

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 HOUSE BILL 1276

By: Lawson

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6 AS INTRODUCED

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

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

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

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

22 B. The court, pursuant to the provisions of subsection A of
23 this section and Section 110.1 of this title, may grant the care,
24 custody, and control of a child to either parent or to the parents
jointly.

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

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

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

23 E. The parents having joint custody of the child may modify the
24 terms of the plan for joint care, custody, and control. The

1 modification to the plan shall be filed with the court and included
2 with the plan. If the court determines the modifications are in the
3 best interests of the child, the court shall approve the
4 modifications.

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

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

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

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

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

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

10 2. For the purposes of this subsection:

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

20 b. "stalking" means the willful course of conduct by a
21 parent who repeatedly follows or harasses another
22 person as defined in Section 1173 of Title 21 of the
23 Oklahoma Statutes, and
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1 c. "harassment" means a knowing and willful course or
2 pattern of conduct by a parent directed at another
3 parent which seriously alarms or is a nuisance to the
4 person, and which serves no legitimate purpose
5 including, but not limited to, harassing or obscene
6 telephone calls or conduct that would cause a
7 reasonable person to have a fear of death or bodily
8 injury.

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

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

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

22 SECTION 2. AMENDATORY 43 O.S. 2011, Section 110.1, is
23 amended to read as follows:
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1 Section 110.1 A. It is the policy of this state to assure that
2 minor children have frequent and continuing contact with parents who
3 have shown the ability to act in the best interests of their
4 children and to encourage parents to share in the rights and
5 responsibilities of rearing their children after the parents have
6 separated or dissolved their marriage, provided that the parents
7 agree to cooperate and that domestic violence, stalking, or
8 harassing behaviors as defined in Section 109 of this title are not
9 present in the parental relationship.

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

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

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