

1 STATE OF OKLAHOMA

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

3 SENATE BILL 489

By: Anderson

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5
6 AS INTRODUCED

7 An Act relating to child custody; creating the
8 Military Custody and Visitation Act; providing short
9 title; defining terms; requiring court to provide for
10 custody in certain proceedings; prohibiting
11 consideration of certain factors; clarifying
12 jurisdiction; requiring certain notice; authorizing
13 award of certain fees and costs; authorizing motion
14 for expedited hearing under certain circumstances;
15 allowing certain appearance and submission of
16 evidence through electronic means under specified
17 circumstances; allowing certain temporary orders;
18 stating effect of prior decree or agreement;
19 requiring court to enter certain orders under
20 specified circumstances; authorizing certain child
21 support orders; allowing granting of certain
22 visitation; establishing requirements for certain
23 visitation; requiring certain notice; providing for
24 resumption of certain custodial arrangements;
providing for termination of certain temporary
orders; requiring assessment of certain fees and
costs for certain motions made in bad faith;
providing for codification; and providing an
effective date.

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

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 112.11 of Title 43, unless there
3 is created a duplication in numbering, reads as follows:

4 This act shall be known and may be cited as the "Military
5 Custody and Visitation Act".

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 112.12 of Title 43, unless there
8 is created a duplication in numbering, reads as follows:

9 As used in this act:

10 1. "Custodial responsibility" means legal custody, physical
11 custody or visitation rights with respect to a child;

12 2. "Deploying parent" means a person who is:

13 a. a legal parent of any child under the age of eighteen
14 (18), or the legal parent of any child who has reached
15 the age of majority but is physically or mentally
16 incapacitated to support himself or herself, or the
17 guardian of any person,

18 b. a service member, and

19 c. deployed or has been notified of impending deployment;

20 3. "Deployment" means the temporary transfer of a service
21 member in compliance with official orders to another location in
22 support of combat, contingency operation, or natural disaster
23 requiring the use of orders for a period of more than thirty (30)
24 consecutive days, during which family members are not authorized to

1 accompany the service member at government expense. Deployment
2 shall include any period during which a service member is absent
3 from duty on account of sickness, wounds, leave or other lawful
4 cause;

5 4. "Guardian" means a person who has qualified as a guardian of
6 a minor or incapacitated adult pursuant to appointment by a court
7 which includes a limited guardian but not a guardian ad litem;

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

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

12 a. the active or reserve components of the Army, Navy,
13 Air Force, Marine Corps, and Coast Guard of the United
14 States, or any other branch of the armed forces of the
15 United States, or

16 b. the active or reserve components of the National
17 Guard; and

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

20 SECTION 3. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 112.13 of Title 43, unless there
22 is created a duplication in numbering, reads as follows:

23 In any original or modification custody proceeding, if either
24 parent is a service member subject to possible deployment, the court

1 shall provide for the terms of custodial responsibility in the event
2 of deployment.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 112.14 of Title 43, unless there
5 is created a duplication in numbering, reads as follows:

6 In any proceeding for custodial responsibility of a child of a
7 service member, whether an original proceeding for custody or the
8 modification of a previous custody order, past deployments or
9 possible future deployments of the service member shall not be
10 considered as a factor in determining the child's best interests,
11 except that effects of the deployment aside from any temporary
12 inconvenience caused to the child may be considered. This section
13 shall not apply to proceedings for a temporary order of custodial
14 responsibility.

15 SECTION 5. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 112.15 of Title 43, unless there
17 is created a duplication in numbering, reads as follows:

18 The removal of a child from this state in anticipation of or
19 during deployment shall be considered a "temporary absence" for the
20 purposes of the Uniform Child Custody and Jurisdiction Act, Sections
21 551-102 et seq. of Title 43 of the Oklahoma Statutes ("UCCJEA"). If
22 this state has exclusive continuing jurisdiction under the UCCJEA at
23 the time of deployment, it shall retain this jurisdiction for the
24 duration of deployment; and the existence of a deployment may not be

1 used as a basis to assert the inconvenience of this state as a forum
2 or otherwise to remove jurisdiction from the courts of this state.
3 This section shall not prevent the exercise of temporary emergency
4 jurisdiction by a court of this state under the UCCJEA.

5 SECTION 6. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 112.16 of Title 43, unless there
7 is created a duplication in numbering, reads as follows:

8 A deploying parent shall notify the nondeploying parent no later
9 than:

- 10 1. The sixtieth day before the date of deployment, or
- 11 2. The tenth day after the date that the deploying parent
12 receives an order of deployment, if the deploying parent did not
13 know and could not reasonably have known the information in
14 sufficient time to comply with the sixty-day notice.

