

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 SENATE BILL 1947

By: Coates

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5
6 AS INTRODUCED

7 An Act relating to marriage and family; amending 43
8 O.S. 2001, Section 112.5, as last amended by Section
9 2, Chapter 233, O.S.L. 2009 and as renumbered by
10 Section 204, Chapter 233, O.S.L. 2009 (43 O.S. Supp.
11 2009, Section 112.5), which relates to custody or
12 guardianship; stating examples of who may be awarded
13 certain custody or guardianship; and providing an
14 effective date.

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

16 SECTION 1. AMENDATORY 43 O.S. 2001, Section 112.5, as
17 last amended by Section 2, Chapter 233, O.S.L. 2009 and as
18 renumbered by Section 204, Chapter 233, O.S.L. 2009 (43 O.S. Supp.
19 2009, Section 112.5), is amended to read as follows:

20 Section 112.5 A. Custody or guardianship of a child may be
21 awarded to:

- 22 1. A parent or to both parents jointly;
- 23 2. A grandparent;
- 24 3. A person who was indicated by the wishes of a deceased
parent;

1 4. A relative of either parent including, but not limited to, a
2 sibling, aunt, uncle or cousin;

3 5. The person in whose home the child has been living in a
4 wholesome and stable environment including but not limited to a
5 foster parent; or

6 6. Any other person deemed by the court to be suitable and able
7 to provide adequate and proper care and guidance for the child.

8 B. In applying subsection A of this section, a court shall
9 award custody or guardianship of a child to a parent, unless a
10 nonparent proves by clear and convincing evidence that:

11 1. For a period of at least twelve (12) months out of the last
12 fourteen (14) months immediately preceding the commencement of the
13 custody or guardianship proceeding, the parent has willfully failed,
14 refused, or neglected to contribute to the support of the child:

15 a. in substantial compliance with a support provision or
16 an order entered by a court of competent jurisdiction
17 adjudicating the duty, amount, and manner of support,
18 or

19 b. according to the financial ability of the parent to
20 contribute to the support of the child if no provision
21 for support is entered by a court of competent
22 jurisdiction, or an order of modification subsequent
23 thereto.
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1 For purposes of this paragraph, incidental or token financial
2 contributions shall not be considered in establishing whether a
3 parent has satisfied his or her obligation under subparagraphs a and
4 b of this paragraph; or

5 2. a. the child has been left in the physical custody of a
6 nonparent by a parent or parents of the child for one
7 (1) year or more, excluding parents on active duty in
8 the military, and

9 b. the parent or parents have not maintained regular
10 visitation or communication with the child.

11 For purposes of this paragraph, incidental or token visits or
12 communications shall not be considered in determining whether a
13 parent or parents have regularly maintained visitation or
14 communication.

15 C. In applying subsection A of this section, a court shall
16 award custody or guardianship of a child to a parent, unless the
17 court finds that the parent is affirmatively unfit. There shall be a
18 rebuttable presumption that a parent is affirmatively unfit if the
19 parent:

20 1. Is or has been subject to the registration requirements of
21 the Oklahoma Sex Offenders Registration Act or any similar act in
22 any other state;

23 2. Has been convicted of a crime listed in Section 582 of Title
24 57 of the Oklahoma Statutes;

1 3. Is an alcohol-dependent person or a drug-dependent person as
2 established by clear and convincing evidence and who can be expected
3 in the near future to inflict or attempt to inflict serious bodily
4 harm to himself or herself or another person as a result of such
5 dependency;

6 4. Has been convicted of domestic abuse within the past five
7 (5) years;

8 5. Is residing with a person who is or has been subject to the
9 registration requirements of the Oklahoma Sex Offenders Registration
10 Act or any similar act in any other state;

11 6. Is residing with a person who has been convicted of a crime
12 listed in the Oklahoma Child Abuse Reporting and Prevention Act or
13 in Section 582 of Title 57 of the Oklahoma Statutes; or

14 7. Is residing with a person who has been convicted of domestic
15 abuse within the past five (5) years.

16 D. Subject to subsection E of this section, a custody
17 determination made in accordance with subsections B and C of this
18 section shall not be modified unless the person seeking the
19 modification proves that:

20 1. Since the making of the order sought to be modified, there
21 has been a permanent, material, and substantial change of conditions
22 that directly affects the best interests of the child; and
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1 2. ~~That as~~ As a result of such change of circumstances, the
2 child would be substantially better off with regard to its temporal,
3 mental, and moral welfare if custody were modified.

4 E. If the custody determination made in accordance with
5 subsections B and C indicates that custody is temporary, the
6 determination may be modified upon a showing that the conditions
7 which led to the custody or guardianship determination no longer
8 exist.

9 SECTION 2. This act shall become effective November 1, 2010.

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