

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 HOUSE BILL 2185

By: Williams

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5  
6 AS INTRODUCED

7 An Act relating to marriage; amending 43 O.S. 2011,  
8 Section 112.3, which relates to notice of proposed  
9 relocation; reducing distance of relocation that  
requires notification; and providing an effective  
date.

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

13 SECTION 1. AMENDATORY 43 O.S. 2011, Section 112.3, is  
14 amended to read as follows:

15 Section 112.3 A. As used in this section:

16 1. "Change of residence address" means a change in the primary  
17 residence of an adult;

18 2. "Child" means a child under the age of eighteen (18) who has  
19 not been judicially emancipated;

20 3. "Person entitled to custody of or visitation with a child"  
21 means a person so entitled by virtue of a court order or by an  
22 express agreement that is subject to court enforcement;

23 4. "Principal residence of a child" means:  
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- 1 a. the location designated by a court to be the primary  
2 residence of the child,
- 3 b. in the absence of a court order, the location at which  
4 the parties have expressly agreed that the child will  
5 primarily reside, or
- 6 c. in the absence of a court order or an express  
7 agreement, the location, if any, at which the child,  
8 preceding the time involved, lived with the child's  
9 parents, a parent, or a person acting as parent for at  
10 least six (6) consecutive months and, in the case of a  
11 child less than six (6) months old, the location at  
12 which the child lived from birth with any of the  
13 persons mentioned. Periods of temporary absence of  
14 any of the named persons are counted as part of the  
15 six-month or other period; and

16 5. "Relocation" means a change in the principal residence of a  
17 child over ~~seventy-five (75)~~ thirty-five (35) miles from the child's  
18 principal residence for a period of sixty (60) days or more, but  
19 does not include a temporary absence from the principal residence.

20 B. 1. Except as otherwise provided by this section, a person  
21 who has the right to establish the principal residence of the child  
22 shall notify every other person entitled to visitation with the  
23 child of a proposed relocation of the child's principal residence as  
24 required by this section.

1        2. Except as otherwise provided by this section, an adult  
2 entitled to visitation with a child shall notify every other person  
3 entitled to custody of or visitation with the child of an intended  
4 change in the primary residence address of the adult as required by  
5 this section.

6        C. 1. Except as provided by this section, notice of a proposed  
7 relocation of the principal residence of a child or notice of an  
8 intended change of the primary residence address of an adult must be  
9 given:

10            a. by mail to the last-known address of the person to be  
11                notified, and

12            b. no later than:

13                    (1) the sixtieth day before the date of the intended  
14                        move or proposed relocation, or

15                    (2) the tenth day after the date that the person  
16                        knows the information required to be furnished  
17                        pursuant to this subsection, if the person did  
18                        not know and could not reasonably have known the  
19                        information in sufficient time to comply with the  
20                        sixty-day notice, and it is not reasonably  
21                        possible to extend the time for relocation of the  
22                        child.

23        2. Except as provided by this section, the following  
24 information, if available, must be included with the notice of

1 intended relocation of the child or change of primary residence of  
2 an adult:

- 3 a. the intended new residence, including the specific  
4 address, if known,
- 5 b. the mailing address, if not the same,
- 6 c. the home telephone number, if known,
- 7 d. the date of the intended move or proposed relocation,
- 8 e. a brief statement of the specific reasons for the  
9 proposed relocation of a child, if applicable,
- 10 f. a proposal for a revised schedule of visitation with  
11 the child, if any, and
- 12 g. a warning to the nonrelocating parent that an  
13 objection to the relocation must be made within thirty  
14 (30) days or the relocation will be permitted.

15 3. A person required to give notice of a proposed relocation or  
16 change of residence address under this subsection has a continuing  
17 duty to provide a change in or addition to the information required  
18 by this subsection as that information becomes known.

19 D. After the effective date of this act, an order issued by a  
20 court directed to a person entitled to custody of or visitation with  
21 a child shall include the following or substantially similar terms:

22 "You, as a party in this action, are ordered to notify every  
23 other party to this action in writing of a proposed relocation of  
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1 the child, change of your primary residence address, and the  
2 following information:

- 3 1. The intended new residence, including the specific address,  
4 if known;
- 5 2. The mailing address, if not the same;
- 6 3. The home telephone number, if known;
- 7 4. The date of the intended move or proposed relocation;
- 8 5. A brief statement of the specific reasons for the proposed  
9 relocation of a child, if applicable; and
- 10 6. A proposal for a revised schedule of visitation with the  
11 child, if any.