15 If a valid court order requires that the address or contact
16 information of the nondeploying parent be kept confidential, the
17 notification shall be made to the court only. In the event of a
18 failure to notify the nondeploying parent, the court may award
19 attorney fees and costs to the nondeploying parent.

20 SECTION 7. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 112.17 of Title 43, unless there
22 is created a duplication in numbering, reads as follows:

23 When a deploying parent has received orders of deployment,
24 either parent may move the court for an expedited hearing on any

1 matter pertaining to custodial responsibility. The motion shall
2 include the date on which the deployment begins. On such a motion,
3 and where the imminent deployment of a parent will have a material
4 effect on the parent's ability, or anticipated ability, to appear in
5 person at a regularly scheduled hearing, the Court shall schedule an
6 expedited hearing within ten (10) days of filing.

7 SECTION 8. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 112.18 of Title 43, unless there
9 is created a duplication in numbering, reads as follows:

10 A deploying parent who is entitled to a stay in civil
11 proceedings pursuant to the Servicemembers Civil Relief Act (50
12 U.S.C. App. Sections 501-596), may elect to proceed while he or she
13 is reasonably unavailable to appear in the geographical location in
14 which the litigation is pursued and may seek relief and provide
15 evidence through video conferencing, internet camera, email,
16 telephone, or other reasonable electronic means. The Court may deny
17 the deploying parent the opportunity to present evidence by
18 electronic means if it would cause a substantial injustice, deny
19 effective cross examination, deny the right to confront the witness,
20 or abridge another constitutional right.

21 SECTION 9. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 112.19 of Title 43, unless there
23 is created a duplication in numbering, reads as follows:

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1 At or after the time that a deploying parent receives notice of
2 deployment, any court with jurisdiction under the laws of this state
3 may enter a temporary order for custodial responsibility under
4 applicable state law, so long as this order is in compliance with
5 the Servicemembers Civil Relief Act. A court of this state may not
6 enter a permanent order regarding custody or visitation after a
7 notice of deployment has occurred or during a deploying parent's
8 deployment without the deploying parent's consent.

9 SECTION 10. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 112.20 of Title 43, unless there
11 is created a duplication in numbering, reads as follows:

12 If a prior judicial decree contains provisions for custodial
13 responsibility of the child in the event of deployment, those
14 provisions are binding on the court in the absence of either:

15 1. A subsequent substantial change of circumstances occurring
16 since the time of the prior judicial decree; or

17 2. A showing that enforcement of those provisions would cause
18 substantial harm to the child.

19 If the deploying parent and nondeploying parent have previously
20 agreed in writing to provisions for custodial responsibility of the
21 child in the event of deployment, the court shall presume that the
22 agreement is in the best interest of the child. This presumption
23 may be overcome only if the court makes specific findings of fact
24 stating why the agreement is not in the best interest of the child.

1 SECTION 11. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 112.21 of Title 43, unless there
3 is created a duplication in numbering, reads as follows:

4 When entering a temporary order for custodial responsibility
5 prior to or during a service member's deployment, the court shall:

- 6 1. Identify the nature of the deployment that is the basis for
7 the order;
- 8 2. State that the order is a temporary order;
- 9 3. Specify the contact between the deploying parent and his or
10 her child that shall occur during deployment, including the means by
11 which the deploying parent may remain in communication with the
12 child, such as electronic communication by webcam, telephone, email,
13 or other available means; and
- 14 4. Order liberal contact between the deploying parent and child
15 when the deploying parent is on leave or is otherwise available,
16 consistent with the best interests of the child.

17 SECTION 12. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 112.22 of Title 43, unless there
19 is created a duplication in numbering, reads as follows:

20 Where the court enters an order on custody or visitation under
21 this section, it may also, on the motion of either parent and with
22 competent jurisdiction, enter a temporary order for child support,
23 consistent with the laws of this state.

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1 SECTION 13. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 112.23 of Title 43, unless there
3 is created a duplication in numbering, reads as follows:

4 Upon the deploying parent's motion to delegate visitation
5 rights, the court may grant reasonable visitation to a member of the
6 child's family, including a stepparent or step sibling, with whom
7 the child has a close and substantial relationship. A "close and
8 substantial relationship" means one in which a bond has been forged
9 between the child and the other person by regular contact or
10 communications. The visitation awarded under this section derives
11 from the deploying parent's own right to custodial responsibility.
12 Neither this section nor a court order permitting delegation shall
13 be deemed to create any separate or permanent rights to visitation.

