

THE HOUSE OF REPRESENTATIVES
Thursday, February 28, 2008

Committee Substitute for
House Bill No. 2637

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2637 - By: PETERS of the House and LEFTWICH of the Senate.

An Act relating to marriage and family; amending 43 O.S. 2001, Sections 109, 110.1, 111.1 and Section 8, Chapter 400, O.S.L. 2002 (43 O.S. Supp. 2007, Section 112.3), which relate to custody of children and visitation guidelines; adding presumption in certain circumstances; defining terms; providing considerations for determining custody; adding condition; deleting certain burden of proof; providing for visitation with certain noncustodial parents under certain circumstances; terminating visitation upon certain occurrences; providing for confidentiality of the address of certain persons; authorizing action to maintain confidentiality of address; providing for waiver of notice of relocation under certain circumstances; entitling domestic abuse or stalking victims to have attorney fees and costs paid for under certain circumstances; providing for codification; and providing an effective date.

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

1 SECTION 1. AMENDATORY 43 O.S. 2001, Section 109, is amended to read as
2 follows:

3 Section 109. A. In awarding the custody of a minor unmarried child or in
4 appointing a general guardian for said child, the court shall consider what appears to be
5 in the best interests of the physical and mental and moral welfare of the child.

6 B. The court, pursuant to the provisions of subsection A of this section, may grant
7 the care, custody, and control of a child to either parent or to the parents jointly.

1 For the purposes of this section, the terms joint custody and joint care, custody, and
2 control mean the sharing by parents in all or some of the aspects of physical and legal
3 care, custody, and control of their children.

4 C. If either or both parents have requested joint custody, said parents shall file
5 with the court their plans for the exercise of joint care, custody, and control of their child.
6 The parents of the child may submit a plan jointly, or either parent or both parents may
7 submit separate plans. Any plan shall include, but is not limited to, provisions detailing
8 the physical living arrangements for the child, child support obligations, medical and
9 dental care for the child, school placement, and visitation rights. A plan shall be
10 accompanied by an affidavit signed by each parent stating that said parent agrees to the
11 plan and will abide by its terms. The plan and affidavit shall be filed with the petition
12 for a divorce or legal separation or after said petition is filed.

13 D. The court shall issue a final plan for the exercise of joint care, custody, and
14 control of the child or children, based upon the plan submitted by the parents, separate
15 or jointly, with appropriate changes deemed by the court to be in the best interests of the
16 child. The court also may reject a request for joint custody and proceed as if the request
17 for joint custody had not been made.

18 E. The parents having joint custody of the child may modify the terms of the plan
19 for joint care, custody, and control. The modification to the plan shall be filed with the
20 court and included with the plan. If the court determines the modifications are in the
21 best interests of the child, the court shall approve the modifications.

1 F. The court also may modify the terms of the plan for joint care, custody, and
2 control upon the request of one parent. The court shall not modify the plan unless the
3 modifications are in the best interests of the child.

4 G. 1. The court may terminate a joint custody decree upon the request of one or
5 both of the parents or whenever the court determines said decree is not in the best
6 interests of the child.

7 2. Upon termination of a joint custody decree, the court shall proceed and issue a
8 modified decree for the care, custody, and control of the child as if no such joint custody
9 decree had been made.

10 H. In the event of a dispute between the parents having joint custody of a child as
11 to the interpretation of a provision of said plan, the court may appoint an arbitrator to
12 resolve said dispute. The arbitrator shall be a disinterested person knowledgeable in
13 domestic relations law and family counseling. The determination of the arbitrator shall
14 be final and binding on the parties to the proceedings until further order of the court.

15 If a parent refuses to consent to arbitration, the court may terminate the joint
16 custody decree.

17 I. In every proceeding where there is a dispute as to the custody of a minor child, a
18 determination by the court that domestic violence, stalking, or harassment has occurred
19 raises a rebuttable presumption that sole custody, joint legal or physical custody, or any
20 shared parenting plan with the perpetrator of domestic violence, harassing, or stalking
21 behavior is detrimental and not in the best interest of the child, and it is in the best

1 interest of the child to reside with the parent who is not a perpetrator of domestic
2 violence, harassing or stalking behavior.

