

1 ENGROSSED HOUSE
2 BILL NO. 1574

By: Peters, Hamilton, Shelton
and Kern of the House

3 and

4 Crain of the Senate
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8 An Act relating to marriage and family; amending 43
9 O.S. 2001, Section 109, which relates to custody and
10 the best interest of the child; adding presumption in
11 certain circumstances; defining terms; providing
12 considerations for determining custody; amending 43
13 O.S. 2001, Section 110.1, which relates to shared
14 parenting; adding condition; deleting certain burden
15 of proof; amending 43 O.S. 2001, Section 111.1, which
16 relates to visitation; providing for visitation with
17 certain noncustodial parents under certain
18 circumstances; terminating visitation upon certain
19 occurrences; providing for confidentiality of the
20 address of certain persons; authorizing action to
21 maintain confidentiality of address; amending Section
22 8, Chapter 400, O.S.L. 2002 (43 O.S. Supp. 2006,
23 Section 112.3), which relates to relocation;
24 providing for waiver of notice of relocation under
certain circumstances; and providing an effective
date.

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

SECTION 1. AMENDATORY 43 O.S. 2001, 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 child, the court

1 shall consider what appears to be in the best interests of the
2 physical and mental and moral welfare of the child.

3 B. The court, pursuant to the provisions of subsection A of
4 this section, may grant the care, custody, and control of a child to
5 either parent or to the parents jointly.

6 For the purposes of this section, the terms joint custody and
7 joint care, custody, and control mean the sharing by parents in all
8 or some of the aspects of physical and legal care, custody, and
9 control of their children.

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

22 D. The court shall issue a final plan for the exercise of joint
23 care, custody, and control of the child or children, based upon the
24 plan submitted by the parents, separate or jointly, with appropriate

1 changes deemed by the court to be in the best interests of the
2 child. The court also may reject a request for joint custody and
3 proceed as if the request for joint custody had not been made.

4 E. The parents having joint custody of the child may modify the
5 terms of the plan for joint care, custody, and control. The
6 modification to the plan shall be filed with the court and included
7 with the plan. If the court determines the modifications are in the
8 best interests of the child, the court shall approve the
9 modifications.

10 F. The court also may modify the terms of the plan for joint
11 care, custody, and control upon the request of one parent. The
12 court shall not modify the plan unless the modifications are in the
13 best interests of the child.

14 G. 1. The court may terminate a joint custody decree upon the
15 request of one or both of the parents or whenever the court
16 determines said decree is not in the best interests of the child.

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

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

1 domestic relations law and family counseling. The determination of
2 the arbitrator shall be final and binding on the parties to the
3 proceedings until further order of the court.

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

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

15 1. For the purposes of the this subsection:

16 a. "domestic violence" means the threat of the infliction
17 of physical injury, any act of physical harm or the
18 creation of a reasonable fear thereof, or the
19 intentional infliction of emotional distress by a
20 parent or a present or former member of the household
21 of the child, against the child or another member of
22 the household,

23 b. "stalking" means the willful, malicious, and repeated
24 following or harassing of a person by a parent that

1 would cause a reasonable person to feel frightened,
2 intimidated, harassed, threatened, or molested and
3 that actually causes the person being followed or
4 harassed to feel terrorized, frightened, intimidated,
5 threatened, harassed, or molested, and

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

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

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

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

1 SECTION 2. AMENDATORY 43 O.S. 2001, Section 110.1, is
2 amended to read as follows:

3 Section 110.1 It is the policy of this state to assure that
4 minor children have frequent and continuing contact with parents who
5 have shown the ability to act in the best interests of their
6 children and to encourage parents to share in the rights and
7 responsibilities of rearing their children after the parents have
8 separated or dissolved their marriage, provided that the parents
9 agree to cooperate or that domestic violence, stalking, or harassing
10 behaviors as defined in this title are not present in the parental
11 relationship. To effectuate this policy, if requested by a parent,
12 the court shall provide substantially equal access to the minor
13 children to both parents at a temporary order hearing, unless the
14 court finds that ~~such~~ the shared parenting would be detrimental to
15 ~~such~~ the child. ~~The burden of proof that such shared parenting~~
16 ~~would be detrimental to such child shall be upon the parent~~
17 ~~requesting sole custody and the reason for such determination shall~~
18 ~~be documented in the court record.~~

19 SECTION 3. AMENDATORY 43 O.S. 2001, Section 111.1, is
20 amended to read as follows:

21 Section 111.1 A. 1. Any order providing for the visitation of
22 a noncustodial parent with any of the children of ~~such~~ the
23 noncustodial parent shall provide a specified minimum amount of
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1 visitation between the noncustodial parent and the child unless the
2 court determines otherwise.

