

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 3088

By: Graves

COMMITTEE SUBSTITUTE

An Act relating to marriage and family; amending 43 O.S. 1991, Sections 111.1 and 112, as last amended by Section 10, Chapter 403, O.S.L. 1997 (43 O.S. Supp. 1997, Section 112), which relate to child custody and visitation; requiring compliance with visitation orders and child support payment orders; providing for prosecution of violations; providing for payment of certain court costs; requiring certain considerations in awarding custody; making noncompliance with visitation or child support orders contrary to the best interests of the child; and providing an effective date.

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

SECTION 1. AMENDATORY 43 O.S. 1991, Section 111.1, is amended to read as follows:

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

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

B. Except for good cause shown:

1. When a noncustodial parent who is ordered to pay child support and who is awarded visitation rights fails to pay child

support, the custodial parent shall not refuse to honor the noncustodial parent's visitation rights; and

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

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

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

SECTION 2. AMENDATORY 43 O.S. 1991, Section 112, as last amended by Section 10, Chapter 403, O.S.L. 1997 (43 O.S. Supp. 1997, 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 such noncustodial parent; and

3. May modify or change any order whenever circumstances render such 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 such 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.

B. In any action if there are minor unmarried children concerned in awarding the custody 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 21.1 of Title 10 of the Oklahoma Statutes and shall consider what appears to be in the best interests of the child. In awarding the custody or changing the custody of any child, and in determining the best interests of the child, the court shall take into consideration compliance of the parties to requirements specified by any current custody order.

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 such a way so as to assure the frequent and continuing contact of the child with both parents. To this effect, in making an order for 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. In making an order for custody, the court may specify that:

- a. unless there is a prior written agreement to change the permanent residence of the child either parent shall notify the other parent if such parent plans to change the permanent residence of the child, and
- b. the noncustodial parent is to notify the custodial parent if such noncustodial parent plans to change permanent residence.

D. 1. Except for good cause shown, a pattern of failure to pay court-ordered child support or a pattern of failure to allow court-ordered visitation is hereby 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. Any child shall be entitled to support by the parents until the child reaches eighteen (18) years of age. If a dependent child is regularly and continuously attending high school, said child shall be entitled to support by the parents through the age of eighteen (18) years. No hearing shall be required to extend such support through the age of eighteen (18) if the child is regularly and continuously attending high school.

~~E.~~ F. In any case in which provision is made for the custody or support of a minor child or enforcement of such order, the court shall inquire whether public assistance money has been provided by the Department of Human Services for the benefit of each child. If public assistance money has been provided for the benefit of the child, the Department of Human Services shall be a

necessary party for the just adjudication and establishment of the debt due and owing the State of Oklahoma, as defined in Section 238 of Title 56 of the Oklahoma Statutes and for the just adjudication and establishment of current child support.

~~F.~~ 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, if any.

SECTION 3. This act shall become effective November 1, 1998.

46-2-9577

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