

An Act

ENROLLED HOUSE
BILL NO. 1603

By: Stiles, Hoskin, Sherrer and
Shelton of the House

and

Anderson, Russell, Simpson
and Ivester of the Senate

An Act relating to deployed parent custody of child; amending 43 O.S. 2001, Section 112, as last amended by Section 10, Chapter 358, O.S.L. 2010 (43 O.S. Supp. 2010, Section 112), which relates to custody and support of minor children in divorce proceedings; modifying requirements; authorizing the entry of certain orders; specifying that a military deployment shall not be used as evidence for certain purposes; creating the Deployed Parents Custody and Visitation Act; providing short title; defining terms; providing for jurisdiction; directing court to provide for custody of child when parent has been deployed; authorizing court to designate visitation; specifying limitation of designation; requiring deploying parent to provide certain notice; specifying notice requirements; providing exception; authorizing motions for certain custody hearings; specifying procedure; specifying required contents of motion; authorizing expedited hearing motions; requiring parent designating visitation to identify family member so designated; authorizing the use of electronic means for certain hearings; authorizing certain limitations; authorizing the entry of certain orders; establishing presumption that certain existing orders are in best interest of child; specifying certain requirements of temporary order; providing for visitation of other family members; specifying limitations of visitation orders; directing court to order reasonable visitation; providing exceptions; specifying visitation order shall be temporary; limiting authority of court to

modify certain existing arrangements; providing exception; requiring notice of change of address under certain circumstances; authorizing orders for child support; providing for designation of visitation rights; specifying visitation orders shall be temporary; establishing visitation requirements; providing exception; requiring attendance of certain family member at hearing; specifying rebuttable presumptions for deploying parents; requiring notice at the end of deployment; specifying certain temporary orders shall terminate upon deployment completion; providing that certain existing orders shall be reinstated; providing for sanctions; providing for codification; and declaring an emergency.

SUBJECT: Deployed parent custody of child

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

SECTION 1. AMENDATORY 43 O.S. 2001, Section 112, as last amended by Section 10, Chapter 358, O.S.L. 2010 (43 O.S. Supp. 2010, Section 112), is amended to read as follows:

Section 112. A. A petition or cross-petition for a divorce, legal separation, or annulment must state whether or not the parties have minor children of the marriage. If there are minor children of the marriage, the court:

1. Shall make provision for guardianship, custody, medical care, support and education of the children;

2. Unless not in the best interests of the children, may provide for the visitation of the noncustodial parent with any of the children of the noncustodial parent; and

3. May modify or change any order whenever circumstances render the change proper either before or after final judgment in the action; provided, that the amount of the periodic child support payment shall not be modified retroactively or payment of all or a portion of the past due amount waived, except by mutual agreement of the obligor and obligee, or if the obligee has assigned child

support rights to the Department of Human Services or other entity, by agreement of the Department or other entity. Unless the parties agree to the contrary, a completed child support computation form provided for in Section 120 of this title shall be required to be filed with the child support order.

The social security numbers of both parents and the child shall be included on the child support order summary form provided for in Section 120 of this title, which shall be submitted to the Central Case Registry as provided for in Section 112A of this title with all child support or paternity orders.

B. In any action in which there are minor unmarried children in awarding or modifying the custody of the child or in appointing a general guardian for the child, the court shall be guided by the provisions of Section 112.5 of this title and shall consider what appears to be in the best interests of the child.

C. 1. When it is in the best interests of a minor unmarried child, the court shall:

- a. assure children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and
- b. encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

2. There shall be neither a legal preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody.

3. When in the best interests of the child, custody shall be awarded in a way which assures the frequent and continuing contact of the child with both parents. When awarding custody to either parent, the court:

- a. shall consider, among other facts, which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent, and
- b. shall not prefer a parent as a custodian of the child because of the gender of that parent.

4. In any action, there shall be neither a legal preference or a presumption for or against private or public school or home-schooling in awarding the custody of a child, or in appointing a general guardian for the child.

