

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 54th Legislature (2014)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3472

 By: Nelson

7
8 COMMITTEE SUBSTITUTE

9 An Act relating to child custody; amending 43 O.S.
10 2011, Section 112.5, which relates to child custody
11 and guardianship; providing exception; prohibiting
12 court from awarding custody or guardianship to
13 persons convicted of certain crimes; and providing an
14 effective date.

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

16 SECTION 1. AMENDATORY 43 O.S. 2011, Section 112.5, is
17 amended to read as follows:

18 Section 112.5 A. Custody or guardianship of a child may be
19 awarded to:

- 20 1. A parent or to both parents jointly;
- 21 2. A grandparent;
- 22 3. A person who was indicated by the wishes of a deceased
23 parent;
- 24 4. A relative of either parent;

1 5. The person in whose home the child has been living in a
2 wholesome and stable environment including but not limited to a
3 foster parent; or

4 6. Any other person deemed by the court to be suitable and able
5 to provide adequate and proper care and guidance for the child.

6 B. In applying subsection A of this section, a court shall
7 award custody or guardianship of a child to a parent, unless a
8 nonparent proves by clear and convincing evidence that:

9 1. For a period of at least twelve (12) months out of the last
10 fourteen (14) months immediately preceding the commencement of the
11 custody or guardianship proceeding, the parent has willfully failed,
12 refused, or neglected to contribute to the support of the child:

13 a. in substantial compliance with a support provision or
14 an order entered by a court of competent jurisdiction
15 adjudicating the duty, amount, and manner of support,
16 or

17 b. according to the financial ability of the parent to
18 contribute to the support of the child if no provision
19 for support is entered by a court of competent
20 jurisdiction, or an order of modification subsequent
21 thereto.

22 For purposes of this paragraph, incidental or token financial
23 contributions shall not be considered in establishing whether a
24

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 parent has satisfied his or her obligation under subparagraphs a and
2 b of this paragraph; or

3 2. a. the child has been left in the physical custody of a
4 nonparent by a parent or parents of the child for one
5 (1) year or more, excluding parents on active duty in
6 the military, and

7 b. the parent or parents have not maintained regular
8 visitation or communication with the child.

9 For purposes of this paragraph, incidental or token visits or
10 communications shall not be considered in determining whether a
11 parent or parents have regularly maintained visitation or
12 communication.

13 C. In applying subsection A of this section, a court shall
14 award custody or guardianship of a child to a parent, unless the
15 court finds that the parent is affirmatively unfit. There shall be
16 a rebuttable presumption that a parent is affirmatively unfit if the
17 parent:

18 1. Is or has been subject to the registration requirements of
19 the Oklahoma Sex Offenders Registration Act or any similar act in
20 any other state, except as provided in subsection D of this section;

21 2. Has been convicted of a crime listed in Section 582 of Title
22 57 of the Oklahoma Statutes;

23 3. Is an alcohol-dependent person or a drug-dependent person as
24 established by clear and convincing evidence and who can be expected

1 in the near future to inflict or attempt to inflict serious bodily
2 harm to himself or herself or another person as a result of such
3 dependency;

4 4. Has been convicted of domestic abuse within the past five
5 (5) years;

6 5. Is residing with a person who is or has been subject to the
7 registration requirements of the Oklahoma Sex Offenders Registration
8 Act or any similar act in any other state;

9 6. Is residing with a person who has been convicted of a crime
10 listed in ~~the Oklahoma Child Abuse Reporting and Prevention Act~~
11 Section 843.5 of Title 21 or in Section 582 of Title 57 of the
12 Oklahoma Statutes; or

13 7. Is residing with a person who has been convicted of domestic
14 abuse within the past five (5) years.

15 D. In applying subsection A of this section, a court shall not
16 award custody or guardianship of a child to any person who has been
17 convicted, whether upon a verdict or plea of guilty or upon a plea
18 of nolo contendere, or received a suspended sentence or any
19 probationary term, or is currently serving a sentence or any form of
20 probation or parole in a court in any state of any of the following
21 crimes:

22 1. Sexual abuse or sexual exploitation of a child, Section
23 843.5 of Title 21 of the Oklahoma Statutes;

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1 2. Child endangerment, if the offense involved sexual abuse of
2 a child, Section 852.1 of Title 21 of the Oklahoma Statutes;

3 3. Kidnapping, if the offense involved sexual abuse or sexual
4 exploitation of a child, Section 741 of the Title 21 of the Oklahoma
5 Statutes;

6 4. Incest, Section 885 of Title 21 of the Oklahoma Statutes;

7 5. Forcible sodomy of a child, Section 888 of Title 21 of the
8 Oklahoma Statutes;

9 6. Child stealing, if the offense involved sexual abuse or
10 sexual exploitation, Section 891 of Title 21 of the Oklahoma
11 Statutes;

12 7. Procuring minors for participation in child pornography,
13 Section 1021.2 of Title 21 of the Oklahoma Statutes;

14 8. Consent to participation of minors in child pornography,
15 Section 1021.3 of Title 21 of the Oklahoma Statutes;

16 9. Facilitating, encouraging, offering or soliciting sexual
17 conduct with a minor, Section 1040.13a of Title 21 of the Oklahoma
18 Statutes;

19 10. Distributing child pornography, Section 1040.13 of Title 21
20 of the Oklahoma Statutes;

21 11. Possession of child pornography, Section 1024.2 of Title 21
22 of the Oklahoma Statutes;

23 12. Aggravated possession of child pornography, Section
24 1040.12a of Title 21 of the Oklahoma Statutes;

1 13. Procuring a child under eighteen (18) years of age for
2 prostitution, Section 1087 of Title 21 of the Oklahoma Statutes;

3 14. Inducing or restraining a child under eighteen (18) years
4 of age for prostitution, Section 1088 of Title 21 of the Oklahoma
5 Statutes;

6 15. First degree rape, Section 1114 of Title 21 of the Oklahoma
7 Statutes;

8 16. Lewd or indecent proposals or acts to a child under sixteen
9 (16) years of age, Section 1123 of Title 21 of the Oklahoma
10 Statutes.

11 E. Subject to subsection ~~E~~ F of this section, a custody
12 determination made in accordance with subsections B and C of this
13 section shall not be modified unless the person seeking the
14 modification proves that:

15 1. Since the making of the order sought to be modified, there
16 has been a permanent, material, and substantial change of conditions
17 that directly affects the best interests of the child; and

18 2. That as a result of such change of circumstances, the child
19 would be substantially better off with regard to its temporal,
20 mental, and moral welfare if custody were modified.

21 ~~E.~~ F. If the custody determination made in accordance with
22 subsections B and C of this section indicates that custody is
23 temporary, the determination may be modified upon a showing that the
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1 conditions which led to the custody or guardianship determination no
2 longer exist.

3 SECTION 2. This act shall become effective November 1, 2014.
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5 COMMITTEE REPORT BY: COMMITTEE ON HUMAN SERVICES, dated 02/26/2014 -
6 DO PASS, As Amended.
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