

1 ENGROSSED SENATE AMENDMENT  
TO

2 ENGROSSED HOUSE  
BILL NO. 1603

By: Stiles of the House

3  
4 and

Anderson of the Senate

5  
6 An Act relating to marriage and family;\*\*\* specifying  
7 authority of delegation; specifying limitation of  
8 delegation; specifying certain deployments shall be  
9 considered temporary absence for certain purposes;  
10 providing for jurisdiction; requiring deploying  
11 parent to provide certain notice; specifying notice  
12 requirements; providing exception; authorizing  
13 motions for certain custody hearings; specifying  
14 procedure; specifying required contents of motion;  
15 authorizing expedited hearing motions; requiring  
16 parent delegating visitation to identify family  
17 member so delegated;\*\*\* specifying rebuttable  
18 presumptions for deploying parents; requiring notice  
19 at the end of deployment;\*\*\* requiring liberal  
20 visitation; providing exception; providing for  
21 codification; and providing an effective date.

22 AUTHORS: Add the following Senate Coauthors: Russell and Simpson

23 AMENDMENT NO. 1. Page 1, strike the title, enacting clause and  
entire bill and insert

24 "[ deployed parent custody of child - Deployed  
Parents Custody Act - sanctions - codification -  
effective date ]

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

SECTION 1. AMENDATORY 43 O.S. 2001, Section 112, as last  
amended by Section 10, Chapter 358, O.S.L. 2010 (43 O.S. Supp. 2010,  
Section 112), is amended to read as follows:

1 Section 112. A. A petition or cross-petition for a divorce,  
2 legal separation, or annulment must state whether or not the parties  
3 have minor children of the marriage. If there are minor children of  
4 the marriage, the court:

5 1. Shall make provision for guardianship, custody, medical  
6 care, support and education of the children;

7 2. Unless not in the best interests of the children, may  
8 provide for the visitation of the noncustodial parent with any of  
9 the children of the noncustodial parent; and

10 3. May modify or change any order whenever circumstances render  
11 the change proper either before or after final judgment in the  
12 action; provided, that the amount of the periodic child support  
13 payment shall not be modified retroactively or payment of all or a  
14 portion of the past due amount waived, except by mutual agreement of  
15 the obligor and obligee, or if the obligee has assigned child  
16 support rights to the Department of Human Services or other entity,  
17 by agreement of the Department or other entity. Unless the parties  
18 agree to the contrary, a completed child support computation form  
19 provided for in Section 120 of this title shall be required to be  
20 filed with the child support order.

21 The social security numbers of both parents and the child shall  
22 be included on the child support order summary form provided for in  
23 Section 120 of this title, which shall be submitted to the Central  
24

1 Case Registry as provided for in Section 112A of this title with all  
2 child support or paternity orders.

3 B. In any action in which there are minor unmarried children in  
4 awarding or modifying the custody of the child or in appointing a  
5 general guardian for the child, the court shall be guided by the  
6 provisions of Section 112.5 of this title and shall consider what  
7 appears to be in the best interests of the child.

8 C. 1. When it is in the best interests of a minor unmarried  
9 child, the court shall:

10 a. assure children of frequent and continuing contact  
11 with both parents after the parents have separated or  
12 dissolved their marriage, and

13 b. encourage parents to share the rights and  
14 responsibilities of child rearing in order to effect  
15 this policy.

16 2. There shall be neither a legal preference nor a presumption  
17 for or against joint legal custody, joint physical custody, or sole  
18 custody.

19 3. When in the best interests of the child, custody shall be  
20 awarded in a way which assures the frequent and continuing contact  
21 of the child with both parents. When awarding custody to either  
22 parent, the court:

23 a. shall consider, among other facts, which parent is  
24 more likely to allow the child or children frequent

1 and continuing contact with the noncustodial parent,  
2 and

3 b. shall not prefer a parent as a custodian of the child  
4 because of the gender of that parent.

5 4. In any action, there shall be neither a legal preference or  
6 a presumption for or against private or public school or home-  
7 schooling in awarding the custody of a child, or in appointing a  
8 general guardian for the child.