12 You are further ordered to give written notice of the proposed  
13 relocation or change of residence address on or before the sixtieth  
14 day before a proposed change. If you do not know and could not have  
15 reasonably known of the change in sufficient time to provide a  
16 sixty-day notice, you are ordered to give written notice of the  
17 change on or before the tenth day after the date that you know of  
18 the change.

19 Your obligation to furnish this information to every other party  
20 continues as long as you, or any other person, by virtue of this  
21 order, are entitled to custody of or visitation with a child covered  
22 by this order.

23 Your failure to obey the order of this court to provide every  
24 other party with notice of information regarding the proposed

1 relocation or change of residence address may result in further  
2 litigation to enforce the order, including contempt of court.

3 In addition, your failure to notify of a relocation of the child  
4 may be taken into account in a modification of custody of,  
5 visitation with, possession of or access to the child. Reasonable  
6 costs and attorney fees also may be assessed against you if you fail  
7 to give the required notice.

8 If you, as the nonrelocating parent, do not file a proceeding  
9 seeking a temporary or permanent order to prevent the relocation  
10 within thirty (30) days after receipt of notice of the intent of the  
11 other party to relocate the residence of the child, relocation is  
12 authorized."

13 E. 1. On a finding by the court that the health, safety, or  
14 liberty of a person or a child would be unreasonably put at risk by  
15 the disclosure of the required identifying information in  
16 conjunction with a proposed relocation of the child or change of  
17 residence of an adult, the court may order that:

- 18 a. the specific residence address and telephone number of  
19 the child or of the adult and other identifying  
20 information shall not be disclosed in the pleadings,  
21 other documents filed in the proceeding, or the final  
22 order, except for an in camera disclosure,
- 23 b. the notice requirements provided by this article be  
24 waived to the extent necessary to protect

1 confidentiality and the health, safety or liberty of a  
2 person or child, and

- 3 c. any other remedial action that the court considers  
4 necessary to facilitate the legitimate needs of the  
5 parties and the best interest of the child.

6 2. If appropriate, the court may conduct an ex parte hearing  
7 pursuant to this subsection.

8 F. 1. The court may consider a failure to provide notice of a  
9 proposed relocation of a child as provided by this section as:

- 10 a. a factor in making its determination regarding the  
11 relocation of a child,  
12 b. a factor in determining whether custody or visitation  
13 should be modified,  
14 c. a basis for ordering the return of the child if the  
15 relocation has taken place without notice, and  
16 d. sufficient cause to order the person seeking to  
17 relocate the child to pay reasonable expenses and  
18 attorney fees incurred by the person objecting to the  
19 relocation.

20 2. In addition to the sanctions provided by this subsection,  
21 the court may make a finding of contempt if a party violates the  
22 notice requirement required by this section and may impose the  
23 sanctions authorized for contempt of a court order.

1 G. 1. The person entitled to custody of a child may relocate  
2 the principal residence of a child after providing notice as  
3 provided by this section unless a parent entitled to notice files a  
4 proceeding seeking a temporary or permanent order to prevent the  
5 relocation within thirty (30) days after receipt of the notice.

6 2. A parent entitled by court order or written agreement to  
7 visitation with a child may file a proceeding objecting to a  
8 proposed relocation of the principal residence of a child and seek a  
9 temporary or permanent order to prevent the relocation.

10 3. If relocation of the child is proposed, a nonparent entitled  
11 by court order or written agreement to visitation with a child may  
12 file a proceeding to obtain a revised schedule of visitation, but  
13 may not object to the proposed relocation or seek a temporary or  
14 permanent order to prevent the relocation.

15 4. A proceeding filed pursuant to this subsection must be filed  
16 within thirty (30) days of receipt of notice of a proposed  
17 relocation.

18 H. 1. The court may grant a temporary order restraining the  
19 relocation of a child, or ordering return of the child if a  
20 relocation has previously taken place, if the court finds:

- 21 a. the required notice of a proposed relocation of a  
22 child as provided by this section was not provided in  
23 a timely manner and the parties have not presented an  
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1           agreed-upon revised schedule for visitation with the  
2           child for the court's approval,

3           b.   the child already has been relocated without notice,  
4           agreement of the parties, or court approval, or

5           c.   from an examination of the evidence presented at the  
6           temporary hearing there is a likelihood that on final  
7           hearing the court will not approve the relocation of  
8           the primary residence of the child.