5. Notwithstanding any custody determination made pursuant to the Oklahoma Children's Code, when a ~~custodial~~ parent of a child is required to be separated from a child due to military service, a the court shall not enter a final order modifying an existing custody order until such time as the ~~custodial~~ parent has completed the term of duty requiring separation. For purposes of this paragraph:

- a. in the case of a parent who is a member of the Army, Navy, Air Force, Marine Corps or Coast Guard, the term "military service" means a combat deployment, contingency operation, or natural disaster requiring the use of orders that do not permit any family member to accompany the member, ~~and~~
- b. in the case of a parent who is a member of the National Guard, the term "military service" means service under a call to active service authorized by the President of the United States or the Secretary of Defense for a period of more than thirty (30) consecutive days under 32 U.S.C. 502(f) for purposes of responding to a national emergency declared by the President and supported by federal funds. "Military service" shall include any period during which a member is absent from duty on account of sickness, wounds, leave or other lawful cause, and
- c. the court may enter a temporary custody or visitation order pursuant to the requirements of the Deployed Parents Custody and Visitation Act.

6. In making an order for custody, the court shall require compliance with Section 112.3 of this title.

D. 1. Except for good cause shown, a pattern of failure to allow court-ordered visitation may be determined to be contrary to the best interests of the child and as such may be grounds for modification of the child custody order.

2. For any action brought pursuant to the provisions of this section which the court determines to be contrary to the best interests of the child, the prevailing party shall be entitled to recover court costs, attorney fees and any other reasonable costs and expenses incurred with the action.

E. Except as otherwise provided by Section 112.1A of this title, any child shall be entitled to support by the parents until the child reaches eighteen (18) years of age. If a child is regularly enrolled in and attending high school, as set forth in Section 11-103.6 of Title 70 of the Oklahoma Statutes, other means of high school education, or an alternative high school education program as a full-time student, the child shall be entitled to support by the parents until the child graduates from high school or until the age of twenty (20) years, whichever occurs first. Full-time attendance shall include regularly scheduled breaks from the school year. No hearing or further order is required to extend support pursuant to this subsection after the child reaches the age of eighteen (18) years.

F. In any case in which provision is made for the custody or support of a minor child or enforcement of such order and before hearing the matter or signing any orders, the court shall inquire whether public assistance money or medical support has been provided by the Department of Human Services, hereafter referred to as the Department, for the benefit of each child. If public assistance money, medical support, or child support services under the state child support plan as provided in Section 237 of Title 56 of the Oklahoma Statutes have been provided for the benefit of the child, the Department shall be a necessary party for the adjudication of the debt due to the State of Oklahoma, as defined in Section 238 of Title 56 of the Oklahoma Statutes, and for the adjudication of paternity, child support, and medical insurance coverage for the minor children in accordance with federal regulations. When an action is filed, the petitioner shall give the Department notice of the action according to Section 2004 of Title 12 of the Oklahoma Statutes. The Department shall not be required to intervene in the action to have standing to appear and participate in the action. When the Department is a necessary party to the action, any orders concerning paternity, child support, medical support, or the debt due to the State of Oklahoma shall be approved and signed by the Department.

G. In any case in which a child support order or custody order or both is entered, enforced or modified, the court may make a determination of the arrearages of child support.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 112.7 of Title 43, unless there is created a duplication in numbering, reads as follows:

A military deployment shall not be used as evidence of a substantial, material and permanent change of circumstances to warrant a permanent modification of custody.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 150 of Title 43, unless there is created a duplication in numbering, reads as follows:

Sections 3 through 13 of this act shall be known and may be cited as the "Deployed Parents Custody and Visitation Act".

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 150.1 of Title 43, unless there is created a duplication in numbering, reads as follows:

As used in the Deployed Parents Custody and Visitation Act:

1. "Close and substantial relationship" means a relationship in which a bond has been forged between the child and the other person by regular contact or communication;

2. "Custodial responsibility" refers to legal custody, physical custody or visitation rights with respect to a child;

3. "Deploying parent" means a legal parent of a minor child or the legal guardian of a child, who is a member of the United States Armed Forces and who is deployed or has been notified of an impending deployment;

4. "Deployment" means the temporary transfer of a servicemember in compliance with official orders to another location in support of combat, contingency operation, or natural disaster requiring the use of orders for a period of more than thirty (30) consecutive days, during which family members are not authorized to accompany the servicemember at government expense. Deployment shall include any period during which a servicemember is absent from duty on account of sickness, wounds, leave or other lawful cause;

5. "Guardian" means a person who has been appointed as a guardian of a minor or incapacitated adult pursuant to the requirements of Title 30 of the Oklahoma Statutes. The term shall include a limited guardian, but shall not include a guardian ad litem;

6. "Nondeploying parent" means a legal parent or guardian who is not deployed and who has a child or ward in common with a deploying parent;

