



Oklahoma Statutes Citationized

Title 43. Marriage

Divorce and Alimony

Section 109 - Best Interest of Child Considered in Awarding Custody or Appointing Guardian - Joint Custody - Plan - Arbitration

Cite as: 43 O.S. § 109 (OSCN 2026), Divorce and Alimony

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

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

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

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

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

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

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

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

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

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

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

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

2. For the purposes of this subsection:

a. “child abuse” shall have the same meaning as “abuse” as defined pursuant to the Oklahoma Children’s Code in [Section 1-1-105 of Title 10A](#) of the Oklahoma Statutes,

b. “domestic violence” means the threat of the infliction of physical injury, any act of physical harm or the creation of a reasonable fear thereof, or the intentional infliction of emotional distress by a parent or a present or former member of the household of the child, against the child or another member of the household including coercive control by a parent involving physical, sexual, psychological, emotional, economic or financial abuse,

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

d. “stalking” means the willful course of conduct by a parent who repeatedly follows or harasses another person as defined in [Section 1173 of Title 21](#) of the Oklahoma Statutes.

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

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

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

Historical Data

Laws 1983, HB 1141, c. 269, § 3, emerg. eff. July 1, 1983; Renumbered from 12 [O.S. § 1275.4](#) by Laws 1989, SB 121, c. 333, § 1, eff. November 1, 1989; Amended by Laws 2009, HB 1739, c. 307, § 1, eff. November 1, 2009 ([superseded document available](#)); Amended by Laws 2024, SB 901, c. 24, § 1, eff. November 1, 2024 ([superseded document available](#)).

Citationizer[®] Summary of Documents Citing This Document

| <i>Cite Name</i> | <i>Level</i> | |
|---|--------------------------------|---------------------|
| Oklahoma Court of Civil Appeals Cases | | |
| <i>Cite</i> | <i>Name</i> | <i>Level</i> |
| 1992 OK CIV APP 125, 840 P.2d 46, 63 OBJ 3351 | Brown v. Brown | Cited |
| 1994 OK CIV APP 143, 889 P.2d | Newell v. Nash | Discussed at Length |

| | | |
|---|---|----------------------------|
| <u>345, 66 OBJ 114,</u> | | |
| <u>2001 OK CIV APP 88, 27 P.3d 488,</u> | <u>WHITE v. POLSON</u> | <i>Cited</i> |
| <u>72 OBJ 2207,</u> | | |
| <u>2003 OK CIV APP 77, 78 P.3d 562,</u> | <u>WALLIS v. WALLIS</u> | <i>Cited</i> |
| <u>2006 OK CIV APP 23, 131 P.3d</u> | <u>EIMEN v. EIMEN</u> | <i>Cited</i> |
| <u>148,</u> | | |
| <u>2008 OK CIV APP 94, 198 P.3d</u> | <u>KILPATRICK v. KILPATRICK</u> | <i>Discussed</i> |
| <u>406,</u> | | |
| <u>2009 OK CIV APP 27, 209 P.3d</u> | <u>MOORE v. MOORE</u> | <i>Cited</i> |
| <u>318,</u> | | |
| <u>2010 OK CIV APP 19, 231 P.3d</u> | <u>GALARZA v. GALARZA</u> | <i>Discussed</i> |
| <u>694,</u> | | |
| <u>2010 OK CIV APP 104, 241 P.3d</u> | <u>LE v. NGUYEN</u> | <i>Discussed at Length</i> |
| <u>647,</u> | | |
| <u>1996 OK CIV APP 76, 920 P.2d</u> | <u>Meigs v. Meigs</u> | <i>Cited</i> |
| <u>1077, 67 OBJ 2526,</u> | | |
| <u>2011 OK CIV APP 128, 268 P.3d</u> | <u>JOHNSON v. WINGERT</u> | <i>Discussed at Length</i> |
| <u>145,</u> | | |
| <u>2012 OK CIV APP 19, 272 P.3d</u> | <u>CABER v. DAHLE</u> | <i>Cited</i> |
| <u>733,</u> | | |
| <u>2014 OK CIV APP 25, 321 P.3d</u> | <u>VARBEL v. VARBEL</u> | <i>Discussed at Length</i> |
| <u>1012,</u> | | |
| <u>2015 OK CIV APP 58, 352 P.3d 56,</u> | <u>BILYEU v. BILYEU</u> | <i>Discussed</i> |
| <u>2018 OK CIV APP 42, 417 P.3d</u> | <u>POLSON v. BOYD</u> | <i>Cited</i> |
| <u>1288,</u> | | |
| <u>2018 OK CIV APP 68, 430 P.3d</u> | <u>IN RE THE MARRIAGE OF JONES</u> | <i>Cited</i> |
| <u>544,</u> | | |
| <u>2019 OK CIV APP 61, 451 P.3d</u> | <u>BROADBENT v. BROADBENT</u> | <i>Cited</i> |
| <u>930,</u> | | |
| <u>1997 OK CIV APP 69, 948 P.2d</u> | <u>Hoedebeck v. Hoedebeck</u> | <i>Discussed</i> |
| <u>1240, 68 OBJ 3833,</u> | | |
| <u>2025 OK CIV APP 3, 564 P.3d 914,</u> | <u>IN RE THE MARRIAGE OF WALTERS</u> | <i>Discussed at Length</i> |
| <u>2025 OK CIV APP 33,</u> | <u>IN THE MARRIAGE OF: SKOCH v. SKOCH</u> | <i>Discussed at Length</i> |
| <u>1998 OK CIV APP 53, 960 P.2d</u> | <u>ANDERSEN v. FELLERS</u> | <i>Cited</i> |
| <u>851, 69 OBJ 1821,</u> | | |
| <u>1999 OK CIV APP 42, 979 P.2d</u> | <u>Earnheart v. Earnheart</u> | <i>Cited</i> |
| <u>761, 70 OBJ 1484,</u> | | |

Oklahoma Supreme Court Cases

| <i>Cite</i> | <i>Name</i> | <i>Level</i> |
|---|---------------------------|----------------------------|
| <u>2001 OK 117, 42 P.3d 863, 72 OBJ</u> | <u>DANIEL v. DANIEL</u> | <i>Discussed at Length</i> |
| <u>3708,</u> | | |
| <u>1995 OK 133, 916 P.2d 1355, 66</u> | <u>Kahre v. Kahre</u> | <i>Cited</i> |
| <u>OBJ 3771,</u> | | |
| <u>2010 OK 85, 247 P.3d 1162,</u> | <u>FOSHEE v. FOSHEE</u> | <i>Discussed</i> |
| <u>2014 OK 92, 339 P.3d 888,</u> | <u>ELDREDGE v. TAYLOR</u> | <i>Cited</i> |

2017 OK 27, 404 P.3d 822,

BOATMAN v. BOATMAN

Cited

2020 OK 6, 457 P.3d 1073,

DUKE v. DUKE

Discussed

Title 11. Cities and Towns

Cite

Name

Level

11 O.S. 35-107,

Utility Deposit - Refund - Notice - Forfeiture - Waive Initial Credit and
Deposit Requirements for Victim of Domestic Violence, Stalking, or
Harassment

Cited

Title 17. Corporation Commission

Cite

Name

Level

17 O.S. 180.12,

Victim of Domestic Violence, Stalking, or Harassment Exempt from Initial
Credit and Deposit Requirements - Certification Letter - Confidential

Discussed

Title 43. Marriage

Cite

Name

Level

43 O.S. 110,

Orders Concerning Property, Children, Support and Expenses

Cited

Citationizer: Table of Authority

Cite *Name* *Level*

None Found.