

1 **SENATE FLOOR VERSION**

2 April 11, 2011

3 As Amended

4 ENGROSSED HOUSE

5 BILL NO. 1603

By: Stiles of the House

and

Anderson and Russell of the
Senate

7
8
9 **[marriage and family - creating the Military Custody
and Visitation Act - codification - effective date]**

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

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

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

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

22 2. Unless not in the best interests of the children, may
23 provide for the visitation of the noncustodial parent with any of
24 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 determine custody~~

1 and visitation pursuant to the provisions of the
2 Military Custody and Visitation Act.

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

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

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

14 E. Except as otherwise provided by Section 112.1A of this
15 title, any child shall be entitled to support by the parents until
16 the child reaches eighteen (18) years of age. If a child is
17 regularly enrolled in and attending high school, as set forth in
18 Section 11-103.6 of Title 70 of the Oklahoma Statutes, other means
19 of high school education, or an alternative high school education
20 program as a full-time student, the child shall be entitled to
21 support by the parents until the child graduates from high school or
22 until the age of twenty (20) years, whichever occurs first. Full-
23 time attendance shall include regularly scheduled breaks from the
24 school year. No hearing or further order is required to extend

1 support pursuant to this subsection after the child reaches the age
2 of eighteen (18) years.

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

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

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

7 Sections 2 through 7 of this act shall be known and may be cited
8 as the "Military Custody and Visitation Act".

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

12 As used in the Military Custody and Visitation Act:

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

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

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

21 4. "Deployment" means the temporary transfer of a servicemember
22 in compliance with official orders to another location in support of
23 combat, contingency operation, or natural disaster requiring the use
24 of orders for a period of more than thirty (30) consecutive days,

1 during which family members are not authorized to accompany the
2 servicemember at government expense. Deployment shall include any
3 period during which a servicemember is absent from duty on account
4 of sickness, wounds, leave or other lawful cause;

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

10 6. "Nondeploying parent" means a legal parent or guardian who
11 is not deployed and who has a child or ward in common with a
12 deploying parent;

13 7. "Servicemember" means a member of either:
14 a. the active or reserve components of the Army, Navy,
15 Air Force, Marine Corps, or Coast Guard, or
16 b. the active or reserve components of the National
17 Guard; and

18 8. "Visitation" means the right to take a child for a limited
19 period of time to a place other than the habitual residence of the
20 child.

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

24

1 A. In any proceeding in which the custody and visitation of a
2 minor child is contested and a parent of the minor child is a
3 servicemember subject to deployment, the court shall provide for the
4 custody and visitation of the child in the event the servicemember
5 parent is deployed.

6 B. In order to ensure an ongoing relationship with the child
7 while deployed, a deploying parent has the right to delegate his or
8 her visitation rights to a member of the family of the child.
9 Visitation awarded pursuant to this section derives from the
10 deploying parent's own right to custodial responsibility. Neither
11 this section nor a court order permitting delegations shall be
12 deemed to create any separate or permanent rights to visitation.

13 C. The removal of a child from this state in anticipation of or
14 during deployment shall be considered a temporary absence for the
15 purposes of the Uniform Child Custody and Jurisdiction Enforcement
16 Act (UCCJEA), Sections 551-101 through 551-402 of Title 43 of the
17 Oklahoma Statutes. If this state has exclusive continuing
18 jurisdiction pursuant to the UCCJEA at the time of deployment, the
19 state shall retain jurisdiction for the duration of the deployment.
20 The existence of a deployment shall not be used as a basis to assert
21 the inconvenience of this state as a forum or otherwise to remove
22 jurisdiction from the courts of this state. This section shall not
23 prevent the exercise of temporary emergency jurisdiction by a court
24 of this state under the UCCJEA.

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

4 A. A deploying parent shall notify the nondeploying parent
5 twenty (20) days after the date the deploying parent receives an
6 order of deployment if the orders are received less than sixty (60)
7 days before the date of deployment. However, the deploying parent
8 shall provide notice to the nondeploying parent no less than ten
9 (10) days prior to deployment unless it would be impractical for the
10 servicemember to provide notice any earlier.

11 B. If a valid court order requires that the address or contact
12 information of the nondeploying parent be kept confidential, the
13 notification shall be made to the court only. The court shall
14 notify the nondeploying parent, or counsel for the nondeploying
15 parent, if the deploying parent is prohibited from directly
16 contacting the nondeploying parent.

17 SECTION 6. 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. Where an action affecting custody or visitation is pending
21 before the court and the servicemember has been served notice of the
22 Dissolution of Marriage for at least thirty (30) days prior to
23 deployment, upon receiving notice of the deployment, either party
24

1 may motion the court to enter a temporary order for custodial
2 responsibility consistent with the Servicemembers Civil Relief Act.