9 5. Notwithstanding any custody determination made pursuant to  
10 the Oklahoma Children's Code, when a custodial parent of a child is  
11 required to be separated from a child due to military service, a the  
12 ~~court shall not enter a final order modifying an existing custody~~  
13 ~~order until such time as the custodial parent has completed the term~~  
14 ~~of duty requiring separation. For purposes of this paragraph:~~

15 a. ~~in the case of a parent who is a member of the Army,~~  
16 ~~Navy, Air Force, Marine Corps or Coast Guard, the term~~  
17 ~~"military service" means a combat deployment,~~  
18 ~~contingency operation, or natural disaster requiring~~  
19 ~~the use of orders that do not permit any family member~~  
20 ~~to accompany the member, and~~

21 b. ~~in the case of a parent who is a member of the~~  
22 ~~National Guard, the term "military service" means~~  
23 ~~service under a call to active service authorized by~~  
24 ~~the President of the United States or the Secretary of~~

1           ~~Defense for a period of more than thirty (30)~~  
2           ~~consecutive days under 32 U.S.C. 502(f) for purposes~~  
3           ~~of responding to a national emergency declared by the~~  
4           ~~President and supported by federal funds. "Military~~  
5           ~~service" shall include any period during which a~~  
6           ~~member is absent from duty on account of sickness,~~  
7           ~~wounds, leave or other lawful cause~~ determine custody  
8           and visitation pursuant to the provisions of the  
9           Deployed Parents Custody Act.

10           6. In making an order for custody, the court shall require  
11 compliance with Section 112.3 of this title.

12           D. 1. Except for good cause shown, a pattern of failure to  
13 allow court-ordered visitation may be determined to be contrary to  
14 the best interests of the child and as such may be grounds for  
15 modification of the child custody order.

16           2. For any action brought pursuant to the provisions of this  
17 section which the court determines to be contrary to the best  
18 interests of the child, the prevailing party shall be entitled to  
19 recover court costs, attorney fees and any other reasonable costs  
20 and expenses incurred with the action.

21           E. Except as otherwise provided by Section 112.1A of this  
22 title, any child shall be entitled to support by the parents until  
23 the child reaches eighteen (18) years of age. If a child is  
24 regularly enrolled in and attending high school, as set forth in

1 Section 11-103.6 of Title 70 of the Oklahoma Statutes, other means  
2 of high school education, or an alternative high school education  
3 program as a full-time student, the child shall be entitled to  
4 support by the parents until the child graduates from high school or  
5 until the age of twenty (20) years, whichever occurs first. Full-  
6 time attendance shall include regularly scheduled breaks from the  
7 school year. No hearing or further order is required to extend  
8 support pursuant to this subsection after the child reaches the age  
9 of eighteen (18) years.

10 F. In any case in which provision is made for the custody or  
11 support of a minor child or enforcement of such order and before  
12 hearing the matter or signing any orders, the court shall inquire  
13 whether public assistance money or medical support has been provided  
14 by the Department of Human Services, hereafter referred to as the  
15 Department, for the benefit of each child. If public assistance  
16 money, medical support, or child support services under the state  
17 child support plan as provided in Section 237 of Title 56 of the  
18 Oklahoma Statutes have been provided for the benefit of the child,  
19 the Department shall be a necessary party for the adjudication of  
20 the debt due to the State of Oklahoma, as defined in Section 238 of  
21 Title 56 of the Oklahoma Statutes, and for the adjudication of  
22 paternity, child support, and medical insurance coverage for the  
23 minor children in accordance with federal regulations. When an  
24 action is filed, the petitioner shall give the Department notice of

1 the action according to Section 2004 of Title 12 of the Oklahoma  
2 Statutes. The Department shall not be required to intervene in the  
3 action to have standing to appear and participate in the action.  
4 When the Department is a necessary party to the action, any orders  
5 concerning paternity, child support, medical support, or the debt  
6 due to the State of Oklahoma shall be approved and signed by the  
7 Department.

8 G. In any case in which a child support order or custody order  
9 or both is entered, enforced or modified, the court may make a  
10 determination of the arrearages of child support.

11 SECTION 2. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 150 of Title 43, unless there is  
13 created a duplication in numbering, reads as follows:

14 Sections 2 through 12 of this act shall be known and may be  
15 cited as the "Deployed Parents Custody Act".

16 SECTION 3. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 150.1 of Title 43, unless there  
18 is created a duplication in numbering, reads as follows:

19 As used in the Deployed Parents Custody Act:

20 1. "Close and substantial relationship" means a relationship in  
21 which a bond has been forged between the child and the other person  
22 by regular contact or communication;

23 2. "Custodial responsibility" refers to legal custody, physical  
24 custody or visitation rights with respect to a child;

