

SENATE FLOOR VERSION

February 12, 2019

SENATE BILL NO. 66

By: Shaw

An Act relating to child custody; amending 43 O.S. 2011, Section 112, which relates to care and custody of children; requiring court to encourage certain parental behaviors if in the best interest of a child; adding certain grounds for modification of certain order; making requirement for prevailing party to recover specified costs and fees permissive; and providing an effective date.

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

SECTION 1. AMENDATORY 43 O.S. 2011, 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 the noncustodial parent; and

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

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

17 B. In any action in which there are minor unmarried children in
18 awarding or modifying the custody of the child or in appointing a
19 general guardian for the child, the court shall be guided by the
20 provisions of Section 112.5 of this title and shall consider what
21 appears to be in the best interests of the child.

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

- 1 a. assure children of frequent and continuing contact
2 with both parents after the parents have separated or
3 dissolved their marriage, ~~and~~
4 b. encourage parents to promote and facilitate a close
5 and continuing relationship between the child and both
6 parents and to minimize exposure of the child to
7 parental conflict, and
8 c. encourage parents to share the rights and
9 responsibilities of child rearing and to communicate
10 and cooperate in matters relating to the child in
11 order to effect 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, when a parent of a child is required
7 to be separated from a child due to military service, the court
8 shall not enter a final order modifying an existing custody order
9 until such time as the parent has completed the term of duty
10 requiring separation. For purposes of this paragraph:

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

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

1 service" shall include any period during which a
2 member is absent from duty on account of sickness,
3 wounds, leave or other lawful cause, and

4 c. the court may enter a temporary custody or visitation
5 order pursuant to the requirements of the Deployed
6 Parents Custody and Visitation Act.

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

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

13 2. Any behavior or pattern of behavior by a parent to alienate
14 or attempt to alienate the child from the other parent may be
15 determined to be contrary to the best interests of the child and as
16 such may be grounds for modification of the child custody order.

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~~ may be entitled
20 to 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. This act shall become effective November 1, 2019.

13 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
14 February 12, 2019 - DO PASS
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