

ENROLLED HOUSE
BILL NO. 1739

By: Peters, Luttrell and
Pittman of the House

and

Anderson and Leftwich of
the Senate

An Act relating to marriage and family; amending 43 O.S. 2001, Section 109, which relates to custody determinations in divorces; establishing criteria for custody determinations in certain cases; defining terms; amending 43 O.S. 2001, Section 110.1, which relates to shared parenting plans; prohibiting shared parenting plans in certain cases; providing courts discretion in providing equal access to children in certain circumstances; removing requirement that parent seeking sole custody bear the burden of proof; amending 43 O.S. 2001, Section 111.1, as amended by Section 3 of Enrolled Senate Bill No. 1138 of the 1st Session of the 52nd Oklahoma Legislature, which relates to child visitation and the failure to pay child support; providing court authority to specify visitation preconditions and requirements in certain cases; requiring termination of visitation in certain circumstances; requiring that certain information be kept confidential; providing for the suspension of certain parental visitation if the Department of Human Services substantiates or confirms child abuse; providing custodial parent discretion to take certain actions including refusal of visitation to the noncustodial parent in certain circumstances; suspending visitation in certain circumstances; requiring court to order that attorney fees of certain victims of domestic violence be paid by abusing party; 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. 2001, Section 109, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

I. 1. In every proceeding in which there is a dispute as to the custody of a minor child, a determination by the court that domestic violence, stalking, or harassment has occurred raises a rebuttable presumption that sole custody, joint legal or physical custody, or any shared parenting plan with the perpetrator of domestic violence, harassing or stalking behavior is detrimental and not in the best interest of the child, and it is in the best interest of the child to reside with the parent who is not a perpetrator of domestic violence, harassing or stalking behavior.

2. For the purposes of this subsection:

a. "domestic violence" means the threat of the infliction of physical injury, any act of physical harm or the creation of a reasonable fear thereof, or the intentional infliction of emotional distress by a parent or a present or former member of the household of the child, against the child or another member of the household, including coercive control by a parent

involving physical, sexual, psychological, emotional, economic or financial abuse,

b. "stalking" means the willful course of conduct by a parent who repeatedly follows or harasses another person as defined in Section 1173 of Title 21 of the Oklahoma Statutes, and

c. "harassment" means a knowing and willful course or pattern of conduct by a parent directed at another parent which seriously alarms or is a nuisance to the person, and which serves no legitimate purpose including, but not limited to, harassing or obscene telephone calls or conduct that would cause a reasonable person to have a fear of death or bodily injury.

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

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

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

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

Section 110.1 It is the policy of this state to assure that minor children have frequent and continuing contact with parents who have shown the ability to act in the best interests of their children and to encourage parents to share in the rights and responsibilities of rearing their children after the parents have separated or dissolved their marriage, provided that the parents agree to cooperate and that domestic violence, stalking, or harassing behaviors as defined in Section 109 of this title are not present in the parental relationship. To effectuate this policy, if

requested by a parent, the court ~~shall~~ may provide substantially equal access to the minor children to both parents at a temporary order hearing, unless the court finds that ~~such~~ shared parenting would be detrimental to ~~such~~ the child. ~~The burden of proof that such shared parenting would be detrimental to such child shall be upon the parent requesting sole custody and the reason for such determination shall be documented in the court record.~~

SECTION 3. AMENDATORY 43 O.S. 2001, Section 111.1, as amended by Section 3 of Enrolled Senate Bill No. 1138 of the 1st Session of the 52nd Oklahoma Legislature, is amended to read as follows:

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

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

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

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

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

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

5. The court shall not order a victim of domestic violence, stalking, or harassment to be present during child visitation exchange if the victim of domestic violence, stalking, or harassment objects to being present.

6. Visitation shall be terminated if:

- a. the abusive, stalking, or harassing parent repeatedly violates the terms and conditions of visitation,
- b. the child becomes severely distressed in response to visitation, including the determination by a mental health professional or certified domestic violence specialist that visitation with the abusive, stalking,

or harassing parent is causing the child severe distress which is not in the best interest of the child, or

- c. there are clear indications that the abusive, stalking, or harassing parent has threatened to either harm or flee with the child, or has threatened to harm the custodial parent.

7. Whether or not visitation is allowed, the court shall order the address of the child and the victim of domestic violence, stalking, or harassing behavior to be kept confidential if requested.

- a. The court may order that the victim of domestic violence, stalking, or harassing behavior participate in the address confidentiality program available pursuant to Section 60.14 of Title 22 of the Oklahoma Statutes.
- b. The abusive, stalking, or harassing parent may be denied access to the medical and educational records of the child if those records may be used to determine the location of the child.

B. 1. Except for good cause shown, when a noncustodial parent who is ordered to pay child support and who is awarded visitation rights fails to pay child support, the custodial parent shall not refuse to honor the ~~noncustodial parent's~~ visitation rights of the noncustodial parent.

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

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

2. Any person complying in good faith with the provisions of Section 852.1 of Title 21 of the Oklahoma Statutes, by refusing to

allow his or her child to be transported by an intoxicated driver, shall have an affirmative defense to a contempt of court proceeding in a divorce or custody action.

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

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

A. A parent who, in good faith and with a reasonable belief supported by fact, determines that the child of that parent is the victim of child abuse or neglect, or suffers from effects of domestic violence, may take necessary actions to protect the child, including refusing to permit visitation.

B. In cases in which there is evidence to substantiate suspected or confirmed child abuse or neglect, visitation shall be suspended.

SECTION 5. 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 a dissolution of marriage or separate maintenance or custody proceeding, a victim of domestic violence or stalking shall be entitled to reasonable attorney fees and costs after the filing of a petition, upon application and a showing by a preponderance of evidence that the party is currently being stalked or has been stalked or is the victim of domestic abuse. The court shall order that the attorney fees and costs of the victimized party for the proceeding be substantially paid for by the abusing party prior to and after the entry of a final order.

SECTION 6. This act shall become effective November 1, 2009.

Passed the House of Representatives the 13th day of May, 2009.

Presiding Officer of the House of
Representatives

Passed the Senate the 14th day of May, 2009.

Presiding Officer of the Senate