

SB 793

THE STATE SENATE
Tuesday, February 23, 1999

Senate Bill No. 793
As Amended

SENATE BILL NO. 793 - By: WILLIAMSON and FORD of the Senate and ASKINS, REESE and VAUGHN of the House.

[child custody - minor children - visitation - temporary orders - requirements - joint custody - guidelines - repealer - codification - effective date]

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

SECTION 1. AMENDATORY Section 1, Chapter 243, O.S.L.

1992, as last amended by Section 7, Chapter 131, O.S.L. 1996 (43 O.S. Supp. 1998, Section 107.1), is amended to read as follows:

Section 107.1 A. 1. In an action for divorce or such other action where there are minor children involved, the court shall not issue a final order thereon for at least ninety (90) days from the date of filing the petition which ninety (90) days may be waived by the court for good cause shown and without objection by either party.

2. The court may require that within the ninety-day period specified by paragraph 1 of this subsection, the parties attend and complete an educational program specified by Section & 107.7 of this ~~act~~ title, and complete a parenting plan as specified by Section 2 of this act.

1 B. This section shall not apply to divorces filed for any of
2 the following causes:

3 1. Abandonment for one (1) year;

4 2. Extreme cruelty;

5 3. Habitual drunkenness;

6 4. Imprisonment of the other party in a state or federal penal
7 institution under sentence thereto for the commission of a felony at
8 the time the petition is filed;

9 5. The procurement of a final divorce decree outside this state
10 by a husband or wife which does not in this state release the other
11 party from the obligations of the marriage; and

12 6. Insanity for a period of five (5) years, the insane person
13 having been an inmate of a state institution for the insane in the
14 State of Oklahoma, or an inmate of a state institution for the
15 insane in some other state for such period, or an inmate of a
16 private sanitarium, and affected with a type of insanity with a poor
17 prognosis for recovery.

18 **C. After a petition has been filed in an action for divorce**
19 **where there are minor children involved, the court may make any such**
20 **order concerning property, children, support and expenses of the**
21 **suit as provided for in Section 110 of this title, to be enforced**
22 **during the pendency of the action, as may be right and proper.**

1 **D. The court may issue a final order in an action for divorce**
2 **where minor children are involved before the ninety-day time period**
3 **set forth in subsection A of this section has expired, if the**
4 **parties voluntarily participate in marital or family counseling and**
5 **the court finds reconciliation is unlikely.**

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 107.4 of Title 43, unless there
8 is created a duplication in numbering, reads as follows:

9 A. There shall be a presumption that joint custody is in the
10 best interest of a child in an initial custody determination. An
11 award of joint custody does not imply an equal division of financial
12 responsibility for the child. Joint custody shall not be awarded as
13 a substitute for an existing custody arrangement, unless there has
14 been a substantial and material change in circumstances since the
15 entry of the prior custody order or decree, which change affects the
16 welfare of the child, such that joint custody is presently in the
17 best interest of the child. With respect to any proceeding in which
18 it is proposed that joint custody be terminated, the court shall not
19 terminate joint custody unless there has been a substantial and
20 material change in circumstances affecting the welfare of the child,
21 since entry of the joint custody order, such that joint custody is
22 no longer in the best interest of the child.

1 B. In determining whether a joint custody order is in the best
2 interest of the child, the court shall consider the following
3 factors:

4 1. Whether the child has established or has been allowed to
5 establish a close relationship with each parent;

6 2. Whether each parent is capable of providing adequate care
7 for the child throughout each period of responsibility, including
8 arranging for the child's care by others as needed;

9 3. Whether each parent is willing to accept all
10 responsibilities of parenting, including a willingness to accept
11 care of the child at specified times and to relinquish care to the
12 other parent at specified times;

13 4. Whether the child can best maintain and strengthen a
14 relationship with both parents through predictable, frequent contact
15 and whether a child's development will profit from such involvement
16 and influence with both parents;

17 5. Whether each parent is able to allow the other to provide
18 care without intrusion, that is, to respect the other's parental
19 rights and responsibilities and his or her right to privacy;

20 6. The suitability of a parenting plan for the implementation
21 of joint custody, preferably, although not necessarily, one arrived
22 at through parental agreement, through mediation if necessary and
23 feasible;

1 7. Geographic distance between the parent's residences, and
2 each parent's willingness and ability to travel and transport the
3 child for periods of responsibility; and

4 8. Willingness or ability of the parents to communicate,
5 cooperate, or agree on issues regarding the child's needs.

6 C. In any proceeding in which the custody of a child is at
7 issue, the court shall not prefer one parent as a custodian solely
8 because of gender, race, or religion.

