

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 901

By: Jett

AS INTRODUCED

An Act relating to child custody; amending 43 O.S. 2021, Section 109, which relates to care and custody of children; modifying requirements for certain presumption; defining term; modifying definitions; requiring court to consider certain factors; 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 grant the care, custody, and control of a child to either parent or to the parents jointly.

For the purposes of this section, the terms joint custody and joint care, custody, and control mean the sharing by parents in all

1 or some of the aspects of physical and legal care, custody, and  
2 control of their children.

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

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

21 E. The parents having joint custody of the child may modify the  
22 terms of the plan for joint care, custody, and control. The  
23 modification to the plan shall be filed with the court and included  
24 with the plan. If the court determines the modifications are in the  
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1 best interests of the child, the court shall approve the  
2 modifications.

3 F. The court also may modify the terms of the plan for joint  
4 care, custody, and control upon the request of one parent. The  
5 court shall not modify the plan unless the modifications are in the  
6 best interests of the child.

7 G. 1. The court may terminate a joint custody decree upon the  
8 request of one or both of the parents or whenever the court  
9 determines ~~said~~ the decree is not in the best interests of the  
10 child.

11 2. Upon termination of a joint custody decree, the court shall  
12 proceed and issue a modified decree for the care, custody, and  
13 control of the child as if no such joint custody decree had been  
14 made.

15 H. In the event of a dispute between the parents having joint  
16 custody of a child as to the interpretation of a provision of ~~said~~  
17 the plan, the court may appoint an arbitrator to resolve ~~said~~ the  
18 dispute. The arbitrator shall be a disinterested person  
19 knowledgeable in domestic relations law and family counseling. The  
20 determination of the arbitrator shall be final and binding on the  
21 parties to the proceedings until further order of the court.

22 If a parent refuses to consent to arbitration, the court may  
23 terminate the joint custody decree.  
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1 I. 1. In every proceeding in which there is a dispute as to  
2 the custody of a minor child, a determination by the court that  
3 child abuse, domestic violence, stalking, or harassment has occurred  
4 raises a rebuttable presumption that sole custody, joint legal or  
5 physical custody, or any shared parenting plan with the perpetrator  
6 of child abuse, domestic violence, harassing or stalking behavior is  
7 detrimental and not in the best interest of the child, and it is in  
8 the best interest of the child to reside with the parent who is not  
9 a perpetrator of child abuse, domestic violence, harassing or  
10 stalking behavior.

11 2. For the purposes of this subsection:

- 12 a. "child abuse" shall have the same meaning as "abuse"  
13 as defined pursuant to the Oklahoma Children's Code in  
14 Section 1-1-105 of Title 10A of the Oklahoma Statutes,  
15 b. "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, and

13          d. "stalking" means the willful course of conduct by a  
14          parent who repeatedly follows or harasses another  
15          person as defined in Section 1173 of Title 21 of the  
16          Oklahoma Statutes.

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

21          4. The court shall consider, as a primary factor, the safety  
22          and well-being of the child who is the victim of child abuse and of  
23          the parent who is the victim of domestic violence, harassment, or  
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1 stalking behavior, in addition to other facts regarding the best  
2 interest of the child.

3 5. The court shall consider the history of the parent causing  
4 physical harm, bodily injury, assault, verbal threats, stalking, or  
5 harassing behavior, or the fear of physical harm, bodily injury, or  
6 assault to another person, including the minor child, in determining  
7 issues regarding custody and visitation.

8 SECTION 2. This act shall become effective November 1, 2023.

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