3 B. Where an action affecting custody or visitation has been
4 filed and the deploying parent has been served for less than thirty
5 (30) days before the deployment or filed during deployment, only the
6 deploying parent may motion the court to enter a temporary order for
7 custodial responsibility consistent with the Servicemembers Civil
8 Relief Act.

9 C. The motion shall include the date on which the deployment
10 begins or began, the length of deployment if known and whether the
11 party requests an expedited hearing. If a party requests an
12 expedited hearing, the court shall schedule a hearing within ten
13 (10) days of the filing of the motion.

14 D. If the deployed or deploying parent is the movant and is
15 exercising the right to delegate visitation to a family member, then
16 the name of the family member shall be stated in the motion.

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

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

23 B. A deploying parent who is entitled to a stay in civil
24 proceedings pursuant to the Servicemembers Civil Relief Act, 50

1 U.S.C. App., Sections 501 through 596, may elect to proceed while
2 the deploying parent is unavailable to appear in the geographical
3 location in which the litigation is pursued and may seek relief and
4 provide evidence through video conferencing, Internet camera, e-
5 mail, telephone, or other reasonable electronic means.

6 C. Except for the privilege offered to the deployed
7 servicemember in subsection B of this section, the court shall
8 factor the same consideration and conduct the temporary order
9 hearing as provided in Section 112 of Title 43 of the Oklahoma
10 Statutes. Hearings conducted pursuant to this section shall be
11 considered nonevidentiary hearings and the standard rules of
12 evidence do not apply.

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

16 a. a subsequent substantial change of circumstances has
17 occurred after the prior judicial decree was ordered,
18 or

19 b. a showing that enforcement of the provisions of the
20 prior decree would result in substantial harm to the
21 child.

22 2. If the deploying parent and the nondeploying parent have
23 previously agreed in writing to provisions for the custodial
24 responsibility of the child in the event of deployment, there shall

1 be a rebuttable presumption that the agreement is in the best
2 interest of the child. The presumption may be overcome only if the
3 court makes specific findings of fact establishing that the
4 agreement is not in the best interest of the child.

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

7 1. Identify the nature of the deployment that is the basis for
8 the order;

9 2. Specify that the order is temporary;

10 3. Specify the contact between the deploying parent and the
11 child during deployment, including the means by which the deploying
12 parent may remain in communication with the child, such as
13 electronic communication by Internet camera, telephone, e-mail and
14 other available means; and

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

18 F. In an order granting delegation of visitation rights
19 pursuant to Section 8 of this act, the court shall:

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

22 2. Identify the nature of the deployment that is the basis for
23 the order; and

24

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

3 G. If the matter before the court concerns a postdissolution
4 modification of custody or visitation, the court shall not modify
5 the previously ordered custody or visitation arrangement until the
6 expiration of the servicemember's deployment, unless the child is at
7 risk of serious irreparable harm.

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

11 A. If the deploying parent moves to delegate visitation rights,
12 the court shall grant reasonable visitation to a member of the
13 family of the child, including a stepparent or step sibling, with
14 whom the child has a close and substantial relationship as defined
15 in the Military Custody and Visitation Act.

16 B. Any visitation ordered by the court pursuant to this section
17 shall be temporary in nature and shall not exceed or be less than
18 the amount of custodial time granted to the deploying parent under
19 any existing permanent order or agreement between the parents, with
20 the exception that the court may take into account unusual travel
21 time required to transport the child between the nondeploying parent
22 and the family members allowed visitation.

23 C. The person appointed by the deploying parent to exercise
24 visitation shall appear at the temporary order hearing.

1 D. Rebuttable presumptions for proceedings under this act:

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

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

9 3. There shall be a rebuttable presumption that visitation by a
10 family member who has perpetrated domestic violence against a
11 spouse, a child, a domestic living partner, or is otherwise subject
12 to registration requirements of the Sex Offenders Registration Act
13 is not in the best interest of the child.

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

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

21 A. Within ten (10) days of the completion of the deployment,
22 the deploying parent shall notify the nondeploying parent of the
23 return of the nondeploying parent. If the deploying parent is
24

1 unable to locate the nondeploying parent, the parent shall notify
2 the court of the return.

3 B. At any time upon the completion of the deployment, either
4 party may file a motion for new temporary orders. If this motion is
5 filed within thirty (30) days of the completion of the deployment,
6 the court shall hold an expedited hearing no later than ten (10)
7 days after the filing of the motion.

8 C. In establishing a temporary order upon deployment, the court
9 shall grant liberal visitation to the deployed parent in order to
10 reestablish the relationship with the child and the deployed parent.
11 If the court reasonably believes liberal visitation would cause
12 irreparable harm to the child, the court shall order a transition
13 period which allows a gradual return to the prior custody order.

14 SECTION 10. This act shall become effective November 1, 2011.

15 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 4-5-11 - DO PASS,
16 As Amended and Coauthored.

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