3 1. For the purposes of this subsection:

- 4 a. “domestic violence” means the threat of the infliction of physical injury,
5 any act of physical harm or the creation of a reasonable fear thereof, or
6 the intentional infliction of emotional distress by a parent or a present
7 or former member of the household of the child, against the child or
8 another member of the household, including coercive control by a
9 parent involving physical, sexual, psychological, emotional, economic
10 or financial abuse.
- 11 b. “stalking” means the willful course of conduct by a parent who
12 repeatedly follows or harasses another person as defined in Section
13 1173 of Title 21 of the Oklahoma Statutes, and
- 14 c. “harassment” means a knowing and willful course or pattern of
15 conduct by a parent directed at another parent which seriously alarms
16 or is a nuisance to the person, and which serves no legitimate purpose
17 including, but not limited to, harassing or obscene telephone calls or
18 conduct that would cause a reasonable person to have a fear of death
19 or bodily injury.

20 2. If a parent is absent or relocates as a result of an act of domestic violence by the
21 other parent, the absence or relocation shall not be a factor that weighs against the
22 parent in determining custody or visitation.

1 3. The court shall consider, as a primary factor, the safety and well-being of the
2 child and of the parent who is the victim of domestic violence or stalking behavior, in
3 addition to other facts regarding the best interest of the child.

4 4. The court shall consider the history of the parent causing physical harm, bodily
5 injury, assault, verbal threats, stalking or harassing behavior, or the fear of physical
6 harm, bodily injury, or assault to another person, including the minor child, in
7 determining issues regarding custody and visitation.

8 SECTION 2. AMENDATORY 43 O.S. 2001, Section 110.1, is amended to read
9 as follows:

10 Section 110.1 It is the policy of this state to assure that minor children have
11 frequent and continuing contact with parents who have shown the ability to act in the
12 best interests of their children and to encourage parents to share in the rights and
13 responsibilities of rearing their children after the parents have separated or dissolved
14 their marriage, provided that the parents agree to cooperate and that domestic violence,
15 stalking, or harassing behaviors as defined in this title are not present in the parental
16 relationship. To effectuate this policy, if requested by a parent, the court shall provide
17 substantially equal access to the minor children to both parents at a temporary order
18 hearing, unless the court finds that ~~such~~ the shared parenting would be detrimental to
19 ~~such~~ the child. ~~The burden of proof that such shared parenting would be detrimental to~~
20 ~~such child shall be upon the parent requesting sole custody and the reason for such~~
21 ~~determination shall be documented in the court record.~~

1 SECTION 3. AMENDATORY 43 O.S. 2001, Section 111.1, is amended to read
2 as follows:

3 Section 111.1 A. 1. Any order providing for the visitation of a noncustodial parent
4 with any of the children of ~~such~~ the noncustodial parent shall provide a specified
5 minimum amount of visitation between the noncustodial parent and the child unless the
6 court determines otherwise.

7 2. Except for good cause shown and when in the best interests of the child, the
8 order shall encourage additional visitations of the noncustodial parent and the child and
9 in addition encourage liberal telephone communications between the noncustodial parent
10 and the child.

11 3. A court may award visitation by a noncustodial parent who was determined to
12 have committed domestic violence or engaged in stalking behavior as defined in Section
13 109 of this title, only if the court is able to ensure the safety of the child and the parent
14 who is the victim of that domestic violence.

15 4. In a visitation order, a court shall provide for the safety of the minor child and
16 victim of domestic violence, stalking, or harassment as defined in Section 109 of this title,
17 and subject to the provisions of Section 109 of this title, may:

- 18 a. order the exchange of a child to be facilitated by a third party where
19 the parents do not have any contact with each other,
20 b. order an exchange of a child to occur in a protected setting,
21 c. order visitation supervised by another person or agency,

- 1 d. order the abusive, stalking, or harassing parent to pay a fee to help
2 defray the costs of supervised visitation or other costs of child
3 exchanges including compensating third parties.
- 4 e. order the abusive, stalking, or harassing parent to attend and
5 complete, to the satisfaction of the court, a batterers intervention
6 program certified by the Office of the Attorney General.
- 7 f. prohibit unsupervised or overnight visitation until the abusive,
8 stalking, or harassing parent has successfully completed a specialized
9 program for abusers and the parent has neither threatened nor
10 exhibited violence for a substantial period of time.
- 11 g. order the abusive, stalking, or harassing parent to abstain from the
12 possession or consumption of alcohol or controlled substances during
13 the visitation and for twenty-four (24) hours preceding visitation.
- 14 h. order the abusive, stalking, or harassing parent to complete a
15 danger/lethality assessment by a qualified mental health professional,
16 and
- 17 i. impose any other condition that is deemed necessary to provide for the
18 safety of the child, the victim of domestic violence, stalking, or
19 harassing behavior, or another household member.

20 5. Visitation shall be terminated if:

- 21 a. the abusive, stalking, or harassing parent repeatedly violates the
22 terms and conditions of visitation.

