

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

SENATE BILL 1767

By: Jech

AS INTRODUCED

An Act relating to child custody; amending 43 O.S. 2021, Section 109, which relates to joint custody; requiring court to grant joint custody; providing exception; requiring written findings to support certain determinations; updating statutory language; and providing an effective date.

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

SECTION 1. AMENDATORY 43 O.S. 2021, Section 109, is amended to read as follows:

Section 109. A. In awarding the custody of a minor unmarried child or in appointing a general guardian for ~~said~~ the child, the court shall consider what appears to be in the best interests of the physical and mental and moral welfare of the child.

B. The court, pursuant to the provisions of subsection A of this section, ~~may~~ shall grant the care, custody, and control of a child ~~to either parent or~~ to the parents jointly unless a parent objects to joint custody. Upon a determination that it is not in the best interest of the child to grant joint custody, the court shall submit written findings to support such a determination.

1 For the purposes of this section, the terms joint custody and
2 joint care, custody, and control mean the sharing by parents in all
3 or some of the aspects of physical and legal care, custody, and
4 control of their children.

5 C. If either or both parents have requested joint custody, ~~said~~
6 the parents shall file with the court their plans for the exercise
7 of joint care, custody, and control of their child. The parents of
8 the child may submit a plan jointly, or either parent or both
9 parents may submit separate plans. Any plan shall include but is
10 not limited to provisions detailing the physical living arrangements
11 for the child, child support obligations, medical and dental care
12 for the child, school placement, and visitation rights. A plan
13 shall be accompanied by an affidavit signed by each parent stating
14 that said parent agrees to the plan and will abide by its terms.
15 The plan and affidavit shall be filed with the petition for a
16 divorce or legal separation or after said petition is filed.

17 D. The court shall issue a final plan for the exercise of joint
18 care, custody, and control of the child or children, based upon the
19 plan submitted by the parents, separate or jointly, with appropriate
20 changes deemed by the court to be in the best interests of the
21 child. The court also may reject a request for joint custody and
22 proceed as if the request for joint custody had not been made.

23 E. The parents having joint custody of the child may modify the
24 terms of the plan for joint care, custody, and control. The

1 modification to the plan shall be filed with the court and included
2 with the plan. If the court determines the modifications are in the
3 best interests of the child, the court shall approve the
4 modifications.

5 F. The court also may modify the terms of the plan for joint
6 care, custody, and control upon the request of one parent. The
7 court shall not modify the plan unless the modifications are in the
8 best interests of the child, and shall submit written findings that
9 support such modification.

10 G. 1. The court may terminate a joint custody decree upon the
11 request of one or both of the parents or whenever the court
12 determines said decree is not in the best interests of the child,
13 and shall submit written findings that support termination of the
14 joint custody decree.

15 2. Upon termination of a joint custody decree, the court shall
16 proceed and issue a modified decree for the care, custody, and
17 control of the child as if no such joint custody decree had been
18 made.

19 H. In the event of a dispute between the parents having joint
20 custody of a child as to the interpretation of a provision of said
21 plan, the court may appoint an arbitrator to resolve said dispute.
22 The arbitrator shall be a disinterested person knowledgeable in
23 domestic relations law and family counseling. The determination of
24

1 the arbitrator shall be final and binding on the parties to the
2 proceedings until further order of the court.

3 If a parent refuses to consent to arbitration, the court may
4 terminate the joint custody decree.

5 I. 1. In every proceeding in which there is a dispute as to
6 the custody of a minor child, a determination by the court that
7 domestic violence, stalking, or harassment has occurred raises a
8 rebuttable presumption that sole custody, joint legal or physical
9 custody, or any shared parenting plan with the perpetrator of
10 domestic violence, harassing or stalking behavior is detrimental and
11 not in the best interest of the child, and it is in the best
12 interest of the child to reside with the parent who is not a
13 perpetrator of domestic violence, harassing or stalking behavior.

14 2. For the purposes of this subsection:

15 a. "domestic violence" means the threat of the infliction
16 of physical injury, any act of physical harm or the
17 creation of a reasonable fear thereof, or the
18 intentional infliction of emotional distress by a
19 parent or a present or former member of the household
20 of the child, against the child or another member of
21 the household, including coercive control by a parent
22 involving physical, sexual, psychological, emotional,
23 economic or financial abuse,

1 b. "stalking" means the willful course of conduct by a
2 parent who repeatedly follows or harasses another
3 person as defined in Section 1173 of Title 21 of the
4 Oklahoma Statutes, and

5 c. "harassment" means a knowing and willful course or
6 pattern of conduct by a parent directed at another
7 parent which seriously alarms or is a nuisance to the
8 person, and which serves no legitimate purpose
9 including, but not limited to, harassing or obscene
10 telephone calls or conduct that would cause a
11 reasonable person to have a fear of death or bodily
12 injury.

13 3. If a parent is absent or relocates as a result of an act of
14 domestic violence by the other parent, the absence or relocation
15 shall not be a factor that weighs against the parent in determining
16 custody or visitation.

17 4. The court shall consider, as a primary factor, the safety
18 and well-being of the child and of the parent who is the victim of
19 domestic violence or stalking behavior, in addition to other facts
20 regarding the best interest of the child.

21 5. The court shall consider the history of the parent causing
22 physical harm, bodily injury, assault, verbal threats, stalking, or
23 harassing behavior, or the fear of physical harm, bodily injury, or
24

1 assault to another person, including the minor child, in determining
2 issues regarding custody and visitation.

3 SECTION 2. This act shall become effective November 1, 2022.

4
5 58-2-3048 TEK 1/20/2022 7:28:57 PM
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25