

1 STATE OF OKLAHOMA

2 2nd Session of the 59th Legislature (2024)

3 HOUSE BILL 3088

By: Tedford

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6 AS INTRODUCED

7 An Act relating to child custody; defining terms;
8 providing factors for determining parenting time;
9 providing for temporary custody agreements; providing
10 for dismissal of custody hearings; providing for
11 visitation rights; providing for alleged domestic
12 abuse exceptions; providing for if a parent is in the
13 armed forces; providing for noncustodial parental
14 visitation rights; providing for motions to modify
15 court orders; providing for enforcement of the
16 Uniform Child Custody Jurisdiction Act; providing for
17 certain exceptions to the Uniform Child Custody
18 Jurisdiction Act; providing for attorney fees in
19 certain instances; prohibiting joint custody when
20 domestic violence has been established; authorizing
21 the court to order restraining orders when domestic
22 violence has been established; providing for child
23 support; providing for codification; and providing an
24 effective date.

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

20 SECTION 1. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 109.7 of Title 43, unless there
22 is created a duplication in numbering, reads as follows:

- 23 1. a. As used in this section, "de facto custodian" means a
24 person who has been shown by clear and convincing
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1 evidence to have been the primary caregiver for, and
2 financial supporter of, a child who has resided with
3 the person for a period of six (6) months or more if
4 the child is under three (3) years of age and for a
5 period of one (1) year or more if the child is three
6 (3) years of age or older or has been placed by the
7 Department of Human Services. Any period of time
8 after a legal proceeding has been commenced by a
9 parent seeking to regain custody of the child shall
10 not be included in determining whether the child has
11 resided with the person for the required minimum
12 period.

13 b. A person shall not be a de facto custodian until a
14 court determines by clear and convincing evidence that
15 the person meets the definition of de facto custodian
16 established in subsection 1. Once a court determines
17 that a person meets the definition of de facto
18 custodian, the court shall give the person the same
19 standing in custody matters that is given to each
20 parent under this section.

21 2. The court shall determine custody in accordance with the
22 best interests of the child and equal consideration shall be given
23 to each parent and to any de facto custodian. Subject to Section 5
24 of this act, there shall be a presumption, rebuttable by a
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1 preponderance of evidence, that joint custody and equally shared
2 parenting time is in the best interest of the child. If a deviation
3 from equal parenting time is warranted, the court shall construct a
4 parenting time schedule which maximizes the time each parent or de
5 facto custodian has with the child and is consistent with ensuring
6 the child's welfare. The court shall consider all relevant factors
7 including:

- 8 a. the wishes of the child's parent or parents, and any
9 de facto custodian, as to his or her custody,
- 10 b. the wishes of the child as to his or her custodian,
11 with due consideration given to the influence a parent
12 or de facto custodian may have over the child's
13 wishes,
- 14 c. the interaction and interrelationship of the child
15 with his or her parent or parents, his or her
16 siblings, and any other person who may significantly
17 affect the child's best interests,
- 18 d. the motivation of the adults participating in the
19 custody proceeding,
- 20 e. the child's adjustment and continuing proximity to his
21 or her home, school, and community,
- 22 f. the mental and physical health of all individuals
23 involved,

- 1 g. finding by the court that domestic violence and abuse
2 has been committed by one (1) of the parties against a
3 child of the parties or against another party. The
4 court shall determine the extent to which the domestic
5 violence and abuse has affected the child and the
6 child's relationship to each party, with due
7 consideration given to efforts made by a party toward
8 the completion of any domestic violence treatment,
9 counseling, or program,
- 10 h. the extent to which the child has been cared for,
11 nurtured, and supported by any de facto custodian,
- 12 i. the intent of the parent or parents in placing the
13 child with a de facto custodian,
- 14 j. the circumstances under which the child was placed or
15 allowed to remain in the custody of a de facto
16 custodian, including whether the parent now seeking
17 custody was previously prevented from doing so as a
18 result of domestic violence and whether the child was
19 placed with a de facto custodian to allow the parent
20 now seeking custody to seek employment, work, or
21 attend school; and
- 22 k. the likelihood a party will allow the child frequent,
23 meaningful, and continued contact with the other
24 parent or de facto custodian, except that the court
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1 shall not consider this likelihood if there is a
2 finding that the other parent or de facto custodian
3 engaged in domestic violence and abuse against the
4 party or a child and that a continued relationship
5 with the other parent will endanger the health or
6 safety of either that party or the child.

