

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 SENATE BILL 1761

By: Merrick

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6 AS INTRODUCED

7 An Act relating to custody; providing name of act;
8 amending 43 O.S. 2021, Section 112, which relates to
9 care and custody of children; providing certain
10 procedures for hearing on custody and visitation;
11 prohibiting certain care and custody designation
under certain circumstances; authorizing a court to
direct custody upon certain findings; providing for
noncodification; providing an effective date; and
declaring an emergency.

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

15 SECTION 1. NEW LAW A new section of law not to be
16 codified in the Oklahoma Statutes reads as follows:

17 This act shall be known and may be cited as "Maddie's Law".

18 SECTION 2. AMENDATORY 43 O.S. 2021, Section 112, is
19 amended to read as follows:

20 Section 112. A. A petition or cross-petition for a divorce,
21 legal separation, or annulment must state whether or not the parties
22 have minor children of the marriage. If there are minor children of
23 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 112.5 of this title and shall consider what
2 appears to be in the best interests of the child.

3 C. Where either party to an action concerning custody of or a
4 right to visitation with a child alleges in a sworn petition or
5 complaint or sworn answer, cross-petition, counterclaim or other
6 sworn responsive pleading that the other party has committed an act
7 of child abuse against such child, or committed an act of domestic
8 violence against the party making the allegation or a family or
9 household member of either party, the court shall first, before
10 considering any other best interest factors, hear and determine upon
11 competent admissible evidence such allegations set forth, and enter
12 any findings regarding any child abuse or domestic abuse. The
13 evidentiary hearing for such determination shall be held within
14 sixty (60) days of the filing of a verified pleading. The court
15 shall not be precluded from issuing any necessary emergency orders
16 to protect the child. All costs including attorney and expert fees
17 incurred by the non-offending parent and the child to prepare for
18 and participate in such evidentiary hearing, shall be paid by the
19 parent who is found to have committed child abuse or domestic
20 violence, unless the offending parent has insufficient means to fund
21 such activities. If a parent makes a good faith allegation based on
22 a reasonable belief supported by facts that the child is the victim
23 of child abuse, child neglect, or the effects of domestic violence,
24 and if that parent acts lawfully and in good faith in response to

1 that reasonable belief to protect the child or seek treatment for
2 the child, then that parent shall not be deprived of custody,
3 visitation or contact with the child, or restricted in custody,
4 visitation or contact, based solely on that belief or the reasonable
5 actions taken based on that belief. If the court finds a pattern of
6 domestic violence or child abuse by a parent, the court shall award
7 sole custody of the child to the non-offending parent or party and
8 shall suspend visitation or only award professionally supervised
9 visitation to the parent engaged in a pattern of violence or abusive
10 behavior. If the court does not make a finding that a party has
11 engaged in a pattern of domestic violence or child abuse, the court
12 may not refuse to consider additional evidence of domestic violence
13 or child abuse presented later in the case.

14 D. 1. When it is in the best interests of a minor unmarried
15 child, the court shall:

- 16 a. assure children of frequent and continuing contact
17 with both parents after the parents have separated or
18 dissolved their marriage, and
- 19 b. encourage parents to share the rights and
20 responsibilities of child rearing in order to effect
21 this policy.

22 2. There shall be neither a legal preference nor a presumption
23 for or against joint legal custody, joint physical custody, or sole
24 custody.

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

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

9 b. shall not prefer a parent as a custodian of the child
10 because of the gender of that parent.

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

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

21 a. in the case of a parent who is a member of the Army,
22 Navy, Air Force, Marine Corps or Coast Guard, the term
23 "military service" means a combat deployment,
24 contingency operation, or natural disaster requiring

1 the use of orders that do not permit any family member
2 to accompany the member,

3 b. in the case of a parent who is a member of the
4 National Guard, the term "military service" means
5 service under a call to active service authorized by
6 the President of the United States or the Secretary of
7 Defense for a period of more than thirty (30)
8 consecutive days under 32 U.S.C. 502(f) for purposes
9 of responding to a national emergency declared by the
10 President and supported by federal funds. "Military
11 service" shall include any period during which a
12 member is absent from duty on account of sickness,
13 wounds, leave or other lawful cause, and

14 c. the court may enter a temporary custody or visitation
15 order pursuant to the requirements of the Deployed
16 Parents Custody and Visitation Act.

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

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

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

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

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

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

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

18 SECTION 3. This act shall become effective July 1, 2022.

19 SECTION 4. It being immediately necessary for the preservation
20 of the public peace, health or safety, an emergency is hereby
21 declared to exist, by reason whereof this act shall take effect and
22 be in full force from and after its passage and approval.

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