STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1425 BY: KINNAMON

AS INTRODUCED

AN ACT RELATING TO CHILDREN; AMENDING SECTION 1, CHAPTER 224, O.S.L. 1988, AS RENUMBERED BY SECTION 1, CHAPTER 333, O.S.L. 1989 AND AMENDED BY SECTION 2, CHAPTER 362, O.S.L. 1989 (43 O.S. SUPP. 1990, SECTION 118), WHICH RELATES TO CHILD SUPPORT GUIDELINES; PROHIBITING CERTAIN EXEMPTION FROM CHILD SUPPORT; AUTHORIZING AND PROVIDING FOR TERMINATION OF PARENTAL RIGHTS IN CERTAIN CASES; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 60.7a of Title 10, unless there is created a duplication in numbering, reads as follows:

A parent or guardian of a child may file a petition for adoption of a child without the consent of a parent or parents pursuant to Section 60.7 of Title 10 of the Oklahoma Statutes and for termination of the parental rights of such parent or parents of a child for the following grounds:

1. a. the parent whose rights are sought to be terminated has been sentenced to a period of incarceration of not less than ten (10) years, and

b. the continuation of parental rights would result in harm to the child based on consideration of the following factors, among others: the duration of incarceration and its detrimental effect on the parent/child relationship; any previous incarcerations; any history of criminal behavior, including crimes against children; the age of the child; the evidence of abuse or neglect of the child or siblings of the child by the parent; and the current relationship between the parent and the child and the manner in which the parent has exercised parental rights and duties in the past, and

c. termination of parental rights is in the best interests of the child.

Provided, that the incarceration of a parent shall not in and of itself be sufficient to deprive a parent of his parental rights; or

2. A prior finding by a court that a child is delinquent, deprived or in need of supervision shall not be required for the filing of such petition by the parent or guardian.

SECTION 2. AMENDATORY Section 1, Chapter 224, O.S.L. 1988, as renumbered by Section 1, Chapter 333, O.S.L. 1989 and amended by Section 2, Chapter 362, O.S.L. 1989 (43 O.S. Supp. 1990, Section 118), is amended to read as follows:

Section 118. A. Except in those cases where parties represented by counsel have agreed to a different disposition, there shall be a rebuttable presumption in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the following guidelines is the correct amount of child support to be awarded.

The court may deviate from the level of child support suggested by these guidelines where the amount of support so indicated is unjust, inequitable, unreasonable or inappropriate under the circumstances, or not in the best interests of the child or children involved. In making such determination, the court may take into account the reasonable support obligations of either parent as to other children in the custody of said parent. If the court deviates from the amount of support indicated by these guidelines, it shall make specific findings of fact supporting such action.

1. All child support shall be computed as a percentage of the combined gross income of both parents. The Child Support Guideline Schedule as provided in Section ~~1277.8~~ 119 of this title shall be used for such computation. The child support obligations of each parent shall be computed, and the noncustodial parent's share shall be paid monthly to the custodial parent;

2. Gross income includes income from any source, except as excluded in this act, and includes but is not limited to income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, rent, interest income, trust income, annuities, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts and prizes. Specifically excluded are actual child support received for children not before the court and benefits received from means-tested public assistance programs, including but not limited to Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), Food Stamps, General Assistance and State Supplemental Payments for Aged, Blind and the Disabled;

3. For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income is defined as gross receipts minus ordinary and necessary expenses required for self-employment or business operation. Specifically excluded from ordinary and

necessary expenses for purposes of this section are amounts determined by the court to be inappropriate for determining gross income for purposes of calculating child support. The court shall carefully review income and expenses from self-employment or operation of a business to determine an appropriate level of gross income available to the parent to satisfy a child support obligation. A determination of business income for tax purposes shall not control for purposes of determining a child support obligation.

Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business shall be counted as income if they are significant and reduce personal living expenses. Such payments may include but are not limited to a company car, free housing, or reimbursed meals;

4. For purposes of computing gross income of the parents, the court shall include for each parent, either the actual monthly income, the average of the gross monthly income for the time actually employed during the previous three (3) years, or the minimum wage paid for a forty-hour week, whichever is the most equitable. If equitable, the court may instead impute as gross monthly income for either parent the amount a person with comparable education, training and experience could reasonably expect to earn; provided, however, that if a person is permanently physically or mentally incapacitated, the child support obligation shall be computed on the basis of actual monthly gross income;

5. The amount of any preexisting court order for child support for children not before the court or for support alimony arising in a prior case shall be deducted from gross income to the extent payment is actually made under such order;

6. The amount of reasonable expenses of the parties attributable to debt service for preexisting, jointly acquired debt of the parties may be deducted from gross income to the extent

payment of such expenses is actually made. In any case where deduction for such debt service is made, the court may make provision for prospective upward adjustments of support made possible by the reasonable anticipated reduction or elimination of such debt service;

7. The results of paragraphs 2, 3, 4, 5 and 6 of this section shall be denominated "adjusted gross income";

8. The adjusted gross income of both parents shall be added together and the Child Support Guideline Schedule consulted for the total combined child support;

9. After the total combined child support is determined, the percentage share of each parent shall be allocated by computing the percentage contribution of each parent to the combined adjusted gross income and allocating that same percentage to the child support obligation to determine the base child support obligation of each parent;

10. The actual dependent medical insurance premium shall be determined by the court. The premium shall be allocated between the parents in the same proportion as base child support;

11. The payor shall receive credit for the payee's allocated share of medical insurance premium which the payor pays directly to the provider. The payor shall pay his or her (payor's) allocated share of the medical insurance premiums to payee, if payee pays the premium to the provider;

12. The court shall then determine the "actual" child care expenses reasonably necessary to enable both parents to maintain employment or to conduct an active search for employment;

13. The actual child care costs incurred due to employment or active employment search of either parent shall be allocated in the same proportion as base child support. The noncustodial parent shall be designated the "payor". The custodial parent shall be designated the "payee". Payor's proportionate amount of the child

care fee for that month shall be paid to the payee on or before the date the child care fee is due to the provider. The court shall require the payee to provide payor with timely documentation of any change in the amount of the child care fee;

14. Visitation transportation expenses shall be determined by the court on a case by case basis and may be allocated in addition to or as a credit against the child support obligation of the payor. Such expenses may be adjusted at any time the court deems it equitable;

15. Payment of reasonable and necessary medical, dental, orthodontic, optometrical, psychological or any other physical or mental health expenses of the child not reimbursed by insurance shall be determined by the court on a case by case basis and may be allocated in addition to the child support obligation of the payor, as a percentage contribution by each parent toward future expenses;

16. If the court adopts a joint custody plan meeting the requirements of Section 1275.4 of this title, the plan must provide for the support of the child equivalent to the amount of combined support the child would otherwise receive under these guidelines. The court shall have the authority, however, to accept a plan which allocates the payment of actual expenses of the children, rather than designating one custodial parent the "payor" and one the "payee", if the court finds the payments allocated to each respective parent are substantially equivalent to the amount of the child support obligation of the parent under these guidelines;

17. If each parent is awarded custody of one or more children, the child support obligation of each parent shall be computed for each custodial arrangement separately using the percentage applicable for the children residing with each parent. The payor obligation of each parent shall be compared with the other. The difference between the obligations of each parent shall be paid to the parent with the smaller payor obligation in order to equalize

the child support spent on all of the children, regardless of the custodial arrangements. Other minor children of the parties may be taken into account in determining child support;

18. The court may make adjustments to child support guidelines for periods of extended visitation;

19. Child support orders may be modified only upon a material change in circumstances. If the court finds there is a basis for modification, the child support guidelines provided in this act shall be used in computing child support, subject to the court's discretion to deviate from the guidelines where the amount of support is unjust, inequitable, unreasonable or inappropriate under the circumstances, or not in the best interests of the child or children involved, and such deviation is supported by specific findings. The enactment of these guidelines alone shall not constitute a material change in circumstances;

20. The child support computation worksheet provided in Section 1277.9 of this title shall be signed by the judge; and

21. Child support orders may include such provisions as the court deems appropriate to assure that the child support payments to the custodial parent are used for the support of the child.

B. No parent shall be exempt from the payment of support for the benefit of a child by virtue of their incarceration in a local, state or federal penitentiary or by virtue of being the recipient of benefits from any governmental agency. A court of competent jurisdiction may make specific findings of fact that the parent has willfully failed to contribute to the support of a child despite the amount of discretionary income available for payment of support or the source thereof.

SECTION 3. This act shall become effective September 1, 1991.

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