3 2. Except for good cause shown and when in the best interests
4 of the child, the order shall encourage additional visitations of
5 the noncustodial parent and the child and in addition encourage
6 liberal telephone communications between the noncustodial parent and
7 the child.

8 3. A court may award visitation by a noncustodial parent who
9 was determined to have committed domestic violence as defined in
10 Section 109 of this title, only if the court is able to ensure the
11 safety of the child and the parent who is the victim of that
12 domestic violence.

13 4. In a visitation order, a court shall provide for the safety
14 of the minor child and victim of domestic violence, stalking, or
15 harassment as defined in Section 109 of this title, and subject to
16 the provisions of Section 109 of this title, may:

17 a. order the exchange of a child to be facilitated by a
18 third party where the parents do not have any contact
19 with each other,

20 b. order an exchange of a child to occur in a protected
21 setting,

22 c. order visitation supervised by another person or
23 agency,

24

- 1 d. order the abusive, stalking, or harassing parent to
2 pay a fee to help defray the costs of supervised
3 visitation or other costs of child exchanges including
4 compensating third parties,
- 5 e. order the abusive, stalking, or harassing parent to
6 attend and complete, to the satisfaction of the court,
7 a batterers intervention program certified by the
8 Office of the Attorney General,
- 9 f. prohibit unsupervised or overnight visitation until
10 the abusive, stalking, or harassing parent has
11 successfully completed a specialized program for
12 abusers and the parent has neither threatened nor
13 exhibited violence for a substantial period of time,
- 14 g. order the abusive, stalking, or harassing parent to
15 abstain from the possession or consumption of alcohol
16 or controlled substances during the visitation and for
17 twenty-four (24) hours preceding visitation,
- 18 h. order the abusive, stalking, or harassing parent to
19 complete a danger/lethality assessment by a qualified
20 mental health professional, and
- 21 i. impose any other condition that is deemed necessary to
22 provide for the safety of the child, the victim of
23 domestic violence, stalking, or harassing behavior, or
24 another household member.

1 5. Visitation shall be terminated if:

2 a. the abusive, stalking, or harassing parent repeatedly
3 violates the terms and conditions of visitation,

4 b. the child becomes severely distressed in response to
5 visitation, including the determination by a mental
6 health professional or certified domestic violence
7 specialist that visitation with the abusive, stalking,
8 or harassing parent is causing the child severe
9 distress which is not in the best interest of the
10 child, or

11 c. there are clear indications that the abusive,
12 stalking, or harassing parent has threatened to either
13 harm or flee with the child, or has threatened to harm
14 the custodial parent.

15 6. Whether or not visitation is allowed, the court shall order
16 the address of the child and the victim of domestic violence,
17 stalking, or harassing behavior to be kept confidential if
18 requested.

19 a. The court may order that the victim of domestic
20 violence, stalking, or harassing behavior participate
21 in the address confidentiality program available
22 pursuant to Section 60.14 of Title 22 of the Oklahoma
23 Statutes.

1 b. The abusive, stalking, or harassing parent may be
2 denied access to the medical and educational records
3 of the child if those records may be used to determine
4 the location of the child.

5 B. 1. Except for good cause shown, when a noncustodial parent
6 who is ordered to pay child support and who is awarded visitation
7 rights fails to pay child support, the custodial parent shall not
8 refuse to honor the ~~noncustodial parent's~~ visitation rights of the
9 noncustodial parent.

10 2. When a custodial parent refuses to honor ~~a noncustodial~~
11 ~~parent's~~ the visitation rights of a noncustodial parent, the
12 noncustodial parent shall not fail to pay any ordered child support
13 or alimony.

14 C. 1. Violation of an order providing for the payment of child
15 support or providing for the visitation of a noncustodial parent
16 with any of the children of such noncustodial parent may be
17 prosecuted as indirect civil contempt pursuant to Section 566 of
18 Title 21 of the Oklahoma Statutes or as otherwise deemed appropriate
19 by the court.

20 2. Unless good cause is shown for the noncompliance, the
21 prevailing party shall be entitled to recover court costs and
22 attorney fees expended in enforcing the order and any other
23 reasonable costs and expenses incurred in connection with the denied
24 child support or denied visitation as authorized by the court.