1           3. "Deploying parent" means a legal parent of a minor child or  
2 the legal guardian of a child for whom custodial responsibility has  
3 been determined by court order, who is a member of the United States  
4 Armed Forces and who is deployed or has been notified of an  
5 impending deployment;

6           4. "Deployment" means military service in compliance with  
7 military orders received by a member of the United States Armed  
8 Forces, any reserve component thereof, or the National Guard to  
9 report for combat operations, contingency operations, peacekeeping  
10 operations, a remote tour of duty or other active service for which  
11 the deploying parent is required to report unaccompanied by any  
12 family member. The term includes a period during which a military  
13 parent remains subject to those orders and remains subject to them  
14 on account of sickness, wounds, leave or other lawful cause;

15           5. "Guardian" means a person who has been appointed as a  
16 guardian of a minor or incapacitated adult pursuant to the  
17 requirements of Title 30 of the Oklahoma Statutes. The term shall  
18 include a limited guardian, but shall not include a guardian ad  
19 litem;

20           6. "Nondeploying parent" means a legal parent or guardian who  
21 is not deployed and who has a child or ward in common with a  
22 deploying parent;

23           7. "Servicemember" means a member of either:  
24

- 1           a.    the active or reserve components of the Army, Navy,  
2                    Air Force, Marine Corps, or Coast Guard, or  
3           b.    the active or reserve components of the National  
4                    Guard; and

5           8.    "Visitation" means the right to take a child for a limited  
6 period of time to a place other than the habitual residence of the  
7 child.

8           SECTION 4.        NEW LAW        A new section of law to be codified  
9 in the Oklahoma Statutes as Section 150.2 of Title 43, unless there  
10 is created a duplication in numbering, reads as follows:

11           A court of this state may enter an order regarding custodial  
12 responsibility pursuant to the Deployed Parents Custody Act only  
13 where the court has jurisdiction pursuant to the Uniform Child  
14 Custody and Jurisdiction Act (UCCJEA), Sections 551-101 through 551-  
15 402 of Title 43 of the Oklahoma Statutes.  If a court of this state  
16 has rendered a temporary order regarding custodial responsibility  
17 pursuant to the Deployed Parents Custody Act, the deploying parent  
18 shall be deemed to reside in this state for the purposes of the  
19 UCCJEA during the duration of the deployment.  If a court of another  
20 state has rendered a temporary order regarding custodial  
21 responsibility pursuant to deployment, this court shall deem the  
22 deploying parent to reside in the rendering state for the purposes  
23 of the UCCJEA during the duration of the deployment.  This section  
24

1 does not prohibit the exercise of temporary emergency jurisdiction  
2 by a court of this state under the UCCJEA.

3 SECTION 5. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 150.3 of Title 43, unless there  
5 is created a duplication in numbering, reads as follows:

6 A. In any proceeding in which the custody and visitation of a  
7 minor child is contested and a parent of the minor child is a  
8 servicemember subject to deployment, the court may delegate some or  
9 all of the deploying parent's visitation to a family member or  
10 another person with a close and substantial relationship to the  
11 child, if the court determines it is in the best interest of the  
12 child.

13 B. In order to ensure an ongoing relationship with the child  
14 while deployed, a deploying parent has the right to request his or  
15 her visitation rights be delegated. Visitation awarded pursuant to  
16 this section derives from the deploying parent's own right to  
17 custodial responsibility. Neither this section nor a court order  
18 permitting delegation shall be deemed to create any separate or  
19 permanent rights to visitation.

20 SECTION 6. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 150.4 of Title 43, unless there  
22 is created a duplication in numbering, reads as follows:

23 A. A deploying parent shall provide a copy of the deployment  
24 orders to the other parent within ten (10) days of receipt. When

1 the deployment date is less than ten (10) days after receipt of the  
2 orders, a copy shall immediately be provided to the other parent.

3 B. If a valid court order requires that the address or contact  
4 information of the nondeploying parent be kept confidential, the  
5 notification shall be made to the court only. The court shall  
6 notify the nondeploying parent, or counsel for the nondeploying  
7 parent, if the deploying parent is prohibited from directly  
8 contacting the nondeploying parent.

9 C. Failure to timely notify the nondeploying parent of other  
10 deploying parent without good cause shall be presumed contrary to  
11 the best interests of the child in future custody proceedings  
12 between the parents.

