

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 3472

By: Nelson

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5
6 AS INTRODUCED

7 An Act relating to child custody; amending 43 O.S.
8 2011, Section 112.5, which relates to child custody
9 and guardianship; prohibiting court from awarding
10 custody or guardianship to a sex offender; and
11 providing an effective date.

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

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

15 Section 112.5 A. Custody or guardianship of a child may be
16 awarded to:

- 17 1. A parent or to both parents jointly;
- 18 2. A grandparent;
- 19 3. A person who was indicated by the wishes of a deceased
20 parent;
- 21 4. A relative of either parent;
- 22 5. The person in whose home the child has been living in a
23 wholesome and stable environment including but not limited to a
24 foster parent; or

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

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

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

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

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

19 For purposes of this paragraph, incidental or token financial
20 contributions shall not be considered in establishing whether a
21 parent has satisfied his or her obligation under subparagraphs a and
22 b of this paragraph; or

23 2. a. the child has been left in the physical custody of a
24 nonparent by a parent or parents of the child for one

1 (1) year or more, excluding parents on active duty in
2 the military, and

3 b. the parent or parents have not maintained regular
4 visitation or communication with the child.

5 For purposes of this paragraph, incidental or token visits or
6 communications shall not be considered in determining whether a
7 parent or parents have regularly maintained visitation or
8 communication.

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

14 1. ~~Is or has been subject to the registration requirements of~~
15 ~~the Oklahoma Sex Offenders Registration Act or any similar act in~~
16 ~~any other state;~~

17 2. Has been convicted of a crime listed in Section 582 of Title
18 57 of the Oklahoma Statutes;

19 3. 2. Is an alcohol-dependent person or a drug-dependent person
20 as established by clear and convincing evidence and who can be
21 expected in the near future to inflict or attempt to inflict serious
22 bodily harm to himself or herself or another person as a result of
23 such dependency;

1 ~~4.~~ 3. Has been convicted of domestic abuse within the past five
2 (5) years;

3 ~~5.~~ 4. Is residing with a person who is or has been subject to
4 the registration requirements of the Oklahoma Sex Offenders
5 Registration Act or any similar act in any other state;

6 ~~6.~~ 5. Is residing with a person who has been convicted of a
7 crime listed in ~~the Oklahoma Child Abuse Reporting and Prevention~~
8 ~~Act~~ Section 843.5 of Title 21 or in Section 582 of Title 57 of the
9 Oklahoma Statutes; or

10 ~~7.~~ 6. Is residing with a person who has been convicted of
11 domestic abuse within the past five (5) years.

12 D. In applying subsection A of this section, a court shall not
13 award custody or guardianship of a child to any person who is or has
14 been subject to the registration requirements of the Sex Offenders
15 Registration Act or any similar act in another state.

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

20 1. Since the making of the order sought to be modified, there
21 has been a permanent, material, and substantial change of conditions
22 that directly affects the best interests of the child; and
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1 2. That as a result of such change of circumstances, the child
2 would be substantially better off with regard to its temporal,
3 mental, and moral welfare if custody were modified.

4 ~~E.~~ F. If the custody determination made in accordance with
5 subsections B and C of this section indicates that custody is
6 temporary, the determination may be modified upon a showing that the
7 conditions which led to the custody or guardianship determination no
8 longer exist.

9 SECTION 2. This act shall become effective November 1, 2014.

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11 54-2-9608 EK 12/27/13

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