

1 **SENATE FLOOR VERSION**

2 March 1, 2022

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1761

6 By: Merrick

7 An Act relating to child custody; amending 43 O.S.
8 2021, Sections 109 and 112, which relate to care and
9 custody of children; modifying requirements for
10 certain presumption; defining term; modifying
11 definitions; requiring court to consider certain
12 factors; requiring hearing upon certain allegation;
13 requiring court to make determination and enter
14 findings; setting deadline for evidentiary hearing
15 upon certain pleading; authorizing certain emergency
16 orders; prohibiting denial or restriction of custody
17 or visitation for certain reasonable and good faith
18 actions; requiring award of sole custody and
19 suspension of visitation upon certain findings;
20 prohibiting refusal to consider certain evidence;
21 authorizing court to order payment of certain costs
22 and fees; updating statutory language; and providing
23 an effective date.

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

SECTION 1. AMENDATORY 43 O.S. 2021, Section 109, is
amended to read as follows:

Section 109. A. In awarding the custody of a minor unmarried
child or in appointing a general guardian for ~~said~~ the child, the
court shall consider what appears to be in the best interests of the
physical and mental and moral welfare of the child.

1 B. The court, pursuant to the provisions of subsection A of
2 this section, may grant the care, custody, and control of a child to
3 either parent or to the parents jointly.

4 For the purposes of this section, the terms joint custody and
5 joint care, custody, and control mean the sharing by parents in all
6 or some of the aspects of physical and legal care, custody, and
7 control of their children.

8 C. If either or both parents have requested joint custody, ~~said~~
9 the parents shall file with the court their plans for the exercise
10 of joint care, custody, and control of their child. The parents of
11 the child may submit a plan jointly, or either parent or both
12 parents may submit separate plans. Any plan shall include but is
13 not limited to provisions detailing the physical living arrangements
14 for the child, child support obligations, medical and dental care
15 for the child, school placement, and visitation rights. A plan
16 shall be accompanied by an affidavit signed by each parent stating
17 that ~~said~~ the parent agrees to the plan and will abide by its terms.
18 The plan and affidavit shall be filed with the petition for a
19 divorce or legal separation or after ~~said~~ the petition is filed.

20 D. The court shall issue a final plan for the exercise of joint
21 care, custody, and control of the child or children, based upon the
22 plan submitted by the parents, separate or jointly, with appropriate
23 changes deemed by the court to be in the best interests of the
24

1 child. The court also may reject a request for joint custody and
2 proceed as if the request for joint custody had not been made.

3 E. The parents having joint custody of the child may modify the
4 terms of the plan for joint care, custody, and control. The
5 modification to the plan shall be filed with the court and included
6 with the plan. If the court determines the modifications are in the
7 best interests of the child, the court shall approve the
8 modifications.

9 F. The court also may modify the terms of the plan for joint
10 care, custody, and control upon the request of one parent. The
11 court shall not modify the plan unless the modifications are in the
12 best interests of the child.

13 G. 1. The court may terminate a joint custody decree upon the
14 request of one or both of the parents or whenever the court
15 determines ~~said~~ the decree is not in the best interests of the
16 child.

17 2. Upon termination of a joint custody decree, the court shall
18 proceed and issue a modified decree for the care, custody, and
19 control of the child as if no such joint custody decree had been
20 made.

21 H. In the event of a dispute between the parents having joint
22 custody of a child as to the interpretation of a provision of ~~said~~
23 the plan, the court may appoint an arbitrator to resolve ~~said~~ the
24 dispute. The arbitrator shall be a disinterested person

1 knowledgeable in domestic relations law and family counseling. The
2 determination of the arbitrator shall be final and binding on the
3 parties to the proceedings until further order of the court.

4 If a parent refuses to consent to arbitration, the court may
5 terminate the joint custody decree.

6 I. 1. In every proceeding in which there is a dispute as to
7 the custody of a minor child, a determination by the court that
8 child abuse, domestic violence, stalking, or harassment has occurred
9 raises a rebuttable presumption that sole custody, joint legal or
10 physical custody, or any shared parenting plan with the perpetrator
11 of child abuse, domestic violence, harassing or stalking behavior is
12 detrimental and not in the best interest of the child, and it is in
13 the best interest of the child to reside with the parent who is not
14 a perpetrator of child abuse, domestic violence, harassing or
15 stalking behavior.

16 2. For the purposes of this subsection:

17 a. "child abuse" shall have the same meaning as "abuse"
18 as defined pursuant to the Oklahoma Children's Code in
19 Section 1-1-105 of Title 10A of the Oklahoma Statutes,

20 b. "domestic violence" means the threat of the infliction
21 of physical injury, any act of physical harm or the
22 creation of a reasonable fear thereof, or the
23 intentional infliction of emotional distress by a
24 parent or a present or former member of the household

1 of the child, against the child or another member of
2 the household, including coercive control by a parent
3 involving physical, sexual, psychological, emotional,
4 economic or financial abuse,

5 ~~b. "stalking" means the willful course of conduct by a~~
6 ~~parent who repeatedly follows or harasses another~~
7 ~~person as defined in Section 1173 of Title 21 of the~~
8 ~~Oklahoma Statutes, and~~

9 c. "harassment" means a knowing and willful course or
10 pattern of conduct by a parent directed at another
11 parent which seriously alarms or is a nuisance to the
12 person, and which serves no legitimate purpose
13 including, but not limited to, harassing or obscene
14 telephone calls or conduct that would cause a
15 reasonable person to have a fear of death or bodily
16 injury, and

17 d. "stalking" means the willful course of conduct by a
18 parent who repeatedly follows or harasses another
19 person as defined in Section 1173 of Title 21 of the
20 Oklahoma Statutes.