7. "Servicemember" means a member of either:

- a. the active or reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard, or
- b. the active or reserve components of the National Guard; and

8. "Visitation" means the right to take a child for a limited period of time to a place other than the habitual residence of the child.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 150.2 of Title 43, unless there is created a duplication in numbering, reads as follows:

A court of this state may enter an order regarding custodial responsibility pursuant to the Deployed Parents Custody and Visitation Act only where the court has jurisdiction pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Sections 551-101 through 551-402 of Title 43 of the Oklahoma Statutes. If a court of this state has rendered a temporary order regarding custodial responsibility pursuant to the Deployed Parents Custody and Visitation Act, the deploying parent shall be deemed to reside in this state for the purposes of the UCCJEA during the duration of the deployment. If a court of another state has rendered a temporary order regarding custodial responsibility pursuant to deployment, this court shall deem the deploying parent to reside in the rendering state for the purposes of the UCCJEA during the duration of the deployment. This section does not prohibit the exercise of temporary emergency jurisdiction by a court of this state under the UCCJEA.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 150.3 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. In order to ensure an on going relationship with the child while deployed, pursuant to the Deployed Parents Custody and Visitation Act, upon application to the court by the deploying parent, the court shall designate a family member or another person with a close and substantial relationship to the child to exercise his or her visitation rights, unless the court determines it is not in the best interests of the child.

B. Visitation awarded pursuant to this section derives from the deploying parent's own right to custodial responsibility. Neither this section nor a court order permitting designation shall be deemed to create any separate or permanent rights to visitation.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 150.4 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. A deploying parent shall provide a copy of the deployment orders to the other parent within ten (10) days of receipt. When the deployment date is less than ten (10) days after receipt of the orders, a copy shall immediately be provided to the other parent.

B. If a valid court order requires that the address or contact information of the nondeploying parent be kept confidential, the notification shall be made to the court only. The court shall notify the nondeploying parent, or counsel for the nondeploying parent, if the deploying parent is prohibited from directly contacting the nondeploying parent.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 150.5 of Title 43, unless there is created a duplication in numbering, reads as follows:

Following a deploying parent's receiving notice of deployment, either a deploying parent or nondeploying parent may request an expedited hearing to be heard within ten (10) days or prior to deployment, whichever occurs first, on any matter pertaining to custodial or visitation responsibility. The application shall include the date on which the deployment began or begins. If the date of deployment is uncertain, the approximate date shall be included. The court shall grant a request for an expedited hearing

if the deploying parent's ability, or anticipated ability, to appear in person at a regularly scheduled hearing would be prevented by the deployment or preparation for the deployment. If the deployed or deploying parent is seeking the right to designate a family member to determine visitation, then the name of the family member or another person with a close and substantial relationship to the child shall be stated in the application.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 150.6 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. Upon proper motion made pursuant to Section 8 of this act, the court shall enter temporary orders regarding custody, visitation and child support.

B. A deploying parent who is entitled to a stay in civil proceedings pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. App., Sections 501 through 596, may elect to proceed while the deploying parent is unavailable to appear in the geographical location in which the litigation is pursued and may seek relief and provide evidence through video conferencing, Internet camera, e-mail, telephone, or other reasonable electronic means.

C. Except for the privilege offered to the deployed servicemember in subsection B of this section, the court shall factor the same consideration and conduct the temporary order hearing as provided in Section 112 of Title 43 of the Oklahoma Statutes. Hearings conducted pursuant to this section shall be considered nonevidentiary hearings and the standard rules of evidence shall not apply.

D. 1. If a prior judicial custody or visitation order contains provisions for custodial responsibility of the child in the event of deployment, those provisions shall not be modified by the court unless:

- a. a subsequent substantial change of circumstances has occurred after the prior judicial custody or visitation order was issued, or
- b. a showing that enforcement of the provisions of the prior judicial custody or visitation order would result in substantial harm to the child.

2. If the deploying parent and the nondeploying parent have previously agreed in writing to provisions for the custodial responsibility of the child in the event of deployment, there shall be a rebuttable presumption that the agreement is in the best interest of the child. The presumption may be overcome only if the court makes specific findings of fact establishing that the agreement is not in the best interest of the child.