1 2. When a custodial parent refuses to honor ~~a noncustodial parent's~~ the visitation
2 rights of the noncustodial parent, the noncustodial parent shall not fail to pay any
3 ordered child support or alimony.

4 C. 1. Violation of an order providing for the payment of child support or providing
5 for the visitation of a noncustodial parent with any of the children of such noncustodial
6 parent may be prosecuted as indirect civil contempt pursuant to Section 566 of Title 21 of
7 the Oklahoma Statutes or as otherwise deemed appropriate by the court.

8 2. Unless good cause is shown for the noncompliance, the prevailing party shall be
9 entitled to recover court costs and attorney fees expended in enforcing the order and any
10 other reasonable costs and expenses incurred in connection with the denied child support
11 or denied visitation as authorized by the court.

12 SECTION 4. AMENDATORY Section 8, Chapter 400, O.S.L. 2002 (43 O.S.
13 Supp. 2007, Section 112.3), is amended to read as follows:

14 Section 112.3 A. As used in this section:

15 1. "Change of residence address" means a change in the primary residence of an
16 adult;

17 2. "Child" means a child under the age of eighteen (18) who has not been judicially
18 emancipated;

19 3. "Person entitled to custody of or visitation with a child" means a person so
20 entitled by virtue of a court order or by an express agreement that is subject to court
21 enforcement;

22 4. "Principal residence of a child" means:

- 1 a. the location designated by a court to be the primary residence of the
2 child,
3 b. in the absence of a court order, the location at which the parties have
4 expressly agreed that the child will primarily reside, or
5 c. in the absence of a court order or an express agreement, the location, if
6 any, at which the child, preceding the time involved, lived with the
7 child's parents, a parent, or a person acting as parent for at least six
8 (6) consecutive months and, in the case of a child less than six (6)
9 months old, the location at which the child lived from birth with any of
10 the persons mentioned. Periods of temporary absence of any of the
11 named persons are counted as part of the six-month or other period;
12 and

13 5. "Relocation" means a change in the principal residence of a child over seventy-
14 five (75) miles from the child's principal residence for a period of sixty (60) days or more,
15 but does not include a temporary absence from the principal residence.

16 B. 1. Except as otherwise provided by this section, a person who has the right to
17 establish the principal residence of the child shall notify every other person entitled to
18 visitation with the child of a proposed relocation of the child's principal residence as
19 required by this section.

20 2. Except as otherwise provided by this section, an adult entitled to visitation with
21 a child shall notify every other person entitled to custody of or visitation with the child of

1 an intended change in the primary residence address of the adult as required by this
2 section.

3 C. 1. Except as provided by this section, notice of a proposed relocation of the
4 principal residence of a child or notice of an intended change of the primary residence
5 address of an adult must be given:

6 a. by mail to the last-known address of the person to be notified, and

7 b. no later than:

8 (1) the sixtieth day before the date of the intended move or
9 proposed relocation, or

10 (2) the tenth day after the date that the person knows the information
11 required to be furnished pursuant to this subsection, if the
12 person did not know and could not reasonably have known the
13 information in sufficient time to comply with the sixty-day
14 notice, and it is not reasonably possible to extend the time for
15 relocation of the child.

16 2. Except as provided by this section, the following information, if available, must
17 be included with the notice of intended relocation of the child or change of primary
18 residence of an adult:

19 a. the intended new residence, including the specific address, if known,

20 b. the mailing address, if not the same,

21 c. the home telephone number, if known,

22 d. the date of the intended move or proposed relocation,

- 1 e. a brief statement of the specific reasons for the proposed relocation of a
2 child, if applicable,
3 f. a proposal for a revised schedule of visitation with the child, if any,
4 and
5 g. a warning to the nonrelocating parent that an objection to the
6 relocation must be made within thirty (30) days or the relocation will
7 be permitted.

8 3. A person required to give notice of a proposed relocation or change of residence
9 address under this subsection has a continuing duty to provide a change in or addition to
10 the information required by this subsection as that information becomes known.

11 D. After the effective date of this act, an order issued by a court directed to a person
12 entitled to custody of or visitation with a child shall include the following or substantially
13 similar terms:

14 “You, as a party in this action, are ordered to notify every other party to this action
15 of a proposed relocation of the child, change of your primary residence address, and the
16 following information:

- 17 1. The intended new residence, including the specific address, if known;
18 2. The mailing address, if not the same;
19 3. The home telephone number, if known;
20 4. The date of the intended move or proposed relocation;
21 5. A brief statement of the specific reasons for the proposed relocation of a child, if
22 applicable; and

1 6. A proposal for a revised schedule of visitation with the child, if any.

