

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 HOUSE BILL 1276

 By: Lawson and **West (Josh)**

7 AS INTRODUCED

8 An Act relating to marriage; amending 43 O.S. 2011,
9 Sections 109 and 110.1, which relate to child
10 custody; requiring court to comply with specified law
11 in determining custody; requiring equally shared
12 parenting time if requested by a parent; providing
13 exception for best interests of the child; directing
14 maximization of time with each parent if deviation is
15 warranted; and providing an effective date.

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

17 SECTION 1. AMENDATORY 43 O.S. 2011, Section 109, is
18 amended to read as follows:

19 Section 109. A. In awarding the custody of a minor unmarried
20 child or in appointing a general guardian for said child, the court
21 shall consider what appears to be in the best interests of the
22 physical and mental and moral welfare of the child.

23 B. The court, pursuant to the provisions of subsection A of
24 this section and Section 110.1 of this title, may grant the care,

1 custody, and control of a child to either parent or to the parents
2 jointly.

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

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

19 D. The court shall issue a final plan for the exercise of joint
20 care, custody, and control of the child or children, based upon the
21 plan submitted by the parents, separate or jointly, with appropriate
22 changes deemed by the court to be in the best interests of the
23 child. The court also may reject a request for joint custody and
24 proceed as if the request for joint custody had not been made.

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

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

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

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

18 H. In the event of a dispute between the parents having joint
19 custody of a child as to the interpretation of a provision of said
20 plan, the court may appoint an arbitrator to resolve said dispute.
21 The arbitrator shall be a disinterested person knowledgeable in
22 domestic relations law and family counseling. The determination of
23 the arbitrator shall be final and binding on the parties to the
24 proceedings until further order of the court.

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

3 I. 1. In every proceeding in which there is a dispute as to
4 the custody of a minor child, a determination by the court that
5 domestic violence, stalking, or harassment has occurred raises a
6 rebuttable presumption that sole custody, joint legal or physical
7 custody, or any shared parenting plan with the perpetrator of
8 domestic violence, harassing or stalking behavior is detrimental and
9 not in the best interest of the child, and it is in the best
10 interest of the child to reside with the parent who is not a
11 perpetrator of domestic violence, harassing or stalking behavior.

12 2. For the purposes of this subsection:

13 a. "domestic violence" means the threat of the infliction
14 of physical injury, any act of physical harm or the
15 creation of a reasonable fear thereof, or the
16 intentional infliction of emotional distress by a
17 parent or a present or former member of the household
18 of the child, against the child or another member of
19 the household, including coercive control by a parent
20 involving physical, sexual, psychological, emotional,
21 economic or financial abuse,

22 b. "stalking" means the willful course of conduct by a
23 parent who repeatedly follows or harasses another
24

1 person as defined in Section 1173 of Title 21 of the
2 Oklahoma Statutes, and

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

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

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

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

1 SECTION 2. AMENDATORY 43 O.S. 2011, Section 110.1, is
2 amended to read as follows:

3 Section 110.1 A. 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 and that domestic violence, stalking, or
10 harassing behaviors as defined in Section 109 of this title are not
11 present in the parental relationship.

12 B. To effectuate this policy, if requested by a parent, the
13 court ~~may shall~~ provide ~~substantially equal access~~ equally shared
14 parenting time to the minor children to both parents at a temporary
15 order hearing, unless the court finds that shared parenting time
16 would not be ~~detrimental to~~ in the best interests of the child. If
17 a deviation from shared parenting time is warranted, the court shall
18 approve a parenting plan which maximizes the time each parent has
19 with the child and is consistent with the best interests of the
20 child.

21 SECTION 3. This act shall become effective November 1, 2019.

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23 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/26/2019 - DO
24 PASS, As Coauthored.