E. When entering a temporary order for custodial responsibility prior to or during a deployment, the court shall:

1. Identify the nature of the deployment that is the basis for the order;

2. Specify that the order is temporary;

3. Specify the contact between the deploying parent and the child during deployment, including the means by which the deploying parent may remain in communication with the child, such as electronic communication by Internet camera, telephone, e-mail and other available means; and

4. Order liberal contact between the deploying parent and child when the deploying parent is on leave or is otherwise available, consistent with the best interest of the child.

F. In an order granting designation of a family member or another person with a close and substantial relationship to the child to exercise visitation rights pursuant to Section 11 of this act, the court shall:

1. Set out a process to resolve any disputes that may arise between the person receiving visitation and the nondeploying parent;

2. Identify the nature of the deployment that is the basis for the order; and

3. Specify that the order is a temporary order and shall terminate ten (10) days after notice has been provided to the nondeploying parent of the end of the deployment.

G. If the matter before the court concerns a postdissolution modification of custody or visitation, the court shall not modify the previously ordered custody or visitation arrangement until the

expiration of the servicemember's deployment, unless the child is at risk of serious irreparable harm.

H. If the court has rendered a temporary order regarding custodial responsibility pursuant to the Deployed Parents Custody and Visitation Act, any nondeploying parent or any third party to whom the court has assigned primary custodial responsibility, visitation or limited contact shall notify the court of any change of address until the termination of the temporary order.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 150.7 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. A court that renders an order on custodial responsibility under the Deployed Parents Custody and Visitation Act may, on motion of either party and with appropriate jurisdiction under the Uniform Interstate Family Support Act ("UIFSA"):

1. Enter a temporary order for child support consistent with Oklahoma Child Support Guidelines; and

2. Require the deploying parent to enroll the child to receive military dependent benefits.

B. Any order entered on child support pursuant to this section shall state that such order shall terminate following the child's return to the deploying parent upon conclusion of deployment.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 150.8 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. If the deploying parent moves to designate a family member or another person with a close and substantial relationship with the child to exercise visitation rights, the court shall grant reasonable visitation to a member of the family of the child, including a stepparent or step sibling, with whom the child has a close and substantial relationship as defined in the Deployed Parents Custody and Visitation Act.

B. Any visitation ordered by the court pursuant to this section shall be temporary in nature and shall not exceed or be less than the amount of custodial time granted to the deploying parent under any existing permanent order or agreement between the parents, with

the exception that the court may take into account unusual travel time required to transport the child between the nondeploying parent and the family members allowed visitation.

C. The person designated by the deploying parent to exercise visitation shall appear at the temporary order hearing.

D. Rebuttable presumptions for proceedings under the Deployed Parents Custody and Visitation Act:

1. In postdissolution proceedings, there shall be a rebuttable presumption that it is in the best interests of the child for a stepparent to exercise the deployed parent's parental duties;

2. There shall be a rebuttable presumption that if the person designated by the deployed or deploying party meets the requirements of subsection A of this section, then it shall be in the best interest of the child that the person receive visitation; and

3. There shall be a rebuttable presumption that visitation by a family member who has perpetrated domestic violence against a spouse, a child, a domestic living partner, or is otherwise subject to registration requirements of the Sex Offenders Registration Act is not in the best interest of the child.

E. Any temporary order issued under the Deployed Parents Custody and Visitation Act shall be enforced as any other orders relating to the care, custody and control of the child.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 150.9 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. The deploying parent shall notify the nondeploying parent of the completion of the deployment. If the deploying parent is unable to locate the nondeploying parent, the deploying parent shall notify the court of the return.

B. A temporary modification order granted in accordance with the Deployed Parents Custody and Visitation Act shall terminate by operation of law ten (10) days after notice has been provided to the nondeploying parent of the completion of deployment and the original terms of the prior custody or visitation order shall be automatically reinstated.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 150.10 of Title 43, unless there is created a duplication in numbering, reads as follows:

If the court finds that a party to a proceeding under the Deployed Parents Custody and Visitation Act has acted in bad faith or otherwise deliberately failed to comply with the terms of the Deployed Parents Custody and Visitation Act or a court order issued under the Deployed Parents Custody and Visitation Act, the court may assess attorney fees and costs against the opposing party and order any other appropriate sanctions.

SECTION 14. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 18th day of May, 2011.

Presiding Officer of the House of
Representatives

Passed the Senate the 19th day of May, 2011.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this _____
day of _____, 20____,
at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma the _____ day of
_____, 20____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this _____
_____ day of _____, 20____,
at _____ o'clock _____ M.

By: _____