21 3. If a parent is absent or relocates as a result of an act of
22 domestic violence by the other parent, the absence or relocation
23 shall not be a factor that weighs against the parent in determining
24 custody or visitation.

1 4. The court shall consider, as a primary factor, the safety
2 and well-being of the child who is the victim of child abuse and of
3 the parent who is the victim of domestic violence, harassment, or
4 stalking behavior, in addition to other facts regarding the best
5 interest of the child.

6 5. The court shall consider the history of the parent causing
7 physical harm, bodily injury, assault, verbal threats, stalking, or
8 harassing behavior, or the fear of physical harm, bodily injury, or
9 assault to another person, including the minor child, in determining
10 issues regarding custody and visitation.

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

13 Section 112. A. A petition or cross-petition for a divorce,
14 legal separation, or annulment ~~must~~ shall state whether ~~or not~~ the
15 parties have minor children of the marriage. If there are minor
16 children of the marriage, the court:

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

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

22 3. May modify or change any order whenever circumstances render
23 the change proper either before or after final judgment in the
24 action; provided, that the amount of the periodic child support

1 payment shall not be modified retroactively or payment of all or a
2 portion of the past due amount waived, except by mutual agreement of
3 the obligor and obligee, or if the obligee has assigned child
4 support rights to the Department of Human Services or other entity,
5 by agreement of the Department or other entity. Unless the parties
6 agree to the contrary, a completed child support computation form
7 provided for in Section 120 of this title shall be required to be
8 filed with the child support order.

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

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

19 C. In awarding or modifying custody or visitation of a child,
20 if a party to the action alleges that the other party has committed
21 an act of child abuse against the child, or committed an act of
22 domestic violence against the party making the allegation or a
23 family or household member of either party, the court shall, before
24 considering any other best interest factors, hear and determine upon

1 competent admissible evidence the allegations set forth and enter
2 findings regarding any child abuse or domestic violence. The
3 evidentiary hearing for such determination shall be held within
4 sixty (60) days of the filing of a verified pleading; provided,
5 however, the court may issue any necessary emergency orders to
6 protect the child. If a parent makes a good faith allegation based
7 on a reasonable belief supported by facts that the child is the
8 victim of child abuse or the effects of domestic violence, and if
9 that parent acts lawfully and in good faith in response to that
10 reasonable belief to protect the child or seek treatment for the
11 child, then that parent shall not be deprived of custody,
12 visitation, or contact with the child, or restricted in custody,
13 visitation, or contact, based solely on that belief or the
14 reasonable actions taken based on that belief. If the court finds a
15 pattern of child abuse or domestic violence by a parent, the court
16 shall award sole custody of the child to the non-offending parent or
17 party and shall suspend visitation or award only supervised
18 visitation to the parent engaged in a pattern of abusive or violent
19 behavior. If the court finds that a party has not engaged in a
20 pattern of child abuse or domestic violence, the court may not
21 refuse to consider additional evidence of child abuse or domestic
22 violence presented later in the case. Upon a finding that a parent
23 has committed child abuse or domestic violence, the court may order
24 payment by the offending parent of court costs and fees including

1 but not limited to attorney and expert fees that are incurred by the
2 non-offending parent to prepare for and participate in the
3 evidentiary hearing.

4 D. 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 nor 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.~~ E. 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. For any action brought pursuant to the provisions of this
14 section which the court determines to be contrary to the best
15 interests of the child, the prevailing party shall be entitled to
16 recover court costs, attorney fees and any other reasonable costs
17 and expenses incurred with the action.

18 ~~E.~~ F. Except as otherwise provided by Section 112.1A of this
19 title, any child shall be entitled to support by the parents until
20 the child reaches eighteen (18) years of age. If a child is
21 regularly enrolled in and attending high school, as set forth in
22 Section 11-103.6 of Title 70 of the Oklahoma Statutes, other means
23 of high school education, or an alternative high school education
24 program as a full-time student, the child shall be entitled to

1 support by the parents until the child graduates from high school or
2 until the age of twenty (20) years, whichever occurs first. Full-
3 time attendance shall include regularly scheduled breaks from the
4 school year. No hearing or further order is required to extend
5 support pursuant to this subsection after the child reaches the age
6 of eighteen (18) years.

7 F. G. In any case in which provision is made for the custody or
8 support of a minor child or enforcement of such order and before
9 hearing the matter or signing any orders, the court shall inquire
10 whether public assistance money or medical support has been provided
11 by the Department of Human Services, hereafter referred to as the
12 Department, for the benefit of each child. If public assistance
13 money, medical support, or child support services under the state
14 child support plan as provided in Section 237 of Title 56 of the
15 Oklahoma Statutes have been provided for the benefit of the child,
16 the Department shall be a necessary party for the adjudication of
17 the debt due to the State of Oklahoma, as defined in Section 238 of
18 Title 56 of the Oklahoma Statutes, and for the adjudication of
19 paternity, child support, and medical insurance coverage for the
20 minor children in accordance with federal regulations. When an
21 action is filed, the petitioner shall give the Department notice of
22 the action according to Section 2004 of Title 12 of the Oklahoma
23 Statutes. The Department shall not be required to intervene in the
24 action to have standing to appear and participate in the action.

1 When the Department is a necessary party to the action, any orders
2 concerning paternity, child support, medical support, or the debt
3 due to the State of Oklahoma shall be approved and signed by the
4 Department.

5 ~~G.~~ H. In any case in which a child support order or custody
6 order or both is entered, enforced or modified, the court may make a
7 determination of the arrearages of child support.

8 SECTION 3. This act shall become effective November 1, 2022.

9 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
10 March 1, 2022 - DO PASS AS AMENDED

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