

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1603

By: Stiles

4
5 AS INTRODUCED

6 An Act relating to marriage and family; amending 43
7 O.S. 2001, Section 112, as last amended by Section
8 10, Chapter 358, O.S.L. 2010 (43 O.S. Supp. 2010,
9 Section 112), which relates to custody and support of
10 minor children in divorce proceedings; modifying
11 requirements and procedures relating to military
12 deployments; creating the Military Custody and
13 Visitation Act; defining terms; directing court to
14 provide for custody of child when parent has been
15 deployed; limiting consideration of past and
16 potential future deployments in determining custody;
17 providing exception; specifying certain deployments
18 shall be considered temporary absence for certain
19 purposes; providing for jurisdiction; requiring
20 deploying parent to provide certain notice;
21 specifying notice requirements; providing exception;
22 authorizing court to make an award of certain fees
23 and costs for certain failure; authorizing motions
24 for certain expedited custody hearings; specifying
procedure; authorizing the use of electronic means
for certain hearings; authorizing certain
limitations; authorizing the entry of certain orders;
prohibiting certain permanent orders; providing
exception; specifying certain decrees shall remain in
effect; providing exception; establishing presumption
that certain existing orders are in best interest of
child; specifying certain requirements of temporary
order; authorizing court to establish certain support
orders; providing for visitation of other family
members; specifying limitations of visitation orders;
directing court to order reasonable visitation;
providing exceptions; specifying visitation order
shall be temporary; specifying requirements of
visitation order; providing for enforcement of
visitation order; requiring notice at the end of
deployment; specifying contents of notice; requiring

1 nondeploying parent to provide liberal visitation
2 prior to entry of certain order; providing exception;
3 providing for the automatic termination of certain
4 temporary custody orders; providing exception;
5 requiring expedited hearing after filing of certain
6 motion; allowing court to order continuation of
7 temporary order in certain circumstances; providing
8 penalties for certain bad-faith motions; providing
9 for codification; and providing an effective date.

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

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

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

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

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

23 3. May modify or change any order whenever circumstances render
24 the change proper either before or after final judgment in the
action; provided, that the amount of the periodic child support
payment shall not be modified retroactively or payment of all or a

1 portion of the past due amount waived, except by mutual agreement of
2 the obligor and obligee, or if the obligee has assigned child
3 support rights to the Department of Human Services or other entity,
4 by agreement of the Department or other entity. Unless the parties
5 agree to the contrary, a completed child support computation form
6 provided for in Section 120 of this title shall be required to be
7 filed with the child support order.

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

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

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

20 a. assure children of frequent and continuing contact
21 with both parents after the parents have separated or
22 dissolved their marriage, and

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1 b. encourage parents to share the rights and
2 responsibilities of child rearing in order to effect
3 this policy.

4 2. There shall be neither a legal preference nor a presumption
5 for or against joint legal custody, joint physical custody, or sole
6 custody.

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

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

15 b. shall not prefer a parent as a custodian of the child
16 because of the gender of that parent.

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

21 5. Notwithstanding any custody determination made pursuant to
22 the Oklahoma Children's Code, when a custodial parent of a child is
23 required to be separated from a child due to military service, a the
24 court shall ~~not enter a final order modifying an existing custody~~

1 ~~order until such time as the custodial parent has completed the term~~
2 ~~of duty requiring separation. For purposes of this paragraph:~~

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

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

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

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

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

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

23 F. In any case in which provision is made for the custody or
24 support of a minor child or enforcement of such order and before

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

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

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

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

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

9 As used in the Military Custody and Visitation Act:

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

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

15 3. "Deploying parent" means a legal parent of a minor child,
16 who is a member of the United States armed forces and who is
17 deployed or has been notified of an impending deployment;

18 4. "Deployment" means the temporary transfer of a service
19 member in compliance with official orders to another location in
20 support of combat, contingency operation, or natural disaster
21 requiring the use of orders for a period of more than thirty (30)
22 consecutive days, during which family members are not authorized to
23 accompany the service member at government expense. Deployment
24 shall include any period during which a service member is absent

1 from duty on account of sickness, wounds, leave or other lawful
2 cause;

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

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

11 7. "Service member" means a member of either:

- 12 a. the active or reserve components of the Army, Navy,
13 Air Force, Marine Corps, or Coast Guard, or
14 b. the active or reserve components of the National
15 Guard; and

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

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

22 A. In any proceeding in which the custody and visitation of a
23 minor child is contested and a parent of the minor child is a
24 service member subject to deployment, the court shall provide for

1 the custody and visitation of the child in the event the service
2 member parent is deployed.

3 B. The court shall not consider the temporary inconvenience to
4 the child caused by past deployments or possible future deployments
5 as a factor in determining the best interest of the child.

6 Provided, however, other effects of deployment may be considered by
7 the court.

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

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

23 A. 1. A deploying parent shall notify the nondeploying parent
24 no later than:

- 1 a. sixty (60) days before the date of deployment, or
2 b. ten (10) days after the date the deploying parent
3 receives an order of deployment if the orders are
4 received less than sixty (60) days before the date of
5 deployment. However, the deploying parent shall
6 provide notice to the nondeploying parent no less than
7 ten (10) days prior to deployment.

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

14 3. If a deploying parent fails to notify the nondeploying
15 parent as required by this subsection, the court may award attorney
16 fees and costs to the nondeploying parent.