7 3. The abandonment of the family residence by a custodial party
8 shall not be considered where said party was physically harmed or
9 was seriously threatened with physical harm by his or her spouse,
10 when such harm or threat of harm was causally related to the
11 abandonment.

12 4. If the court grants custody to a de facto custodian, the de
13 facto custodian shall have legal custody under the laws of Oklahoma.

14 SECTION 2. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 109.8 of Title 43, unless there
16 is created a duplication in numbering, reads as follows:

17 A. A party to a custody proceeding may move for a temporary
18 custody order. The motion must be supported by an affidavit. The
19 court may award temporary custody after a hearing, or, if there is
20 no objection, solely on the basis of the affidavits. If the parents
21 or a de facto custodian joined under subsection I of this section
22 present a temporary custody agreement and mutually agreed plan for
23 parenting time and the court confirms that the agreement adequately
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1 provides for the welfare of the child, the agreement shall become
2 the temporary custody order of the court.

3 B. Subject to Section 5 of this act, in making an order for
4 temporary custody, there shall be a presumption, rebuttable by
5 preponderance of evidence, that it is in the best interest of the
6 child for the parents or a de facto custodian joined under
7 subsection I of this section to have temporary joint custody and
8 share equally in parenting time.

9 C. If a deviation from equal parenting time is warranted, the
10 court shall construct a parenting time schedule which maximizes the
11 time each parent or de facto custodian joined under subsection I of
12 this section has with the child and is consistent with ensuring the
13 child's welfare.

14 D. Each temporary custody order shall include specific findings
15 of fact and conclusions of law, except when the court confirms the
16 agreement of the parties.

17 E. Any temporary custody order shall address the circumstance
18 in which physical possession of the child will be exchanged.

19 F. Modification of a temporary custody order may be sought when
20 there is a material and substantial change in the circumstances of
21 the parents, de facto custodian, or child.

22 G. If a proceeding for dissolution of marriage or legal
23 separation is dismissed, any temporary custody order is vacated
24 unless a parent or the child's custodian moves that the proceeding
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1 continue as a custody proceeding and the court finds, after a
2 hearing, that the circumstances of the parents and the best
3 interests of the child require that a custody decree be issued.

4 H. If a custody proceeding commenced in the absence of a
5 petition for dissolution of marriage or legal separation is
6 dismissed, any temporary custody order is vacated.

7 I. If a court determines by clear and convincing evidence that
8 a person is a de facto custodian, the court shall join that person
9 in the action as a party needed for just adjudication.

10 SECTION 3. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 109.9 of Title 43, unless there
12 is created a duplication in numbering, reads as follows:

13 A. A parent not granted custody of the child and not awarded
14 shared parenting time under the presumption specified in paragraph 2
15 of Section 1 of this act, subsection B of Section 2 of this act, or
16 subsection F of Section 4 of this act is entitled to reasonable
17 visitation rights unless the court finds, after a hearing, that
18 visitation would seriously endanger the child's physical, mental,
19 moral, or emotional health. Upon request of either party, the court
20 shall issue orders which are specific as to the frequency, timing,
21 duration, conditions, and method of scheduling visitation and which
22 reflect the development age of the child.

23 B. If domestic violence and abuse has been alleged, the court
24 shall, after a hearing, determine the visitation arrangement, if
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1 any, which would not seriously endanger the child's or the custodial
2 parent's physical, mental, or emotional health.

3 C. The court may modify an order granting or denying visitation
4 rights whenever modification would serve the best interests of the
5 child; but the court shall not restrict a parent's visitation rights
6 unless it finds that the visitation would seriously endanger the
7 child's physical, mental, moral, or emotional health.