9           2.   The court may grant a temporary order permitting the  
10          relocation of the child pending final hearing if the court:

11          a.   finds that the required notice of a proposed  
12          relocation of a child as provided by this section was  
13          provided in a timely manner and issues an order for a  
14          revised schedule for temporary visitation with the  
15          child, and

16          b.   finds from an examination of the evidence presented at  
17          the temporary hearing there is a likelihood that on  
18          final hearing the court will approve the relocation of  
19          the primary residence of the child.

20          I.   A proposed relocation of a child may be a factor in  
21          considering a change of custody.

22          J.   1.   In reaching its decision regarding a proposed  
23          relocation, the court shall consider the following factors:  
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- 1 a. the nature, quality, extent of involvement, and  
2 duration of the child's relationship with the person  
3 proposing to relocate and with the nonrelocating  
4 person, siblings, and other significant persons in the  
5 child's life,
- 6 b. the age, developmental stage, needs of the child, and  
7 the likely impact the relocation will have on the  
8 child's physical, educational, and emotional  
9 development, taking into consideration any special  
10 needs of the child,
- 11 c. the feasibility of preserving the relationship between  
12 the nonrelocating person and the child through  
13 suitable visitation arrangements, considering the  
14 logistics and financial circumstances of the parties,
- 15 d. the child's preference, taking into consideration the  
16 age and maturity of the child,
- 17 e. whether there is an established pattern of conduct of  
18 the person seeking the relocation, either to promote  
19 or thwart the relationship of the child and the  
20 nonrelocating person,
- 21 f. whether the relocation of the child will enhance the  
22 general quality of life for both the custodial party  
23 seeking the relocation and the child, including but  
24

1 not limited to financial or emotional benefit or  
2 educational opportunity,

- 3 g. the reasons of each person for seeking or opposing the  
4 relocation, and  
5 h. any other factor affecting the best interest of the  
6 child.

7 2. The court may not:

- 8 a. give undue weight to the temporary relocation as a  
9 factor in reaching its final decision, if the court  
10 has issued a temporary order authorizing a party  
11 seeking to relocate a child to move before final  
12 judgment is issued, or  
13 b. consider whether the person seeking relocation of the  
14 child has declared that he or she will not relocate if  
15 relocation of the child is denied.

16 K. The relocating person has the burden of proof that the  
17 proposed relocation is made in good faith. If that burden of proof  
18 is met, the burden shifts to the nonrelocating person to show that  
19 the proposed relocation is not in the best interest of the child.

20 L. 1. After notice and a reasonable opportunity to respond,  
21 the court may impose a sanction on a person proposing a relocation  
22 of the child or objecting to a proposed relocation of a child if it  
23 determines that the proposal was made or the objection was filed:  
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- a. to harass a person or to cause unnecessary delay or needless increase in the cost of litigation,
- b. without being warranted by existing law or was based on frivolous argument, or
- c. based on allegations and other factual contentions which had no evidentiary support or, if specifically so identified, could not have been reasonably believed to be likely to have evidentiary support after further investigation.

2. A sanction imposed under this subsection shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. The sanction may include directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the other party of some or all of the reasonable attorney fees and other expenses incurred as a direct result of the violation.

M. If the issue of relocation is presented at the initial hearing to determine custody of and visitation with a child, the court shall apply the factors set forth in this section in making its initial determination.

N. 1. The provisions of this section apply to an order regarding custody of or visitation with a child issued:

- a. after the effective date of this act, and

1           b.    before the effective date of this act, if the existing  
2                    custody order or enforceable agreement does not  
3                    expressly govern the relocation of the child or there  
4                    is a change in the primary residence address of an  
5                    adult affected by the order.

6           2.    To the extent that a provision of this section conflicts  
7 with an existing custody order or enforceable agreement, this  
8 section does not apply to the terms of that order or agreement that  
9 govern relocation of the child or a change in the primary residence  
10 address of an adult.

11           SECTION 2.   This act shall become effective November 1, 2017.

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13           56-1-5226            AMM           01/12/17  
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