

THE HOUSE OF REPRESENTATIVES  
Thursday, February 28, 2008

Committee Substitute for  
**House Bill No. 3266**

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 3266 - By: HARRISON of the House.

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

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

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

4       Section 112.  A.  A petition or cross-petition for a divorce, legal separation, or  
5    annulment must state whether or not the parties have minor children of the marriage.  If  
6    there are minor children of the marriage, the court:

7       1.  Shall make provision for guardianship, custody, medical care, support and  
8    education of the children;

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

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

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

15           B. In any action in which there are minor unmarried children in awarding or  
16 modifying the custody of the child or in appointing a general guardian for the child, the  
17 court shall be guided by the provisions of Section 21.1 of Title 10 of the Oklahoma  
18 Statutes and shall consider what appears to be in the best interests of the child.

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

- 20                 a.        assure children of frequent and continuing contact with both parents  
21                         after the parents have separated or dissolved their marriage, and

1           b.       encourage parents to share the rights and responsibilities of child  
2                       rearing in order to effect this policy.

3           2. There shall be neither a legal preference nor a presumption for or against joint  
4 legal custody, joint physical custody, or sole custody.

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

8           a.       shall consider, among other facts, which parent is more likely to allow  
9                       the child or children frequent and continuing contact with the  
10                      noncustodial parent, and

11          b.       shall not prefer a parent as a custodian of the child because of the  
12                       gender of that parent.

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

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

- 1 a. In the case of a parent who is a member of the Army, Navy, Air Force,  
2 Marine Corps or Coast Guard, the term “military service” means a  
3 combat deployment, contingency operation, or natural disaster  
4 requiring the use of orders that do not permit any family member to  
5 accompany the member; and
- 6 b. In the case of a parent who is a member of the National Guard, the term  
7 “military service” means service under a call to active service  
8 authorized by the President of the United States or the Secretary of  
9 Defense for a period of more than thirty (30) consecutive days under 32  
10 U.S.C. 502(f) for purposes of responding to a national emergency  
11 declared by the President and supported by federal funds. “Military  
12 service” shall include any period during which a member is absent  
13 from duty on account of sickness, wounds, leave or other lawful cause.

14 6. In making an order for custody, the court shall require compliance with Section  
15 112.3 of this title.

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

19 2. Upon any good faith allegation of child abuse based on a reasonable belief  
20 supported by fact and a subsequent Department of Human Services investigation, a court  
21 shall immediately suspend visitation with the alleged abuser or modify custody of the

1 child if the alleged abuser is the custodial parent and hold a hearing on the allegation  
2 within thirty (30) days of suspension or modification.

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

7 E. Except as otherwise provided by Section 112.1A of this title, any child shall be  
8 entitled to support by the parents until the child reaches eighteen (18) years of age. If a  
9 child is regularly enrolled in and attending high school, as set forth in Section 11-103.6 of  
10 Title 70 of the Oklahoma Statutes, other means of high school education, or an  
11 alternative high school education program as a full-time student, the child shall be  
12 entitled to support by the parents until the child graduates from high school or until the  
13 age of twenty (20) years, whichever occurs first. Full-time attendance shall include  
14 regularly scheduled breaks from the school year. No hearing or further order is required  
15 to extend support pursuant to this subsection after the child reaches the age of eighteen  
16 (18) years.

17 F. In any case in which provision is made for the custody or support of a minor  
18 child or enforcement of such order and before hearing the matter or signing any orders,  
19 the court shall inquire whether public assistance money or medical support has been  
20 provided by the Department of Human Services, hereafter referred to as the Department,  
21 for the benefit of each child. If public assistance money, medical support, or child  
22 support services under the state child support plan as provided in Section 237 of Title 56

1 of the Oklahoma Statutes have been provided for the benefit of the child, the Department  
2 shall be a necessary party for the adjudication of the debt due to the State of Oklahoma,  
3 as defined in Section 238 of Title 56 of the Oklahoma Statutes, and for the adjudication  
4 of paternity, child support, and medical insurance coverage for the minor children in  
5 accordance with federal regulations. When an action is filed, the petitioner shall give the  
6 Department notice of the action according to Section 2004 of Title 12 of the Oklahoma  
7 Statutes. The Department shall not be required to intervene in the action to have  
8 standing to appear and participate in the action. When the Department is a necessary  
9 party to the action, any orders concerning paternity, child support, medical support, or  
10 the debt due to the State of Oklahoma shall be approved and signed by the Department.

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

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

17 This act shall be known and may be cited as the “Protective Parent Reform Act”.

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

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

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

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

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

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

11          COMMITTEE REPORT BY: COMMITTEE ON HUMAN SERVICES, dated 02-27-08 -  
12          DO PASS, As Amended.