14 SECTION 14. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 112.24 of Title 43, unless there
16 is created a duplication in numbering, reads as follows:

17 The court shall grant reasonable visitation upon a finding that
18 it is in the best interests of the child. There shall be a
19 rebuttable presumption that visitation shall not be granted to a
20 family member who has perpetrated domestic violence against a
21 spouse, a child, or a domestic living partner or is otherwise
22 subject to the registration requirements of the Oklahoma Sex
23 Offenders Registration Act; or, to a family member residing with a
24 person who has perpetrated domestic violence against a spouse, a

1 child, or a domestic living partner or is otherwise subject to the
2 registration requirements of the Oklahoma Sex Offenders Registration
3 Act.

4 SECTION 15. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 112.25 of Title 43, unless there
6 is created a duplication in numbering, reads as follows:

7 Any visitation ordered by the court under this section shall be
8 temporary in nature and shall not exceed the amount of custodial
9 time granted to the deploying parent under any existing permanent
10 order or agreement between the parents, with the exception that the
11 court may take into account atypical travel time required to
12 transport the child between the nondeploying parent and the family
13 members to whom visitation rights are delegated.

14 SECTION 16. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 112.26 of Title 43, unless there
16 is created a duplication in numbering, reads as follows:

17 In an order granting delegation of visitation rights, the court
18 shall:

- 19 1. Set out a process to resolve any disputes that may arise
20 between the person receiving visitation and the nondeploying parent;
- 21 2. Identify the nature of the deployment that is the basis for
22 the order; and
- 23 3. State that the order is a temporary order and shall
24 terminate at the end of the deployment.

1 SECTION 17. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 112.27 of Title 43, unless there
3 is created a duplication in numbering, reads as follows:

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

8 SECTION 18. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 112.28 of Title 43, unless there
10 is created a duplication in numbering, reads as follows:

11 Upon return from deployment, a deploying parent must notify the
12 nondeploying parent of the date of his or her return, and the date
13 he or she seeks that the temporary order for custodial
14 responsibility entered under this act terminates. In the event the
15 deploying parent is unable to locate the nondeploying parent, the
16 deploying parent shall file a notice with the court of his or her
17 return.

18 SECTION 19. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 112.29 of Title 43, unless there
20 is created a duplication in numbering, reads as follows:

21 If the resumption of the pre-deployment arrangement for
22 custodial responsibility does not follow immediately on the
23 deploying parent's return from deployment, the nondeploying parent
24 shall provide for liberal visitation of the child with the deploying

1 parent until such time that the pre-deployment custodial
2 responsibility arrangement is resumed or a court of competent
3 jurisdiction enters an order on custodial responsibility. Liberal
4 visitation is not required in the event the nondeploying parent
5 reasonably believes that this visitation will cause the child
6 irreparable harm.

7 SECTION 20. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 112.30 of Title 43, unless there
9 is created a duplication in numbering, reads as follows:

10 Any temporary custody order for custodial responsibility shall
11 terminate automatically no later than thirty (30) days after the
12 deploying parent returns from deployment or thirty (30) days after
13 the deploying parent notifies either the nondeploying parent or the
14 court of the date of his or her return, whichever is later.

15 However, in the event that either parent files a motion to prevent
16 termination during that period on the ground that such termination
17 is likely to cause the child irreparable harm, the temporary order
18 shall not terminate automatically.

19 SECTION 21. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 112.31 of Title 43, unless there
21 is created a duplication in numbering, reads as follows:

22 Any motion by either parent to prevent termination of the
23 temporary custody order that is filed within thirty (30) days of the
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1 deploying parent's return shall be heard by the court at an
2 expedited hearing within ten (10) days of filing.

3 SECTION 22. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 112.32 of Title 43, unless there
5 is created a duplication in numbering, reads as follows:

6 In the event the court finds that the termination of the
7 temporary order for custodial responsibility is likely to cause the
8 child irreparable harm, the court shall order that the temporary
9 order remain in effect until a hearing can be held on the issue of a
10 permanent change of custodial responsibility. Where a likelihood of
11 irreparable harm to the child can be prevented through a gradual
12 reversion to the previous custody arrangement, the court shall order
13 such a transition period rather than retain the temporary order.

14 SECTION 23. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 112.33 of Title 43, unless there
16 is created a duplication in numbering, reads as follows:

17 Where the court finds that an immediate return to the previous
18 arrangement of custodial responsibility would not be in the child's
19 best interests, the court may order a transition period that allows
20 a gradual reversion to that arrangement.

21 SECTION 24. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 112.34 of Title 43, unless there
23 is created a duplication in numbering, reads as follows:

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1 If the court finds that a motion to extend the temporary order
2 for custodial responsibility has been made in bad faith, the court
3 shall assess the attorney fees and court costs of the nonmoving
4 party against the moving party.

5 SECTION 25. This act shall become effective November 1, 2011.

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