

05/17/2011 10:48:47 AM

HOUSE OF REPRESENTATIVES
CONFERENCE COMMITTEE REPORT

Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB1603

By: Stiles of the House and Anderson of the Senate

Title: Marriage and family; creating the Deployed Parents Custody Act; effective date.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its amendment and that the attached Conference Committee Substitute be adopted.

Respectfully submitted,

House Action _____ Date _____ Senate Action _____ Date _____

HOUSE CONFEREES

Jordan Fred Jordan

Martin (Steve) Steve Martin

McCullough W. E. McCullough

Moore J. H. Moore

Morrisette _____

Roan Paul D. Roan

Roberts (Dustin) D. E. Roberts

Schwartz Colby Schwartz

Sherrer Ben Sherrer

Sullivan Alan Sullivan

Tibbs Steve Tibbs

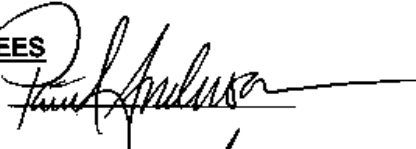
Wesselhoft Paul Wesselhoft

Williams _____

HB1603 CCR B

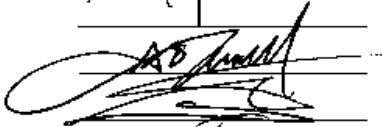
SENATE CONFEREES

Anderson



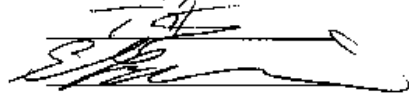
Sykes

Russell



Nichols

Ivester



Garrison

House Action _____ Date _____ Senate Action _____ Date _____

House Action _____ Date _____ Senate Action _____ Date _____

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 CONFERENCE COMMITTEE
4 SUBSTITUTE
5 FOR ENGROSSED
6 HOUSE BILL NO. 1603

By: Stiles of the House

and

7 Anderson, Russell and
8 Simpson of the Senate

9 CONFERENCE COMMITTEE SUBSTITUTE

10 An Act relating to deployed parent custody of child;
11 amending 43 O.S. 2001, Section 112, as last amended
12 by Section 10, Chapter 358, O.S.L. 2010 (43 O.S.
13 Supp. 2010, Section 112), which relates to custody
14 and support of minor children in divorce proceedings;
15 modifying requirements; authorizing the entry of
16 certain orders; specifying that a military deployment
17 shall not be used as evidence for certain purposes;
18 creating the Deployed Parents Custody and Visitation
19 Act; providing short title; defining terms; providing
20 for jurisdiction; directing court to provide for
21 custody of child when parent has been deployed;
22 authorizing court to designate visitation; specifying
23 limitation of designation; requiring deploying parent
24 to provide certain notice; specifying notice
requirements; providing exception; authorizing
motions for certain custody hearings; specifying
procedure; specifying required contents of motion;
authorizing expedited hearing motions; requiring
parent designating visitation to identify family
member so designated; authorizing the use of
electronic means for certain hearings; authorizing
certain limitations; authorizing the entry of certain
orders; establishing presumption that certain
existing orders are in best interest of child;
specifying certain requirements of temporary order;
providing for visitation of other family members;
specifying limitations of visitation orders;
directing court to order reasonable visitation;

1 providing exceptions; specifying visitation order
2 shall be temporary; limiting authority of court to
3 modify certain existing arrangements; providing
4 exception; requiring notice of change of address
5 under certain circumstances; authorizing orders for
6 child support; providing for designation of
7 visitation rights; specifying visitation orders shall
8 be temporary; establishing visitation requirements;
9 providing exception; requiring attendance of certain
10 family member at hearing; specifying rebuttable
11 presumptions for deploying parents; requiring notice
12 at the end of deployment; specifying certain
13 temporary orders shall terminate upon deployment
14 completion; providing that certain existing orders
15 shall be reinstated; providing for sanctions;
16 providing for codification; and declaring an
17 emergency.