1 SECTION 4. AMENDATORY Section 8, Chapter 400, O.S.L.
2 2002 (43 O.S. Supp. 2006, Section 112.3), is amended to read as
3 follows:

4 Section 112.3 A. As used in this section:

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

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

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

12 4. "Principal residence of a child" means:

13 a. the location designated by a court to be the primary
14 residence of the child,

15 b. in the absence of a court order, the location at which
16 the parties have expressly agreed that the child will
17 primarily reside, or

18 c. in the absence of a court order or an express
19 agreement, the location, if any, at which the child,
20 preceding the time involved, lived with the child's
21 parents, a parent, or a person acting as parent for at
22 least six (6) consecutive months and, in the case of a
23 child less than six (6) months old, the location at
24 which the child lived from birth with any of the

1 persons mentioned. Periods of temporary absence of
2 any of the named persons are counted as part of the
3 six-month or other period; and

4 5. "Relocation" means a change in the principal residence of a
5 child over seventy-five (75) miles from the child's principal
6 residence for a period of sixty (60) days or more, but does not
7 include a temporary absence from the principal residence.

8 B. 1. Except as otherwise provided by this section, a person
9 who has the right to establish the principal residence of the child
10 shall notify every other person entitled to visitation with the
11 child of a proposed relocation of the child's principal residence as
12 required by this section.

13 2. Except as otherwise provided by this section, an adult
14 entitled to visitation with a child shall notify every other person
15 entitled to custody of or visitation with the child of an intended
16 change in the primary residence address of the adult as required by
17 this section.

18 C. 1. Except as provided by this section, notice of a proposed
19 relocation of the principal residence of a child or notice of an
20 intended change of the primary residence address of an adult must be
21 given:

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

24 b. no later than:

- 1 (1) the sixtieth day before the date of the intended
2 move or proposed relocation, or
3 (2) the tenth day after the date that the person
4 knows the information required to be furnished
5 pursuant to this subsection, if the person did
6 not know and could not reasonably have known the
7 information in sufficient time to comply with the
8 sixty-day notice, and it is not reasonably
9 possible to extend the time for relocation of the
10 child.

11 2. Except as provided by this section, the following
12 information, if available, must be included with the notice of
13 intended relocation of the child or change of primary residence of
14 an adult:

- 15 a. the intended new residence, including the specific
16 address, if known,
17 b. the mailing address, if not the same,
18 c. the home telephone number, if known,
19 d. the date of the intended move or proposed relocation,
20 e. a brief statement of the specific reasons for the
21 proposed relocation of a child, if applicable,
22 f. a proposal for a revised schedule of visitation with
23 the child, if any, and
24

1 g. a warning to the nonrelocating parent that an
2 objection to the relocation must be made within thirty
3 (30) days or the relocation will be permitted.

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

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

11 "You, as a party in this action, are ordered to notify every
12 other party to this action of a proposed relocation of the child,
13 change of your primary residence address, and the following
14 information:

15 1. The intended new residence, including the specific address,
16 if known;

17 2. The mailing address, if not the same;

18 3. The home telephone number, if known;

19 4. The date of the intended move or proposed relocation;

20 5. A brief statement of the specific reasons for the proposed
21 relocation of a child, if applicable; and

22 6. A proposal for a revised schedule of visitation with the
23 child, if any.

1 You are further ordered to give notice of the proposed
2 relocation or change of residence address on or before the sixtieth
3 day before a proposed change. If you do not know and could not have
4 reasonably known of the change in sufficient time to provide a
5 sixty-day notice, you are ordered to give notice of the change on or
6 before the tenth day after the date that you know of the change.

7 Your obligation to furnish this information to every other party
8 continues as long as you, or any other person, by virtue of this
9 order, are entitled to custody of or visitation with a child covered
10 by this order.

11 Your failure to obey the order of this court to provide every
12 other party with notice of information regarding the proposed
13 relocation or change of residence address may result in further
14 litigation to enforce the order, including contempt of court.

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

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

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

- 6 a. the specific residence address and telephone number of
7 the child or of the adult and other identifying
8 information shall not be disclosed in the pleadings,
9 other documents filed in the proceeding, or the final
10 order, except for an in camera disclosure,
- 11 b. the notice requirements provided by this article be
12 waived to the extent necessary to protect
13 confidentiality and the health, safety or liberty of a
14 person or child, and
- 15 c. any other remedial action that the court considers
16 necessary to facilitate the legitimate needs of the
17 parties and the best interest of the child.

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

20 3. The finding of domestic violence creates a presumption that
21 the custodial parent and child will be put at risk by the disclosure
22 of information required by this section and is sufficient to waive
23 all requirements of this section. It is the policy of this state
24 that a child should reside with a nonviolent parent and that parent

1 should be free to make a choice about a safe, secure place of
2 residence, even if it means relocation to another city or state
3 without disclosure to the violent parent.