9 D. In any case in which the parents agree to a form of custody,
10 the court should award custody consistent with the agreement, unless
11 the court determines that the agreement is not in the best interest
12 of the child.

13 E. In making an order of joint custody, the court may specify
14 the circumstances, if any, under which the consent of both legal
15 custodians is required to be obtained in order to exercise legal
16 control of the child and the consequences of the failure to obtain
17 mutual consent.

18 F. When joint custody is awarded, the court shall approve a
19 parenting plan for the implementation of the prospective custody
20 arrangements prior to the award of joint custody. The parenting
21 plan shall include a division of a child's time and care into
22 periods of responsibility for each parent. It may also include:

- 1 1. Statements regarding the child's religion, education, child
2 care, recreational activities, and medical and dental care;
- 3 2. Designation of specific decision-making responsibilities;
- 4 3. Methods for communicating information about the child,
5 transporting the child, exchanging care for the child, and
6 maintaining telephone and mail contact between parent and child;
- 7 4. Procedures for future decision-making, including procedures
8 for dispute resolution; and
- 9 5. Other statements regarding the welfare of the child or
10 designed to clarify and facilitate parenting under joint custody
11 arrangements.

12 In a case where joint custody is not agreed to, or necessary
13 aspects of the parenting plan are contested, the parties shall each
14 submit parenting plans. The court may accept the plan proposed by
15 either party, or it may combine or revise these plans as it deems
16 necessary in the child's best interest, or it may order the parties
17 to attend professional mediation on the specific contested issues to
18 reach complete agreement on the parenting plan. The time of filing
19 of parenting plans shall be set by local rule. A plan adopted by
20 the court shall be entered as an order of the court.

21 G. Where custody is contested, the court shall refer that issue
22 to mediation if feasible. The court may also use auxiliary services
23 such as professional evaluations.

1 H. Notwithstanding any other provisions of law, access to
2 records and information pertaining to a minor child, including but
3 not limited to medical, dental, and school records, shall not be
4 denied to a parent because that parent is not the child's physical
5 custodial parent or because that parent is not a joint custodial
6 parent.

7 I. Whenever a request for joint custody is granted or denied,
8 the court shall state in its order its basis for granting or denying
9 the request for joint custody. A statement that joint custody is or
10 is not in the best interest of the child is not sufficient to meet
11 the requirements of this subsection.

12 J. An award for joint custody means that:

13 1. Each parent shall have significant, well-defined periods of
14 responsibility for the child;

15 2. Each parent shall have, and be allowed and expected to carry
16 out, responsibility for the child's financial, physical, emotional,
17 and developmental needs during that parent's period of
18 responsibility;

19 3. The parents shall consult with each other on major decisions
20 involving the child before implementing those decisions. Neither
21 parent shall make a decision or take an action which results in a
22 major change in a child's life until the matter has been discussed
23 with the other parent and the parents agree. If the parents, after

1 discussion, cannot agree and if one parent wishes to effect a major
2 change while the other does not wish the major change to occur, then
3 no change shall occur until the issue has been resolved as provided
4 in this subsection;

5 4. The following guidelines shall apply to major changes in a
6 child's life:

- 7 a. if either parent plans to change his home city or
8 state of residence, he or she shall provide to the
9 other parent thirty (30) days' notice in writing
10 stating the date and destination of move,
- 11 b. the religious denomination and religious activities,
12 or lack thereof, which were being practiced during the
13 marriage should not be changed unless the parties
14 agree or it has been otherwise resolved as provided in
15 this subsection,
- 16 c. both parents shall have access to school records,
17 teachers, and activities. The type of education,
18 public or private, which was in place during the
19 marriage should continue, whenever possible, and
20 school districts should not be changed unless the
21 parties agree or it has been otherwise resolved as
22 provided in this subsection, and

1 d. both parents shall have access to medical and dental
2 treatment providers and records. Each parent has
3 authority to make emergency medical decisions.
4 Neither parent may contract for major elective medical
5 or dental treatment unless both parents agree or it
6 has been otherwise resolved as provided in this
7 subsection, and

8 5. Decisions regarding major changes in a child's life may be
9 decided by:

- 10 a. agreement between the joint custodial parents,
- 11 b. a requirement that the parents seek family counseling,
12 professional conciliation, or mediation services to
13 assist in resolving their differences,
- 14 c. agreement by the parents to submit the dispute to
15 binding arbitration,
- 16 d. allocating ultimate responsibility for a particular
17 major decision area to one legal custodian,
- 18 e. terminating joint custody and awarding sole custody to
19 one person, or
- 20 f. the district court.

21 K. No person other than a natural or adoptive parent shall be
22 awarded custody absent of confirmed showing of unfitness of the
23 natural or adoptive parent.