17 B. When a deploying parent has received orders of deployment,
18 either parent may file a motion with the court for an expedited
19 hearing on any matter pertaining to custodial responsibility. The
20 motion shall include the date on which the deployment begins and the
21 length of deployment if known. The court shall schedule an
22 expedited hearing within ten (10) days of the filing of the motion
23 for an expedited hearing.

1 C. A deploying parent who is entitled to a stay in civil
2 proceedings pursuant to the Servicemembers Civil Relief Act, 50
3 U.S.C. App., Sections 501 through 596, may elect to proceed while
4 the deploying parent is unavailable to appear in the geographical
5 location in which the litigation is pursued and may seek relief and
6 provide evidence through video conferencing, Internet camera, e-
7 mail, telephone, or other reasonable electronic means. The court
8 may deny the deploying parent the opportunity to present evidence by
9 electronic means if it would cause a substantial injustice, deny
10 effective cross examination, deny the right to confront a witness,
11 or abridge another constitutional right.

12 D. The court may enter a temporary order for custodial
13 responsibility, consistent with the Servicemembers Civil Relief Act,
14 after the deploying parent has received notice of deployment. The
15 court shall not enter a permanent order regarding custody or
16 visitation after a notice of deployment has occurred or during a
17 deploying parent's deployment without the consent of the deploying
18 parent.

19 E. If a prior judicial decree contains provisions for custodial
20 responsibility of the child in event of deployment, those provisions
21 shall not be modified by the court unless:

22 1. A subsequent substantial change of circumstances has
23 occurred after the prior judicial decree was ordered; or

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1 2. A showing that enforcement of the provisions of the prior
2 decree would result in substantial harm to the child.

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

10 G. When entering a temporary order for custodial responsibility
11 prior to or during a deployment, the court shall:

12 1. Identify the nature of the deployment that is the basis for
13 the order;

14 2. Specify that the order is temporary;

15 3. Specify the contact between the deploying parent and the
16 child during deployment, including the means by which the deploying
17 parent may remain in communication with the child, such as
18 electronic communication by Internet camera, telephone, e-mail and
19 other available means; and

20 4. Order liberal contact between the deploying parent and child
21 when the deploying parent is on leave or is otherwise available,
22 consistent with the best interests of the child.

23 H. The court ordering custody or visitation pursuant to the
24 Military Custody and Visitation Act may also enter a temporary order

1 for child support, consistent with the requirements of Title 43 of
2 the Oklahoma Statutes.

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

6 A. If the deploying parent moves to delegate visitation rights,
7 the court may grant reasonable visitation to a member of the family
8 of the child, including a stepparent or step sibling, with whom the
9 child has a close and substantial relationship as defined in the
10 Military Custody and Visitation Act. Visitation awarded pursuant to
11 this section derives from the deploying parent's own right to
12 custodial responsibility. Neither this section nor a court order
13 permitting delegation shall be deemed to create any separate or
14 permanent rights to visitation.

15 B. If the court finds that it is in the best interest of the
16 child, the court shall grant reasonable visitation to family members
17 of the child. There shall be a rebuttable presumption that
18 visitation by a family member who has perpetrated domestic violence
19 against a spouse, a child, a domestic living partner, or is
20 otherwise subject to registration requirements of the Sex Offenders
21 Registration Act is not in the best interest of the child.

22 C. Any visitation ordered by the court pursuant to this section
23 shall be temporary in nature and shall not exceed the amount of
24 custodial time granted to the deploying parent under any existing

1 permanent order or agreement between the parents, with the exception
2 that the court may take into account unusual travel time required to
3 transport the child between the nondeploying parent and the family
4 members allowed visitation.

5 D. In an order granting delegation of visitation rights, the
6 court shall:

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

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

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

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

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 the completion of the deployment, the deploying parent
21 shall notify the nondeploying parent of the return of the deploying
22 parent. The deploying parent shall file a motion with the court for
23 an order or a hearing to terminate the temporary custody and
24 visitation orders of the court. If the deploying parent is unable

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

3 B. If the resumption of the custodial arrangement in place
4 prior to deployment does not follow immediately upon the return of
5 the deploying parent, the nondeploying parent shall provide for
6 liberal visitation of the child until such time that the
7 predeployment custodial arrangement is resumed or a court of
8 competent jurisdiction enters an order on custodial responsibility.
9 Liberal visitation shall not be required if the nondeploying parent
10 reasonably believes that the visitation would cause the child
11 irreparable harm.

12 C. Any temporary custody order for custodial responsibility
13 shall terminate automatically no later than thirty (30) days after
14 the deploying parent returns from deployment or thirty (30) days
15 after the deploying parent notifies either the nondeploying parent
16 or the court of the date of return, whichever is later. However, in
17 the event that either parent files a motion to prevent termination
18 during that period on the ground that termination is likely to cause
19 the child irreparable harm, the temporary order shall not terminate
20 automatically, provided the nondeploying parent files a motion for
21 an expedited hearing on the matter.

22 D. A motion by either parent to prevent termination of the
23 temporary custody order filed within thirty (30) days of the return
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1 of the deploying parent shall be heard by the court at an expedited
2 hearing no later than ten (10) days after the filing of the motion.

3 E. The court may order a transition period which allows a
4 gradual return to the prior custody order if the court finds that an
5 immediate resumption of the prior order would not be in the best
6 interest of the child.

7 F. The court shall assess attorney fees and court costs of the
8 nonmoving party against the moving party if the court finds that a
9 motion to extend the temporary order was made in bad faith.

10 SECTION 8. This act shall become effective November 1, 2011.

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