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

6 a. a factor in making its determination regarding the
7 relocation of a child,

8 b. a factor in determining whether custody or visitation
9 should be modified,

10 c. a basis for ordering the return of the child if the
11 relocation has taken place without notice, and

12 d. sufficient cause to order the person seeking to
13 relocate the child to pay reasonable expenses and
14 attorney fees incurred by the person objecting to the
15 relocation.

16 2. In addition to the sanctions provided by this subsection,
17 the court may make a finding of contempt if a party violates the
18 notice requirement required by this section and may impose the
19 sanctions authorized for contempt of a court order.

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

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

5 3. If relocation of the child is proposed, a nonparent entitled
6 by court order or written agreement to visitation with a child may
7 file a proceeding to obtain a revised schedule of visitation, but
8 may not object to the proposed relocation or seek a temporary or
9 permanent order to prevent the relocation.

10 4. A proceeding filed pursuant to this subsection must be filed
11 within thirty (30) days of receipt of notice of a proposed
12 relocation.

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

16 a. the required notice of a proposed relocation of a
17 child as provided by this section was not provided in
18 a timely manner and the parties have not presented an
19 agreed-upon revised schedule for visitation with the
20 child for the court's approval,

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

23 c. from an examination of the evidence presented at the
24 temporary hearing there is a likelihood that on final

1 hearing the court will not approve the relocation of
2 the primary residence of the child.

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

5 a. finds that the required notice of a proposed
6 relocation of a child as provided by this section was
7 provided in a timely manner and issues an order for a
8 revised schedule for temporary visitation with the
9 child, and

10 b. finds from an examination of the evidence presented at
11 the temporary hearing there is a likelihood that on
12 final hearing the court will approve the relocation of
13 the primary residence of the child.

14 I. A proposed relocation of a child may be a factor in
15 considering a change of custody.

16 J. 1. In reaching its decision regarding a proposed
17 relocation, the court shall consider the following factors:

18 a. the nature, quality, extent of involvement, and
19 duration of the child's relationship with the person
20 proposing to relocate and with the nonrelocating
21 person, siblings, and other significant persons in the
22 child's life,

23 b. the age, developmental stage, needs of the child, and
24 the likely impact the relocation will have on the

1 child's physical, educational, and emotional
2 development, taking into consideration any special
3 needs of the child,

- 4 c. the feasibility of preserving the relationship between
5 the nonrelocating person and the child through
6 suitable visitation arrangements, considering the
7 logistics and financial circumstances of the parties,
- 8 d. the ~~child's~~ preference of the child, taking into
9 consideration the age and maturity of the child,
- 10 e. whether there is an established pattern of conduct of
11 the person seeking the relocation, either to promote
12 or thwart the relationship of the child and the
13 nonrelocating person,
- 14 f. whether the relocation of the child will enhance the
15 general quality of life for both the custodial party
16 seeking the relocation and the child, including but
17 not limited to financial or emotional benefit or
18 educational opportunity,
- 19 g. the reasons of each person for seeking or opposing the
20 relocation, and
- 21 h. any other factor affecting the best interest of the
22 child.

23 2. The court may not:
24

1 a. give undue weight to the temporary relocation as a
2 factor in reaching its final decision, if the court
3 has issued a temporary order authorizing a party
4 seeking to relocate a child to move before final
5 judgment is issued, or

6 b. consider whether the person seeking relocation of the
7 child has declared that he or she will not relocate if
8 relocation of the child is denied.

9 K. The relocating person has the burden of proof that the
10 proposed relocation is made in good faith. If that burden of proof
11 is met, the burden shifts to the nonrelocating person to show that
12 the proposed relocation is not in the best interest of the child.

13 L. 1. After notice and a reasonable opportunity to respond,
14 the court may impose a sanction on a person proposing a relocation
15 of the child or objecting to a proposed relocation of a child if it
16 determines that the proposal was made or the objection was filed:

17 a. to harass a person or to cause unnecessary delay or
18 needless increase in the cost of litigation,

19 b. without being warranted by existing law or was based
20 on frivolous argument, or

21 c. based on allegations and other factual contentions
22 which had no evidentiary support or, if specifically
23 so identified, could not have been reasonably believed
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1 to be likely to have evidentiary support after further
2 investigation.

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

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

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

- 17 a. after the effective date of this act, and
- 18 b. before the effective date of this act, if the existing
19 custody order or enforceable agreement does not
20 expressly govern the relocation of the child or there
21 is a change in the primary residence address of an
22 adult affected by the order.

23 2. To the extent that a provision of this section conflicts
24 with an existing custody order or enforceable agreement, this