2 You are further ordered to give notice of the proposed relocation or change of
3 residence address on or before the sixtieth day before a proposed change. If you do not
4 know and could not have reasonably known of the change in sufficient time to provide a
5 sixty-day notice, you are ordered to give notice of the change on or before the tenth day
6 after the date that you know of the change.

7 Your obligation to furnish this information to every other party continues as long as
8 you, or any other person, by virtue of this order, are entitled to custody of or visitation
9 with a child covered by this order.

10 Your failure to obey the order of this court to provide every other party with notice
11 of information regarding the proposed relocation or change of residence address may
12 result in further litigation to enforce the order, including contempt of court.

13 In addition, your failure to notify of a relocation of the child may be taken into
14 account in a modification of custody of, visitation with, possession of or access to the
15 child. Reasonable costs and attorney fees also may be assessed against you if you fail to
16 give the required notice.

17 If you, as the nonrelocating parent, do not file a proceeding seeking a temporary or
18 permanent order to prevent the relocation within thirty (30) days after receipt of notice of
19 the intent of the other party to relocate the residence of the child, relocation is
20 authorized.”

21 E. 1. On a finding by the court that the health, safety, or liberty of a person or a
22 child would be unreasonably put at risk by the disclosure of the required identifying

1 information in conjunction with a proposed relocation of the child or change of residence
2 of an adult, the court may order that:

3 a. the specific residence address and telephone number of the child or of
4 the adult and other identifying information shall not be disclosed in
5 the pleadings, other documents filed in the proceeding, or the final
6 order, except for an in camera disclosure,

7 b. the notice requirements provided by this article be waived to the
8 extent necessary to protect confidentiality and the health, safety or
9 liberty of a person or child, and

10 c. any other remedial action that the court considers necessary to
11 facilitate the legitimate needs of the parties and the best interest of the
12 child.

13 2. If appropriate, the court may conduct an ex parte hearing pursuant to this
14 subsection.

15 3. The finding of domestic violence creates a presumption that the custodial parent
16 and child will be put at risk by the disclosure of information required by this section and
17 is sufficient to waive all requirements of this section. It is the policy of this state that a
18 child should reside with a nonviolent parent and that parent should be free to make a
19 choice about a safe, secure place of residence, even if it means relocation to another city
20 or state without disclosure to the violent parent.

21 F. 1. The court may consider a failure to provide notice of a proposed relocation of a
22 child as provided by this section as:

- 1 a. a factor in making its determination regarding the relocation of a child,
- 2 b. a factor in determining whether custody or visitation should be
- 3 modified,
- 4 c. a basis for ordering the return of the child if the relocation has taken
- 5 place without notice, and
- 6 d. sufficient cause to order the person seeking to relocate the child to pay
- 7 reasonable expenses and attorney fees incurred by the person objecting
- 8 to the relocation.

9 2. In addition to the sanctions provided by this subsection, the court may make a
10 finding of contempt if a party violates the notice requirement required by this section and
11 may impose the sanctions authorized for contempt of a court order.

12 G. 1. The person entitled to custody of a child may relocate the principal residence
13 of a child after providing notice as provided by this section unless a parent entitled to
14 notice files a proceeding seeking a temporary or permanent order to prevent the
15 relocation within thirty (30) days after receipt of the notice.

16 2. A parent entitled by court order or written agreement to visitation with a child
17 may file a proceeding objecting to a proposed relocation of the principal residence of a
18 child and seek a temporary or permanent order to prevent the relocation.

19 3. If relocation of the child is proposed, a nonparent entitled by court order or
20 written agreement to visitation with a child may file a proceeding to obtain a revised
21 schedule of visitation, but may not object to the proposed relocation or seek a temporary
22 or permanent order to prevent the relocation.

1 4. A proceeding filed pursuant to this subsection must be filed within thirty (30)
2 days of receipt of notice of a proposed relocation.

3 H. 1. The court may grant a temporary order restraining the relocation of a child,
4 or ordering return of the child if a relocation has previously taken place, if the court
5 finds:

- 6 a. the required notice of a proposed relocation of a child as provided by
7 this section was not provided in a timely manner and the parties have
8 not presented an agreed-upon revised schedule for visitation with the
9 child for the court's approval,
10 b. the child already has been relocated without notice, agreement of the
11 parties, or court approval, or
12 c. from an examination of the evidence presented at the temporary
13 hearing there is a likelihood that on final hearing the court will not
14 approve the relocation of the primary residence of the child.