8 D. 1. Except as provided in paragraph 2 of this subsection,
9 any court-ordered modification of a child visitation decree, based
10 in whole or in part on:

- 11 a. the active duty of a parent or a de facto custodian as
12 a regular member of the United States Armed Forces
13 deployed outside the United States, or
- 14 b. any federal active duty of a parent or a de facto
15 custodian as a member of a state National Guard or a
16 Reserve component,

17 shall be temporary and shall revert to the previous child visitation
18 decree at the end of the deployment outside the United States or the
19 federal active duty, as appropriate.

20 2. A parent or de facto custodian identified in paragraph 1 of
21 this subsection may consent to a modification of a child visitation
22 decree that continues past the end of the deployment outside the
23 United States or the federal active duty, as appropriate.

1 E. Under circumstances where the court finds, by clear and
2 convincing evidence, that it is in the best interest of the child,
3 any relative, by blood or affinity, that was previously granted
4 temporary custody may be granted reasonable noncustodial parental
5 visitation rights by a circuit court or family court as an
6 intervenor or by original action. Once the relative has been
7 granted visitation pursuant to this subsection, those rights shall
8 not be adversely affected by the termination of custodial or
9 parental rights of an individual who has permanent custody of the
10 child unless the court determines that termination of the visitation
11 rights are in the best interests of the child. The action shall be
12 brought in the county in which the temporary or permanent custody
13 order was entered or where the child resides.

14 SECTION 4. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 109.10 of Title 43, unless there
16 is created a duplication in numbering, reads as follows:

17 A. As used in this section, "custody" means sole or joint
18 custody, whether ordered by a court or agreed to by the parties.

19 B. No motion to modify a custody decree shall be made earlier
20 than two (2) years after its date, unless the court permits it to be
21 made on the basis of affidavits that there is reason to believe
22 that:

23 1. The child's present environment may seriously endanger his
24 or her physical, mental, moral, or emotional health; or
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1 2. The custodian appointed under the prior decree has placed
2 the child with a de facto custodian.

3 C. If a court of this state has jurisdiction pursuant to the
4 Uniform Child Custody Jurisdiction Act, the court shall not modify a
5 prior custody decree unless after hearing it finds, upon the basis
6 of facts that have arisen since the prior decree or that were
7 unknown to the court at the time of entry of the prior decree, that
8 a change has occurred in the circumstances of the child or his or
9 her custodian, and that the modification is necessary to serve the
10 best interests of the child. When determining if a change has
11 occurred and whether a modification of custody is in the best
12 interests of the child, the court shall consider the following:

13 1. Whether the custodian agrees to the modification;

14 2. Whether the child has been integrated into the family of the
15 petitioner with consent of the custodian;

16 3. Whether the child's present environment seriously endangers
17 his or her physical, mental, moral, or emotional health;

18 4. Whether the harm likely to be caused by a change of
19 environment is outweighed by its advantages to him or her; and

20 5. Whether the custodian has placed the child with a de facto
21 custodian.

22 D. In determining whether a child's present environment may
23 seriously endanger his or her physical, mental, moral, or emotional
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1 health, the court shall consider all relevant factors, including,
2 but not limited to:

3 1. The interaction and interrelationship of the child with his
4 or her parent or parents, his or her de facto custodian, his or her
5 siblings, and any other person who may significantly affect the
6 child's best interests;

7 2. The mental and physical health of all individuals involved;

8 3. Repeated or substantial failure, without good cause, of
9 either parent to observe visitation, child support, or other
10 provisions of the decree which affect the child, except that
11 modification of custody orders shall not be made solely on the basis
12 of failure to comply with visitation or child support provisions, or
13 on the basis of which parent is more likely to allow visitation or
14 pay child support; and

15 4. If domestic violence and abuse is found by the court to
16 exist, the extent to which the domestic violence and abuse has
17 affected the child and the child's relationship to both parents.