13 SECTION 7. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 150.5 of Title 43, unless there  
15 is created a duplication in numbering, reads as follows:

16 Following a deploying parent's receiving notice of deployment,  
17 either a deploying parent or nondeploying parent may request an  
18 expedited hearing by the court on any matter pertaining to custodial  
19 responsibility. The request shall include the date on which the  
20 deployment began or begins. If the date of deployment is uncertain,  
21 the approximate date shall be included. The court shall grant a  
22 request for an expedited hearing if the deploying parent's ability,  
23 or anticipated ability, to appear in person at a regularly scheduled  
24 hearing would be prevented by the deployment or preparation for the

1 deployment, and if an expedited hearing is feasible for the court.  
2 If the deployed or deploying parent is seeking the right to delegate  
3 visitation to a family member, then the name of the family member or  
4 another person with a close and substantial relationship to the  
5 child shall be stated in the motion.

6 SECTION 8. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 150.6 of Title 43, unless there  
8 is created a duplication in numbering, reads as follows:

9 A. Upon proper motion made pursuant to Section 7 of this act,  
10 the court shall enter temporary orders regarding custody, visitation  
11 and child support.

12 B. A deploying parent who is entitled to a stay in civil  
13 proceedings pursuant to the Servicemembers Civil Relief Act, 50  
14 U.S.C. App., Sections 501 through 596, may elect to proceed while  
15 the deploying parent is unavailable to appear in the geographical  
16 location in which the litigation is pursued and may seek relief and  
17 provide evidence through video conferencing, Internet camera, e-  
18 mail, telephone, or other reasonable electronic means.

19 C. Except for the privilege offered to the deployed  
20 servicemember in subsection B of this section, the court shall  
21 factor the same consideration and conduct the temporary order  
22 hearing as provided in Section 112 of Title 43 of the Oklahoma  
23 Statutes. Hearings conducted pursuant to this section shall be

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1 considered nonevidentiary hearings and the standard rules of  
2 evidence do not apply.

3 D. 1. If a prior judicial decree contains provisions for  
4 custodial responsibility of the child in the event of deployment,  
5 those provisions shall not be modified by the court unless:

6 a. a subsequent substantial change of circumstances has  
7 occurred after the prior judicial decree was ordered,  
8 or

9 b. a showing that enforcement of the provisions of the  
10 prior decree would result in substantial harm to the  
11 child.

12 2. If the deploying parent and the nondeploying parent have  
13 previously agreed in writing to provisions for the custodial  
14 responsibility of the child in the event of deployment, there shall  
15 be a rebuttable presumption that the agreement is in the best  
16 interest of the child. The presumption may be overcome only if the  
17 court makes specific findings of fact establishing that the  
18 agreement is not in the best interest of the child.

19 E. When entering a temporary order for custodial responsibility  
20 prior to or during a deployment, the court shall:

21 1. Identify the nature of the deployment that is the basis for  
22 the order;

23 2. Specify that the order is temporary;

24

1           3. Specify the contact between the deploying parent and the  
2 child during deployment, including the means by which the deploying  
3 parent may remain in communication with the child, such as  
4 electronic communication by Internet camera, telephone, e-mail and  
5 other available means; and

6           4. Order liberal contact between the deploying parent and child  
7 when the deploying parent is on leave or is otherwise available,  
8 consistent with the best interest of the child.

9           F. In an order granting delegation of visitation rights  
10 pursuant to Section 10 of this act, the court shall:

11           1. Set out a process to resolve any disputes that may arise  
12 between the person receiving visitation and the nondeploying parent;

13           2. Identify the nature of the deployment that is the basis for  
14 the order; and

15           3. Specify that the order is a temporary order and shall  
16 terminate at the end of the deployment.

17           G. If the matter before the court concerns a postdissolution  
18 modification of custody or visitation, the court shall not modify  
19 the previously ordered custody or visitation arrangement until the  
20 expiration of the servicemember's deployment, unless the child is at  
21 risk of serious irreparable harm.

22           H. If the court has rendered a temporary order regarding  
23 custodial responsibility pursuant to the Deployed Parents Custody  
24 Act, any nondeploying parent or any third party to whom the court

1 has assigned primary custodial responsibility, visitation or limited  
2 contact shall notify the court of any change of address until the  
3 termination of the temporary order.

4 SECTION 9. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 150.7 of Title 43, unless there  
6 is created a duplication in numbering, reads as follows:

7 A. A court that renders an order on custodial responsibility  
8 under the Deployed Parents Custody Act may, on motion of either  
9 party and with appropriate jurisdiction under the Uniform Interstate  
10 Family Support Act ("UIFSA"):

11 1. Enter a temporary order for child support consistent with  
12 the Oklahoma Child Support Guidelines; and

13 2. Require the deploying parent to enroll the child to receive  
14 military dependent benefits.

