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April 22, 2025

ENGROSSED HOUSE
BILL NO. 2392

By: Adams, Hill, and Sneed of
the House

and

Seifried of the Senate

An Act relating to marriage and families; amending 43 O.S. 2021, Section 112.5, as amended by Section 37, Chapter 59, O.S.L. 2024 (43 O.S. Supp. 2024, Section 112.5), which relates to custody or guardianship; providing for presumption that parent is unfit; and providing an effective date.

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

SECTION 1. AMENDATORY 43 O.S. 2021, Section 112.5, as amended by Section 37, Chapter 59, O.S.L. 2024 (43 O.S. Supp. 2024, Section 112.5), is amended to read as follows:

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

1. A parent or to both parents jointly;
2. A grandparent;
3. A person who was indicated by the wishes of a deceased
parent;
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

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 Section 843.5 of Title 21 or in Section 582 of Title 57 of
11 the Oklahoma Statutes; ~~or~~

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

14 8. Has been convicted of a crime listed in the Oklahoma Child
15 Abuse Reporting and Prevention Act.

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

23 1. Sexual abuse or sexual exploitation of a child, Section
24 843.5 of Title 21 of the Oklahoma Statutes;

- 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 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 sexual abuse
13 material, Section 1021.2 of Title 21 of the Oklahoma Statutes;
- 14 8. Consent to participation of minors in child sexual abuse
15 material, Section 1021.3 of Title 21 of the Oklahoma Statutes;
- 16 9. Facilitating, encouraging, offering or soliciting sexual
17 conduct with a minor by use of technology, Section 1040.13a of Title
18 21 of the Oklahoma Statutes;
- 19 10. Distributing child sexual abuse material, Section 1040.13
20 of Title 21 of the Oklahoma Statutes;
- 21 11. Possession, purchase or procurement of child sexual abuse
22 material, Section 1024.2 of Title 21 of the Oklahoma Statutes;
- 23 12. Aggravated possession of child sexual abuse material,
24 Section 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, keeping, detaining or restraining a child under
4 eighteen (18) years of age for prostitution, Section 1088 of Title
5 21 of the Oklahoma 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; or

11 17. Solicitation of minors in any crime provided in subsection
12 B of Section 1021 of Title 21 of the Oklahoma Statutes.

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

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

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

23 F. If the custody determination made in accordance with
24 subsections B and C of this section indicates that custody is

1 temporary, the determination may be modified upon a showing that the
2 conditions which led to the custody or guardianship determination no
3 longer exist.

4 SECTION 2. This act shall become effective November 1, 2025.

5 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
6 April 22, 2025 - DO PASS
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