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

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

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

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

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

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

12 The social security numbers of both parents and the child shall
13 be included on the child support order summary form provided for in
14 Section 120 of this title, which shall be submitted to the Central
15 Case Registry as provided for in Section 112A of this title with all
16 child support or paternity orders.

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

22 C. 1. When it is in the best interests of a minor unmarried
23 child, the court shall:
24

1 a. assure children of frequent and continuing contact
2 with both parents after the parents have separated or
3 dissolved their marriage, and

4 b. encourage parents to share the rights and
5 responsibilities of child rearing in order to effect
6 this policy.

7 2. There shall be neither a legal preference nor a presumption
8 for or against joint legal custody, joint physical custody, or sole
9 custody.

10 3. When in the best interests of the child, custody shall be
11 awarded in a way which assures the frequent and continuing contact
12 of the child with both parents. When awarding custody to either
13 parent, the court:

14 a. shall consider, among other facts, which parent is
15 more likely to allow the child or children frequent
16 and continuing contact with the noncustodial parent,
17 and

18 b. shall not prefer a parent as a custodian of the child
19 because of the gender of that parent.

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

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

7 a. in the case of a parent who is a member of the Army,
8 Navy, Air Force, Marine Corps or Coast Guard, the term
9 "military service" means a combat deployment,
10 contingency operation, or natural disaster requiring
11 the use of orders that do not permit any family member
12 to accompany the member, ~~and~~

13 b. in the case of a parent who is a member of the
14 National Guard, the term "military service" means
15 service under a call to active service authorized by
16 the President of the United States or the Secretary of
17 Defense for a period of more than thirty (30)
18 consecutive days under 32 U.S.C. 502(f) for purposes
19 of responding to a national emergency declared by the
20 President and supported by federal funds. "Military
21 service" shall include any period during which a
22 member is absent from duty on account of sickness,
23 wounds, leave or other lawful cause, and

1 c. the court may enter a temporary custody or visitation
2 order pursuant to the requirements of the Deployed
3 Parents Custody and Visitation Act.

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

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

10 2. For any action brought pursuant to the provisions of this
11 section which the court determines to be contrary to the best
12 interests of the child, the prevailing party shall be entitled to
13 recover court costs, attorney fees and any other reasonable costs
14 and expenses incurred with the action.

15 E. Except as otherwise provided by Section 112.1A of this
16 title, any child shall be entitled to support by the parents until
17 the child reaches eighteen (18) years of age. If a child is
18 regularly enrolled in and attending high school, as set forth in
19 Section 11-103.6 of Title 70 of the Oklahoma Statutes, other means
20 of high school education, or an alternative high school education
21 program as a full-time student, the child shall be entitled to
22 support by the parents until the child graduates from high school or
23 until the age of twenty (20) years, whichever occurs first. Full-
24 time attendance shall include regularly scheduled breaks from the

1 school year. No hearing or further order is required to extend
2 support pursuant to this subsection after the child reaches the age
3 of eighteen (18) years.

4 F. In any case in which provision is made for the custody or
5 support of a minor child or enforcement of such order and before
6 hearing the matter or signing any orders, the court shall inquire
7 whether public assistance money or medical support has been provided
8 by the Department of Human Services, hereafter referred to as the
9 Department, for the benefit of each child. If public assistance
10 money, medical support, or child support services under the state
11 child support plan as provided in Section 237 of Title 56 of the
12 Oklahoma Statutes have been provided for the benefit of the child,
13 the Department shall be a necessary party for the adjudication of
14 the debt due to the State of Oklahoma, as defined in Section 238 of
15 Title 56 of the Oklahoma Statutes, and for the adjudication of
16 paternity, child support, and medical insurance coverage for the
17 minor children in accordance with federal regulations. When an
18 action is filed, the petitioner shall give the Department notice of
19 the action according to Section 2004 of Title 12 of the Oklahoma
20 Statutes. The Department shall not be required to intervene in the
21 action to have standing to appear and participate in the action.
22 When the Department is a necessary party to the action, any orders
23 concerning paternity, child support, medical support, or the debt

24

1 due to the State of Oklahoma shall be approved and signed by the
2 Department.

