

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 HOUSE BILL 1739

By: Peters

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7 AS INTRODUCED

8 An Act relating to marriage and family; amending 43
9 O.S. 2001, Section 109, which relates to custody
10 determinations in divorces; establishing criteria for
11 custody determinations in certain cases; defining
12 terms; amending 43 O.S. 2001, Section 110.1, which
13 relates to shared parenting plans; prohibiting shared
14 parenting plans in certain cases; providing courts
15 discretion in providing equal access to children in
16 certain circumstances; removing requirement that
17 parent seeking sole custody bear the burden of proof;
18 amending 43 O.S. 2001, Section 111.1, which relates
19 to child visitation and the failure to pay child
20 support; providing court authority to specify
21 visitation preconditions and requirements in certain
22 cases; requiring termination of visitation in certain
23 circumstances; requiring that certain information be
24 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;
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:

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

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

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

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

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

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

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

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

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

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

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

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

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

21 2. For the purposes of this subsection:

22 a. "domestic violence" means the threat of the infliction
23 of physical injury, any act of physical harm or the
24 creation of a reasonable fear thereof, or the

1 intentional infliction of emotional distress by a
2 parent or a present or former member of the household
3 of the child, against the child or another member of
4 the household, including coercive control by a parent
5 involving physical, sexual, psychological, emotional,
6 economic or financial abuse,

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

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

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

23 4. The court shall consider, as a primary factor, the safety
24 and well-being of the child and of the parent who is the victim of

1 domestic violence or stalking behavior, in addition to other facts
2 regarding the best interest of the child.

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

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

10 Section 110.1 It is the policy of this state to assure that
11 minor children have frequent and continuing contact with parents who
12 have shown the ability to act in the best interests of their
13 children and to encourage parents to share in the rights and
14 responsibilities of rearing their children after the parents have
15 separated or dissolved their marriage, provided that the parents
16 agree to cooperate and that domestic violence, stalking, or
17 harassing behaviors as defined in Section 109 of this title are not
18 present in the parental relationship. To effectuate this policy, if
19 requested by a parent, the court ~~shall~~ may provide substantially
20 equal access to the minor children to both parents at a temporary
21 order hearing, unless the court finds that ~~such~~ shared parenting
22 would be detrimental to ~~such~~ the child. ~~The burden of proof that~~
23 ~~such shared parenting would be detrimental to such child shall be~~

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1 ~~upon the parent requesting sole custody and the reason for such~~
2 ~~determination shall be documented in the court record.~~

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

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

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

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

20 4. In a visitation order, the court shall provide for the
21 safety of the minor child and victim of domestic violence, stalking,
22 or harassment as defined in Section 109 of this title, and subject
23 to the provisions of Section 109 of this title, may:
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- 1 a. order the exchange of a child to be facilitated by a
2 third party where the parents do not have any contact
3 with each other,
- 4 b. order an exchange of a child to occur in a protected
5 setting,
- 6 c. order visitation supervised by another person or
7 agency,
- 8 d. order the abusive, stalking, or harassing parent to
9 pay a fee to help defray the costs of supervised
10 visitation or other costs of child exchanges,
11 including compensating third parties,
- 12 e. order the abusive, stalking, or harassing parent to
13 attend and complete, to the satisfaction of the court,
14 an intervention program for batterers certified by the
15 Office of the Attorney General,
- 16 f. prohibit unsupervised or overnight visitation until
17 the abusive, stalking, or harassing parent has
18 successfully completed a specialized program for
19 abusers and the parent has neither threatened nor
20 exhibited violence for a substantial period of time,
- 21 g. order the abusive, stalking, or harassing parent to
22 abstain from the possession or consumption of alcohol
23 or controlled substances during the visitation and for
24 twenty-four (24) hours preceding visitation,

- 1 h. order the abusive, stalking, or harassing parent to
2 complete a danger/lethality assessment by a qualified
3 mental health professional, and
4 i. impose any other condition that is deemed necessary to
5 provide for the safety of the child, the victim of
6 domestic violence, stalking, or harassing behavior, or
7 another household member.

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

12 6. Visitation shall be terminated if:

- 13 a. the abusive, stalking, or harassing parent repeatedly
14 violates the terms and conditions of visitation,
15 b. the child becomes severely distressed in response to
16 visitation, including the determination by a mental
17 health professional or certified domestic violence
18 specialist that visitation with the abusive, stalking,
19 or harassing parent is causing the child severe
20 distress which is not in the best interest of the
21 child, or
22 c. there are clear indications that the abusive,
23 stalking, or harassing parent has threatened to either

1 harm or flee with the child, or has threatened to harm
2 the custodial parent.

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

7 a. The court may order that the victim of domestic
8 violence, stalking, or harassing behavior participate
9 in the address confidentiality program available
10 pursuant to Section 60.14 of Title 22 of the Oklahoma
11 Statutes.

12 b. The abusive, stalking, or harassing parent may be
13 denied access to the medical and educational records
14 of the child if those records may be used to determine
15 the location of the child.

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

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

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

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

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

15 A. In cases in which there is evidence tending to substantiate
16 suspected or confirmed child abuse by an ongoing investigation by
17 the Department of Human Services, visitation shall be suspended.

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

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

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

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

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15 52-1-5500 SDR 01/07/09

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