15 B. Any order entered on child support pursuant to this section  
16 shall state that such order shall terminate by further order of this  
17 court following the child's return to the deploying parent upon  
18 conclusion of deployment.

19 SECTION 10. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 150.8 of Title 43, unless there  
21 is created a duplication in numbering, reads as follows:

22 A. If the deploying parent moves to delegate visitation rights,  
23 the court shall grant reasonable visitation to a member of the  
24 family of the child, including a stepparent or step sibling, with

1 | whom the child has a close and substantial relationship as defined  
2 | in the Deployed Parents Custody Act.

3 |       B. Any visitation ordered by the court pursuant to this section  
4 | shall be temporary in nature and shall not exceed or be less than  
5 | the amount of custodial time granted to the deploying parent under  
6 | any existing permanent order or agreement between the parents, with  
7 | the exception that the court may take into account unusual travel  
8 | time required to transport the child between the nondeploying parent  
9 | and the family members allowed visitation.

10 |       C. The person appointed by the deploying parent to exercise  
11 | visitation shall appear at the temporary order hearing.

12 |       D. Rebuttable presumptions for proceedings under the Deployed  
13 | Parents Custody Act:

14 |       1. In postdissolution proceedings, there shall be a rebuttable  
15 | presumption that it is in the best interests of the child for a  
16 | stepparent to exercise the deployed parent's parental duties;

17 |       2. There shall be a rebuttable presumption that if the person  
18 | appointed by the deployed or deploying party meets the requirements  
19 | of subsection A of this section, then it shall be in the best  
20 | interest of the child that the person receive visitation; and

21 |       3. There shall be a rebuttable presumption that visitation by a  
22 | family member who has perpetrated domestic violence against a  
23 | spouse, a child, a domestic living partner, or is otherwise subject  
24 |

1 to registration requirements of the Sex Offenders Registration Act  
2 is not in the best interest of the child.

3 E. Once the court has ordered visitation, the person to whom  
4 visitation is ordered shall have legal standing to enforce the  
5 visitation rights as allowed by law, so long as the deploying parent  
6 has not revoked consent to the delegation of visitation rights.

7 SECTION 11. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 150.9 of Title 43, unless there  
9 is created a duplication in numbering, reads as follows:

10 A. The deploying parent shall notify the nondeploying parent of  
11 the completion of the deployment. If the deploying parent is unable  
12 to locate the nondeploying parent, the deploying parent shall notify  
13 the court of the return.

14 B. A temporary modification order in accordance with the  
15 Deployed Parents Custody Act terminates by operation of law ten (10)  
16 days after notice has been provided to the nondeploying parent of  
17 the completion of deployment and the original terms of the prior  
18 custody or visitation order are automatically reinstated, unless the  
19 court finds that resumption of the custody or visitation order in  
20 effect before deployment is no longer in the child's best interests.

21 C. If an objection is filed within ten (10) days after notice  
22 of completion of deployment, then the court shall hold an expedited  
23 hearing no later than ten (10) days after the filing of the motion.

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1 D. The nondeployed parent shall bear the burden of proving that  
2 a significant change of circumstances has occurred so that the  
3 immediate resumption of the custody or visitation order in effect  
4 before deployment is no longer in the child's best interest.

5 E. However, absent agreement of the parties no permanent change  
6 of custody shall occur without the nondeployed parent first meeting  
7 the appropriate change of custody modification standard.

8 F. Deployment or the possibility of future deployment cannot be  
9 the sole reason to support or significant change of circumstances.

10 SECTION 12. NEW LAW A new section of law to be codified  
11 in the Oklahoma Statutes as Section 150.10 of Title 43, unless there  
12 is created a duplication in numbering, reads as follows:

13 If the court finds that a party to a proceeding under the  
14 Deployed Parents Custody Act has acted in bad faith or otherwise  
15 deliberately failed to comply with the terms of the Deployed Parents  
16 Custody Act or a court order issued under the Deployed Parents  
17 Custody Act, the court may assess attorney fees and costs against  
18 the opposing party and order any other appropriate sanctions.

19 SECTION 13. This act shall become effective November 1, 2011."  
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1 Passed the Senate the 27th day of April, 2011.

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3 \_\_\_\_\_  
4 Presiding Officer of the Senate

5 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
6 2011.

7  
8 \_\_\_\_\_  
9 Presiding Officer of the House  
of Representatives