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

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 112.7 of Title 43, unless there
8 is created a duplication in numbering, reads as follows:

9 A military deployment shall not be used as evidence of a
10 substantial, material and permanent change of circumstances to
11 warrant a permanent modification of custody.

12 SECTION 3. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 150 of Title 43, unless there is
14 created a duplication in numbering, reads as follows:

15 Sections 3 through 13 of this act shall be known and may be
16 cited as the "Deployed Parents Custody and Visitation Act".

17 SECTION 4. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 150.1 of Title 43, unless there
19 is created a duplication in numbering, reads as follows:

20 As used in the Deployed Parents Custody and Visitation Act:

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

24

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

3 3. "Deploying parent" means a legal parent of a minor child or
4 the legal guardian of a child, who is a member of the United States
5 Armed Forces and who is deployed or has been notified of an
6 impending deployment;

7 4. "Deployment" means the temporary transfer of a servicemember
8 in compliance with official orders to another location in support of
9 combat, contingency operation, or natural disaster requiring the use
10 of orders for a period of more than thirty (30) consecutive days,
11 during which family members are not authorized to accompany the
12 servicemember at government expense. Deployment shall include any
13 period during which a servicemember is absent from duty on account
14 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 5. 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 and
13 Visitation Act only where the court has jurisdiction pursuant to the
14 Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA),
15 Sections 551-101 through 551-402 of Title 43 of the Oklahoma
16 Statutes. If a court of this state has rendered a temporary order
17 regarding custodial responsibility pursuant to the Deployed Parents
18 Custody and Visitation Act, the deploying parent shall be deemed to
19 reside in this state for the purposes of the UCCJEA during the
20 duration of the deployment. If a court of another state has
21 rendered a temporary order regarding custodial responsibility
22 pursuant to deployment, this court shall deem the deploying parent
23 to reside in the rendering state for the purposes of the UCCJEA
24 during the duration of the deployment. This section does not

1 prohibit the exercise of temporary emergency jurisdiction by a court
2 of this state under the UCCJEA.

3 SECTION 6. 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 order to ensure an on going relationship with the child
7 while deployed, pursuant to the Deployed Parents Custody and
8 Visitation Act, upon application to the court by the deploying
9 parent, the court shall designate a family member or another person
10 with a close and substantial relationship to the child to exercise
11 his or her visitation rights, unless the court determines it is not
12 in the best interests of the child.

13 B. Visitation awarded pursuant to this section derives from the
14 deploying parent's own right to custodial responsibility. Neither
15 this section nor a court order permitting designation shall be
16 deemed to create any separate or permanent rights to visitation.

17 SECTION 7. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 150.4 of Title 43, unless there
19 is created a duplication in numbering, reads as follows:

20 A. A deploying parent shall provide a copy of the deployment
21 orders to the other parent within ten (10) days of receipt. When
22 the deployment date is less than ten (10) days after receipt of the
23 orders, a copy shall immediately be provided to the other parent.

24

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

7 SECTION 8. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 150.5 of Title 43, unless there
9 is created a duplication in numbering, reads as follows:

10 Following a deploying parent's receiving notice of deployment,
11 either a deploying parent or nondeploying parent may request an
12 expedited hearing to be heard within ten (10) days or prior to
13 deployment, whichever occurs first, on any matter pertaining to
14 custodial or visitation responsibility. The application shall
15 include the date on which the deployment began or begins. If the
16 date of deployment is uncertain, the approximate date shall be
17 included. The court shall grant a request for an expedited hearing
18 if the deploying parent's ability, or anticipated ability, to appear
19 in person at a regularly scheduled hearing would be prevented by the
20 deployment or preparation for the deployment. If the deployed or
21 deploying parent is seeking the right to designate a family member
22 to determine visitation, then the name of the family member or
23 another person with a close and substantial relationship to the
24 child shall be stated in the application.

