

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

SENATE BILL NO. 559

By: Williams

AS INTRODUCED

An Act relating to child custody; 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 child custody and guardianship; deleting language that limits court consideration of evidence of domestic abuse; amending 43 O.S. 1991, Section 112.2, which relates to custody, guardianship, and visitation of children; deleting language that limits court consideration of evidence of domestic abuse; and declaring an emergency.

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 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~~ the 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~~ the parent's financial ability to contribute to ~~such~~ the 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~~ the 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.

E. 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 43 O.S. 1991, Section 112.2, is amended to read as follows:

Section 112.2 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.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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