18 E. 1. Except as provided in paragraph 2 of this subsection,
19 any court-ordered modification of a child custody decree, based in
20 whole or in part on:

21 a. the active duty of a parent or a de facto custodian as
22 a regular member of the United States Armed Forces
23 deployed outside the United States, or
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1 b. any federal active duty of a parent or a de facto
2 custodian as a member of a state National Guard or a
3 Reserve component,

4 shall be temporary and shall revert to the previous child custody
5 decree at the end of the deployment outside the United States or the
6 federal active duty, as appropriate.

7 2. A parent or de facto custodian identified in paragraph 1 of
8 this subsection may consent to a modification of a child custody
9 decree that continues past the end of the deployment outside the
10 United States or the federal active duty, as appropriate.

11 F. Subject to Section 5 of this act, if the court orders a
12 modification of a child custody decree, there shall be a
13 presumption, rebuttable by a preponderance of evidence, that it is
14 in the best interest of the child for the parents to have joint
15 custody and share equally in parenting time. If a deviation from
16 equal parenting time is warranted, the court shall construct a
17 parenting time schedule which maximizes the time each parent or de
18 facto custodian has with the child and is consistent with ensuring
19 the child's welfare.

20 G. Attorney fees and costs shall be assessed against a party
21 seeking modification if the court finds that the modification action
22 is vexatious and constitutes harassment.

1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 109.11 of Title 43, unless there
3 is created a duplication in numbering, reads as follows:

4 When determining or modifying a custody order pursuant to
5 Section 1, 2, 4, or 6 of this act, the court shall consider the
6 safety and well-being of the parties and of the children. If a
7 domestic violence order is being or has been entered against a party
8 by another party or on behalf of a child at issue in the custody
9 hearing, the presumption that joint custody and equally shared
10 parenting time is in the best interest of the child shall not apply
11 as to the party against whom the domestic violence order is being or
12 has been entered. The court shall weigh all factors set forth in
13 paragraph 2 of Section 1 of this act in determining the best
14 interest of the child.

15 SECTION 6. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 109.12 of Title 43, unless there
17 is created a duplication in numbering, reads as follows:

18 A. Following a hearing, if a court finds by a preponderance of
19 the evidence that domestic violence and abuse has occurred and may
20 again occur, the court may issue a domestic violence order:

- 21 1. Restraining the adverse party from:
 - 22 a. committing further acts of domestic violence and
 - 23 abuse,

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- b. any unauthorized contact or communication with the petitioner or other person specified by the court,
- c. approaching the petitioner or other person specified by the court within a distance specified in the order not to exceed five hundred (500) feet,
- d. going to or within a specified distance of a specifically described residence, school, or place of employment or area where such a place is located, and
- e. disposing of or damaging any of the property of the parties;

2. Directing or prohibiting any other actions that the court believes will be of assistance in eliminating future acts of domestic violence and abuse, except that the court shall not order the petitioner to take any affirmative action; and

3. Directing that either or both of the parties receive counseling services available in the community in domestic violence and abuse cases.

B. In imposing a location restriction described in subparagraph d of paragraph 1 of subsection A of this section, the court shall:

1. Afford the petitioner and respondent, if present, an opportunity to testify on the issue of the locations and areas from which the respondent should or should not be excluded;

1 2. Only impose a location restriction where there is a
2 specific, demonstrable danger to the petitioner or other person
3 protected by the order;

4 3. Specifically describe in the order the locations or areas
5 prohibited to the respondent; and

6 4. Consider structuring a restriction so as to allow the
7 respondent transit through an area if the respondent does not
8 interrupt his or her travel to harass, harm, or attempt to harass or
9 harm the petitioner.

10 C. When temporary child support is granted under this section,
11 the court shall enter an order detailing how the child support is to
12 be paid and collected. Child support ordered under this section may
13 be enforced utilizing the same procedures as any other child support
14 order.

15 D. A domestic violence order shall be effective for a period of
16 time fixed by the court, not to exceed three (3) years, and may be
17 reissued upon expiration for subsequent periods of up to three (3)
18 years each. The fact that an order has not been violated since its
19 issuance may be considered by a court in hearing a request for a
20 reissuance of the order.

21 SECTION 7. This act shall become effective November 1, 2024.

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