15 2. The court may grant a temporary order permitting the relocation of the child
16 pending final hearing if the court:

- 17 a. finds that the required notice of a proposed relocation of a child as
18 provided by this section was provided in a timely manner and issues
19 an order for a revised schedule for temporary visitation with the child,
20 and

1 b. finds from an examination of the evidence presented at the temporary
2 hearing there is a likelihood that on final hearing the court will
3 approve the relocation of the primary residence of the child.

4 I. A proposed relocation of a child may be a factor in considering a change of
5 custody.

6 J. 1. In reaching its decision regarding a proposed relocation, the court shall
7 consider the following factors:

8 a. the nature, quality, extent of involvement, and duration of the child's
9 relationship with the person proposing to relocate and with the
10 nonrelocating person, siblings, and other significant persons in the
11 child's life,

12 b. the age, developmental stage, needs of the child, and the likely impact
13 the relocation will have on the child's physical, educational, and
14 emotional development, taking into consideration any special needs of
15 the child,

16 c. the feasibility of preserving the relationship between the nonrelocating
17 person and the child through suitable visitation arrangements,
18 considering the logistics and financial circumstances of the parties,

19 d. the child's preference, taking into consideration the age and maturity
20 of the child,

- 1 e. whether there is an established pattern of conduct of the person
2 seeking the relocation, either to promote or thwart the relationship of
3 the child and the nonrelocating person,
4 f. whether the relocation of the child will enhance the general quality of
5 life for both the custodial party seeking the relocation and the child,
6 including but not limited to financial or emotional benefit or
7 educational opportunity,
8 g. the reasons of each person for seeking or opposing the relocation, and
9 h. any other factor affecting the best interest of the child.

10 2. The court may not:

- 11 a. give undue weight to the temporary relocation as a factor in reaching
12 its final decision, if the court has issued a temporary order authorizing
13 a party seeking to relocate a child to move before final judgment is
14 issued, or
15 b. consider whether the person seeking relocation of the child has
16 declared that he or she will not relocate if relocation of the child is
17 denied.

18 K. The relocating person has the burden of proof that the proposed relocation is
19 made in good faith. If that burden of proof is met, the burden shifts to the nonrelocating
20 person to show that the proposed relocation is not in the best interest of the child.

21 L. 1. After notice and a reasonable opportunity to respond, the court may impose a
22 sanction on a person proposing a relocation of the child or objecting to a proposed

1 relocation of a child if it determines that the proposal was made or the objection was
2 filed:

- 3 a. to harass a person or to cause unnecessary delay or needless increase
4 in the cost of litigation,
- 5 b. without being warranted by existing law or was based on frivolous
6 argument, or
- 7 c. based on allegations and other factual contentions which had no
8 evidentiary support or, if specifically so identified, could not have been
9 reasonably believed to be likely to have evidentiary support after
10 further investigation.

11 2. A sanction imposed under this subsection shall be limited to what is sufficient to
12 deter repetition of such conduct or comparable conduct by others similarly situated. The
13 sanction may include directives of a nonmonetary nature, an order to pay a penalty into
14 court, or, if imposed on motion and warranted for effective deterrence, an order directing
15 payment to the other party of some or all of the reasonable attorney fees and other
16 expenses incurred as a direct result of the violation.

17 M. If the issue of relocation is presented at the initial hearing to determine custody
18 of and visitation with a child, the court shall apply the factors set forth in this section in
19 making its initial determination.

20 N. 1. The provisions of this section apply to an order regarding custody of or
21 visitation with a child issued:

- 22 a. after the effective date of this act, and

1 b. before the effective date of this act, if the existing custody order or
2 enforceable agreement does not expressly govern the relocation of the
3 child or there is a change in the primary residence address of an adult
4 affected by the order.

5 2. To the extent that a provision of this section conflicts with an existing custody
6 order or enforceable agreement, this section does not apply to the terms of that order or
7 agreement that govern relocation of the child or a change in the primary residence
8 address of an adult.

9 SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma
10 Statutes as Section 112.4 of Title 43, unless there is created a duplication in numbering,
11 reads as follows:

12 In a dissolution of marriage or separate maintenance proceeding, a victim of
13 domestic violence or stalking shall be entitled to reasonable attorney fees and costs after
14 the filing of a petition, upon application and a showing by a preponderance of evidence
15 that the party is currently being stalked or has been stalked or is the victim of domestic
16 abuse. The court shall order that the attorney fees and costs of the victimized party for
17 the proceeding be substantially paid for by the abusing party.

18 SECTION 6. This act shall become effective November 1, 2008.

19 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND PUBLIC SAFETY,
20 dated 02-27-08 - DO PASS, As Amended and Coauthored.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.