

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 SENATE BILL 1323

By: Bergstrom

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5  
6 AS INTRODUCED

7 An Act relating to children; amending 43 O.S. 2011,  
8 Section 112, which relates to care and custody of  
9 children; establishing grounds for permissive denial  
of modification of certain order; and providing an  
effective date.

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

13 SECTION 1. AMENDATORY 43 O.S. 2011, Section 112, is  
14 amended to read as follows:

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

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

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

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- 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 share the rights and  
5                   responsibilities of child rearing in order to effect  
6                   this policy.

7           2.    There shall be neither a legal preference nor a presumption  
8 for or against joint legal custody, joint physical custody, or sole  
9 custody.

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

14           a.    shall consider, among other facts, which parent is  
15                   more likely to allow the child or children frequent  
16                   and continuing contact with the noncustodial parent,  
17                   and

18           b.    shall not prefer a parent as a custodian of the child  
19                   because of the gender of that parent.

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

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

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

13           b. in the case of a parent who is a member of the  
14           National Guard, the term "military service" means  
15           service under a call to active service authorized by  
16           the President of the United States or the Secretary of  
17           Defense for a period of more than thirty (30)  
18           consecutive days under 32 U.S.C. 502(f) for purposes  
19           of responding to a national emergency declared by the  
20           President and supported by federal funds. "Military  
21           service" shall include any period during which a  
22           member is absent from duty on account of sickness,  
23           wounds, leave or other lawful cause, and  
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1 c. the court may enter a temporary custody or visitation  
2 order pursuant to the requirements of the Deployed  
3 Parents Custody and Visitation Act.

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

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

10 2. Except for good cause shown, a pattern of failure to  
11 exercise a majority of court-ordered visitation may be determined to  
12 be contrary to the best interests of the child and as such may be  
13 grounds to deny modification of the child custody order.

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

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

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

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

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

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

9 SECTION 2. This act shall become effective November 1, 2018.

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