1 SECTION 9. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 150.6 of Title 43, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Upon proper motion made pursuant to Section 8 of this act,
5 the court shall enter temporary orders regarding custody, visitation
6 and child support.

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

14 C. Except for the privilege offered to the deployed
15 servicemember in subsection B of this section, the court shall
16 factor the same consideration and conduct the temporary order
17 hearing as provided in Section 112 of Title 43 of the Oklahoma
18 Statutes. Hearings conducted pursuant to this section shall be
19 considered nonevidentiary hearings and the standard rules of
20 evidence shall not apply.

21 D. 1. If a prior judicial custody or visitation order contains
22 provisions for custodial responsibility of the child in the event of
23 deployment, those provisions shall not be modified by the court
24 unless:

1 a. a subsequent substantial change of circumstances has
2 occurred after the prior judicial custody or
3 visitation order was issued, or

4 b. a showing that enforcement of the provisions of the
5 prior judicial custody or visitation order would
6 result in substantial harm to the child.

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

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

16 1. Identify the nature of the deployment that is the basis for
17 the order;

18 2. Specify that the order is temporary;

19 3. Specify the contact between the deploying parent and the
20 child during deployment, including the means by which the deploying
21 parent may remain in communication with the child, such as
22 electronic communication by Internet camera, telephone, e-mail and
23 other available means; and
24

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

4 F. In an order granting designation of a family member or
5 another person with a close and substantial relationship to the
6 child to exercise visitation rights pursuant to Section 11 of this
7 act, the court shall:

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

10 2. Identify the nature of the deployment that is the basis for
11 the order; and

12 3. Specify that the order is a temporary order and shall
13 terminate ten (10) days after notice has been provided to the
14 nondeploying parent of the end of the deployment.

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

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

1 visitation or limited contact shall notify the court of any change
2 of address until the termination of the temporary order.

3 SECTION 10. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 150.7 of Title 43, unless there
5 is created a duplication in numbering, reads as follows:

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

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

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

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

17 SECTION 11. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 150.8 of Title 43, unless there
19 is created a duplication in numbering, reads as follows:

20 A. If the deploying parent moves to designate a family member
21 or another person with a close and substantial relationship with the
22 child to exercise visitation rights, the court shall grant
23 reasonable visitation to a member of the family of the child,
24 including a stepparent or step sibling, with whom the child has a

1 close and substantial relationship as defined in the Deployed
2 Parents Custody and Visitation 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 designated 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 and Visitation 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 designated 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. Any temporary order issued under the Deployed Parents
4 Custody and Visitation Act shall be enforced as any other orders
5 relating to the care, custody and control of the child.

6 SECTION 12. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 150.9 of Title 43, unless there
8 is created a duplication in numbering, reads as follows:

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

13 B. A temporary modification order granted in accordance with
14 the Deployed Parents Custody and Visitation Act shall terminate by
15 operation of law ten (10) days after notice has been provided to the
16 nondeploying parent of the completion of deployment and the original
17 terms of the prior custody or visitation order shall be
18 automatically reinstated.

19 SECTION 13. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 150.10 of Title 43, unless there
21 is created a duplication in numbering, reads as follows:

22 If the court finds that a party to a proceeding under the
23 Deployed Parents Custody and Visitation Act has acted in bad faith
24 or otherwise deliberately failed to comply with the terms of the

1 Deployed Parents Custody and Visitation Act or a court order issued
2 under the Deployed Parents Custody and Visitation Act, the court may
3 assess attorney fees and costs against the opposing party and order
4 any other appropriate sanctions.

5 SECTION 14. It being immediately necessary for the preservation
6 of the public peace, health and safety, an emergency is hereby
7 declared to exist, by reason whereof this act shall take effect and
8 be in full force from and after its passage and approval.

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10 53-1-7803 SDR 05/16/11

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