligible for participation in the program shall be assessed and deemed appropriate for the program by the Department of Juvenile Justice. The juveniles eligible for the program shall include only juveniles adjudicated delinquent ~~and placed in the custody of the Office of Juvenile Affairs.~~

2. A juvenile may be eliminated from the program upon a determination by the Department of Juvenile Justice that a physical or mental condition will prevent full participation in the program by such offender.

C. The regimented juvenile training program shall consist of two phases, which shall be administered as follows:

1. Phase I: An intensive physical training and discipline phase in a secure facility or a nonsecure facility, for a period of not more than one hundred twenty (120) days and administered by the Department of Juvenile Justice. The Department may operate Phase I

at facilities operated by the Office of Juvenile Affairs or contract for such services;

2. Phase II: A community reintegration phase for juveniles who have completed Phase I of the program, which is administered by the Office, as follows:

- a. if appropriate juvenile diversion services are available, the Department of Juvenile Justice may contract for such services, and
- b. if appropriate diversion services are not available, the juvenile shall be subject to a period of supervision under the Department of Juvenile Justice;

3. A juvenile in the regimented juvenile training program shall be required to participate in the reintegration phase for a period to be determined by the Department of Juvenile Justice;

4. In addition to the requirements set forth in this subsection, juveniles shall be required to participate in a job training and educational component, as deemed appropriate by the Department of Juvenile Justice. The educational component shall include classroom work comprised of basic academic and/or vocational instruction.

D. If a juvenile fails to progress through or complete the initial phase of the regimented juvenile training program, the Department of Juvenile Justice may reassign the juvenile to another appropriate facility. In addition, if a juvenile fails to progress through or complete the second phase of the program, the Department may return the juvenile to Phase I of the program for completion of all or part of the earlier phase; except that a juvenile shall not be returned for participation in the initial phase more than once.

E. The Office of Juvenile Affairs shall establish standards, which shall be enforced by the Department of Juvenile Justice, for the regimented juvenile training program and each of the phases thereof described in this section. Supportive services deemed

necessary by the Department shall be made available under the phases of the regimented juvenile training program, as deemed appropriate by the Office of Juvenile Affairs.

SECTION 5. This act shall become effective November 1, 1999.

Passed the House of Representatives the 1st day of March, 1999.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1999.

President of the Senate