1 L. As used in this section:

2 1. "Child" means a person under the age of eighteen (18);

3 2. "Custody" means the authority and responsibility to make

4 major decisions in a child's best interest in the areas of

5 residence, medical and dental treatment, education or child care,

6 religion, and recreation;

7 3. "Joint custody" means an order of the court awarding custody

8 of a child to two parents. Joint custody does not imply equal

9 division of the child's time between the parents, or an equal

10 division of financial responsibility for the child;

11 4. "Parent" means a natural parent, adoptive parent, or person

12 who is acting as a parent who has or shares legal custody of a child

13 or who claims a right to have or share legal custody;

14 5. "Parenting plan" means a document submitted for approval of

15 the court setting forth the responsibilities of each parent

16 individually and the parents jointly in a joint custody arrangement;

17 6. "Period of responsibility" is a specified time period during

18 which a parent is responsible for providing a child's physical,

19 developmental and emotional needs, including the decision-making

20 required in daily living. Specified periods of responsibility shall

21 not be changed in an instance or more permanently except by the

22 methods of decision-making described under the definition of joint

23 custody;

1 7. "Sole custody" means an order of the court awarding custody
2 of a child to one parent;

3 8. "Visitation" is a period of time available to a noncustodial
4 parent, under a sole custody arrangement, during which a child
5 resides with or is under the care and control of the noncustodial
6 parent; and

7 9. "Mediation" means a session with both parents present and
8 with a licensed mediator experienced in mediating the contested
9 specifics of the case at hand, designed to facilitate the parties'
10 reaching of an agreement concerning the contested specifics of the
11 case.

12 SECTION 3. AMENDATORY 43 O.S. 1991, Section 111.1, is
13 amended to read as follows:

14 Section 111.1 A. Any order providing for the visitation of a
15 noncustodial parent with any of the children of such noncustodial
16 parent, or any order providing for established periods of
17 responsibility as established in the parenting plan of a joint
18 custodial parent with any of the children of such joint custodial
19 parent, shall provide a specified minimum amount of visitation
20 between the noncustodial or joint custodial parent and the child
21 unless the court determines otherwise. Except for good cause shown
22 and when in the best interests of the child, the order shall
23 encourage additional visitations of the noncustodial parent and the

1 child, and liberal period of responsibility for a joint custodial
2 parent and the child, and in addition encourage liberal telephone
3 communications and postal communications between the noncustodial
4 parent and the child, and the joint custodial parent and the child.

5 B. Violation of an order providing for the visitation of a
6 noncustodial parent with any of the children of such noncustodial
7 parent, or violation of an order providing for established periods
8 of responsibility as established in a parenting plan of a joint
9 custodial parent and the child, may be enforced by the noncustodial
10 parent or the joint custodial parent by indirect civil contempt.
11 Unless the custodial parent or joint custodial parent establishes
12 good cause for noncompliance, the noncustodial parent or the
13 deprived joint custodial parent shall be entitled to recover court
14 costs and attorney fees expended in enforcing the order.

15 SECTION 4. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 111.4 of Title 43, unless there
17 is created a duplication in numbering, reads as follows:

18 A. Parents. A parent not granted custody or residency of the
19 child is entitled to reasonable visitation rights unless the court
20 finds, after a hearing, that visitation would endanger seriously the
21 child's physical, mental, moral or emotional health, pursuant to
22 Section 111.1 of Title 43 of the Oklahoma Statutes.

1 B. Grandparents. Grandparents may be granted visitation rights
2 pursuant to the provisions of Section 5 of Title 10 of the Oklahoma
3 Statutes.

4 C. Modification. The court may modify an order granting or
5 denying visitation or period of responsibility rights whenever
6 modifications would serve the best interest of the child.

7 D. Enforcement of rights. An order granting visitation or
8 period of responsibility rights to a parent pursuant to this section
9 may be enforced in accordance with Section 111.1 of Title 43 of the
10 Oklahoma Statutes.

11 E. Repeated denial of rights, effect. Repeated unreasonable
12 denial of or interference with visitation rights or period of
13 responsibility granted to parent pursuant to this act may be
14 considered a material change of circumstances which justifies
15 modification of a prior order of child custody.

16 F. Repeated child support misuse, effect. Repeated child
17 support misuse may be considered a material change of circumstances
18 which justifies modification of a prior order of child custody.

19 SECTION 5. REPEALER 43 O.S. 1991, Sections 109 and 112,
20 as last amended by Section 7, Chapter 323, O.S.L. 1998 (43 O.S.
21 Supp. 1998, Section 112), is hereby repealed.

22 SECTION 6. This act shall become effective November 1, 1999.

23 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-16-99 - DO
24 PASS, As Amended and Coauthored.