

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 3266

6 By: Harrison

7 COMMITTEE SUBSTITUTE

8 An Act relating to marriage; amending 43 O.S. 2001,
9 Section 112, as last amended by Section 1, Chapter
10 34, O.S.L. 2007 (43 O.S. Supp. 2007, Section 112),
11 which relates to the care and custody of children;
12 providing for immediate suspension of visitation or
13 modification of custody upon allegation of abuse;
14 providing for hearing within thirty days; creating
15 the Protective Parent Reform Act; prohibiting certain
16 circumstances to act as a cause for the modification
17 of custody; providing for codification; and providing
18 an effective date.

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

20 SECTION 1. AMENDATORY 43 O.S. 2001, Section 112, as last
21 amended by Section 1, Chapter 34, O.S.L. 2007 (43 O.S. Supp. 2007,
22 Section 112), is amended to read as follows:

23 Section 112. A. A petition or cross-petition for a divorce,
24 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 1. Shall make provision for guardianship, custody, medical
2 care, support and education of the children;

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

6 3. May modify or change any order whenever circumstances render
7 the change proper either before or after final judgment in the
8 action; provided, that the amount of the periodic child support
9 payment shall not be modified retroactively or payment of all or a
10 portion of the past due amount waived, except by mutual agreement of
11 the obligor and obligee, or if the obligee has assigned child
12 support rights to the Department of Human Services or other entity,
13 by agreement of the Department or other entity. Unless the parties
14 agree to the contrary, a completed child support computation form
15 provided for in Section 120 of this title shall be required to be
16 filed with the child support order.

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

22 B. In any action in which there are minor unmarried children in
23 awarding or modifying the custody of the child or in appointing a
24 general guardian for the child, the court shall be guided by the

1 provisions of Section 21.1 of Title 10 of the Oklahoma Statutes and
2 shall consider what appears to be in the best interests of the
3 child.

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

6 a. assure children of frequent and continuing contact
7 with both parents after the parents have separated or
8 dissolved their marriage, and

9 b. encourage parents to share the rights and
10 responsibilities of child rearing in order to effect
11 this policy.

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

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

19 a. shall consider, among other facts, which parent is
20 more likely to allow the child or children frequent
21 and continuing contact with the noncustodial parent,
22 and

23 b. shall not prefer a parent as a custodian of the child
24 because of the gender of that parent.

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

5 5. Notwithstanding any custody determination made pursuant to
6 the Oklahoma Children's Code, Section 7001-1.1 et seq. of Title 10
7 of the Oklahoma Statutes, when a custodial parent of a child is
8 required to be separated from a child due to military service, a
9 court shall not enter a final order modifying an existing custody
10 order until such time as the custodial parent has completed the term
11 of duty requiring separation. For purposes of this paragraph:

12 a. In the case of a parent who is a member of the Army,
13 Navy, Air Force, Marine Corps or Coast Guard, the term
14 "military service" means a combat deployment,
15 contingency operation, or natural disaster requiring
16 the use of orders that do not permit any family member
17 to accompany the member; and

18 b. In the case of a parent who is a member of the
19 National Guard, the term "military service" means
20 service under a call to active service authorized by
21 the President of the United States or the Secretary of
22 Defense for a period of more than thirty (30)
23 consecutive days under 32 U.S.C. 502(f) for purposes
24 of responding to a national emergency declared by the

1 President and supported by federal funds. "Military
2 service" shall include any period during which a
3 member is absent from duty on account of sickness,
4 wounds, leave or other lawful cause.

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

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

11 2. Upon any good faith allegation of child abuse based on a
12 reasonable belief supported by fact and a subsequent Department of
13 Human Services investigation, a court shall immediately suspend
14 visitation with the alleged abuser or modify custody of the child if
15 the alleged abuser is the custodial parent and hold a hearing on the
16 allegation within thirty (30) days of suspension or modification.

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

22 E. Except as otherwise provided by Section 112.1A of this
23 title, any child shall be entitled to support by the parents until
24 the child reaches eighteen (18) years of age. If a child is

1 regularly enrolled in and attending high school, as set forth in
2 Section 11-103.6 of Title 70 of the Oklahoma Statutes, other means
3 of high school education, or an alternative high school education
4 program as a full-time student, the child shall be entitled to
5 support by the parents until the child graduates from high school or
6 until the age of twenty (20) years, whichever occurs first. Full-
7 time attendance shall include regularly scheduled breaks from the
8 school year. No hearing or further order is required to extend
9 support pursuant to this subsection after the child reaches the age
10 of eighteen (18) years.

11 F. In any case in which provision is made for the custody or
12 support of a minor child or enforcement of such order and before
13 hearing the matter or signing any orders, the court shall inquire
14 whether public assistance money or medical support has been provided
15 by the Department of Human Services, hereafter referred to as the
16 Department, for the benefit of each child. If public assistance
17 money, medical support, or child support services under the state
18 child support plan as provided in Section 237 of Title 56 of the
19 Oklahoma Statutes have been provided for the benefit of the child,
20 the Department shall be a necessary party for the adjudication of
21 the debt due to the State of Oklahoma, as defined in Section 238 of
22 Title 56 of the Oklahoma Statutes, and for the adjudication of
23 paternity, child support, and medical insurance coverage for the
24 minor children in accordance with federal regulations. When an

1 action is filed, the petitioner shall give the Department notice of
2 the action according to Section 2004 of Title 12 of the Oklahoma
3 Statutes. The Department shall not be required to intervene in the
4 action to have standing to appear and participate in the action.
5 When the Department is a necessary party to the action, any orders
6 concerning paternity, child support, medical support, or the debt
7 due to the State of Oklahoma shall be approved and signed by the
8 Department.

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

12 SECTION 2. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 112.4 of Title 43, unless there
14 is created a duplication in numbering, reads as follows:

15 This act shall be known and may be cited as the "Protective
16 Parent Reform Act".

17 SECTION 3. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 112.5 of Title 43, unless there
19 is created a duplication in numbering, reads as follows:

20 A court shall not restrict or modify the custody or visitation
21 between a parent and a child based solely on one or more of the
22 following actions taken by that parent:

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1 1. A good faith allegation based on a reasonable belief
2 supported by fact that the parent's child or any other child present
3 with the parent's child is the victim of:

- 4 a. child abuse,
- 5 b. neglect,
- 6 c. the effects of domestic violence, or
- 7 d. the effects of family violence; or

8 2. A lawful and good faith action in response to the reasonable
9 belief provided for in paragraph 1 of this section to protect the
10 child or seek treatment for the child, including but not limited to
11 reporting these allegations to the appropriate authorities.

12 SECTION 4. This act shall become effective November 1, 2008.

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