

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1251

By: Steidley

AS INTRODUCED

An Act relating to poor persons; amending 56 O.S.

1991, Sections 234, 235, 237, as amended by Section 2, Chapter 153, O.S.L. 1992, 237.1, 237.2, Section 3, Chapter 153, O.S.L. 1992, 237.6, 238.1, 238.2, 238.3a, 238.4, 238.6, 238.6A, 238.7, 239, 240, 240.1, 240.2, 240.3, 240.4, 240.5, as amended by Section 4, Chapter 153, O.S.L. 1992, 240.6, 240.7, 240.8, 240.9 and 240.10 (56 O.S. Supp. 1992, Sections 237, 237.3 and 240.5), which relate to child support; providing for transfer of child support program to the District Attorneys Council; clarifying language; providing for transfer of certain equipment, files and records; authorizing certain agreements; removing certain fee limitations; making certain remedies available to certain attorneys; requiring certain agreements; repealing 56 O.S. 1991, Section 236, as last amended by Section 1, Chapter 288, O.S.L. 1992 (56 O.S. Supp. 1992, Section 236), which relates to legal division of Department of Human Services; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 56 O.S. 1991, Section 234, is amended to read as follows:

Section 234. If a party in a divorce action or other civil case has disobeyed or failed to comply with an order of the court to make payments for the support or maintenance of a child for whom the Department of ~~Public Welfare~~ Human Services thereafter makes payments in its program for Aid to Families with Dependent Children, the Department may ~~file and prosecute in~~ refer such action or civil case for prosecution or the filing of an application to have such party cited and punished for contempt of court, or any other pleading to secure a compliance with the court's order.

SECTION 2. AMENDATORY 56 O.S. 1991, Section 235, is amended to read as follows:

Section 235. Any court ordering a party in a civil case to make payments for the support or maintenance of a child may direct, and upon application of the ~~Director of the Department of Human Services~~ District Attorneys Council, the court shall direct, that such payments be made to the ~~Department of Human Services~~ District Attorneys Council which shall be disbursed according to federal regulations. The court's order, or payments made pursuant thereto, shall not affect the amount of such assistance payments so long as the custodian of the child makes all reasonable efforts, when necessary, to cause the court's order to be obeyed. If payments are not made by such party as directed by the court, the Director of the ~~Department of Human Services~~ District Attorneys Council may file and prosecute in the case an application to have the party cited for contempt of court, or other pleading to secure a compliance with the court's order. Provided, the authority of the ~~Director of the Department of Human Services~~ District Attorneys Council to take such action shall not affect the right or responsibility of the custodian

of the child to take, or excuse her or him from taking, similar action. The ~~Oklahoma Commission for Human Services~~ District Attorneys Council shall have authority to adopt such rules and regulations as it deems necessary to carry out the provisions of this act.

SECTION 3. AMENDATORY 56 O.S. 1991, Section 237, as amended by Section 2, Chapter 153, O.S.L. 1992 (56 O.S. Supp. 1992, Section 237), is amended to read as follows:

Section 237. A. The ~~Department of Human Services~~ District Attorneys Council, hereinafter referred to as "~~Department~~ Council", is designated as the single state agency ~~designated~~ to administer a statewide plan for child support, and is authorized, in accordance with Title IV, Part D, of the Federal Social Security Act, as amended, 42 U.S.C., Section 651 et seq. to provide child support collection, parent location services and paternity determination services to enable it to participate in programs established by federal law.

B. The ~~Department~~ Council is authorized to:

1. Accept, transfer and expend funds made available by the government of the United States, the State of Oklahoma and public or private sources, for the purpose of carrying out the provisions of this section;

2. Promulgate rules and regulations to provide child support services;

3. Initiate legal actions needed to implement the provisions of this section;

4. Enter into contracts or agreements necessary to administer this section;

5. Request agencies and political subdivisions of the state, county or municipality to search their records and furnish to the ~~Department~~ Council information concerning names and addresses to assist in the locating of absent parents; and

6. Request information to assist in locating said individuals, from any state agency, political subdivision of the state, person, sole proprietorship, corporation, utility, partnership, association or organization doing business in this state, who or which shall provide such information to the ~~Child Support Enforcement Division~~ Council when the ~~Child Support Enforcement Division of the Department of Human Services~~ Council has reason to believe that individuals are not providing for the support of their children.

C. 1. An applicant for or recipient of aid to families with dependent children, hereinafter referred to as "recipient", shall be required to assign to the ~~Department~~ Council any rights of or support from any other person which the recipient may have in his or her own behalf or for a child for whom the recipient is applying for or receiving assistance, including the right to an amount accrued at the time the assignment is executed.

2. When an order has been entered which provides for payment of child support and the legal custodian and obligee pursuant to the order relinquishes physical custody of the child to a caretaker relative who is a recipient, without obtaining a modification of the order to change legal custody, and the caretaker relative makes an assignment of support rights for that child to the ~~Department~~ Council, the relinquishment and assignment, by operation of law, shall create a presumption that the recipient has physical custody of the child and shall transfer the child support obligation pursuant to the order to the ~~Department~~ Council. The assignment and transfer of the obligation shall terminate when the caretaker relative no longer has physical custody of the child, except for the amount of unpaid support still owing to the Department pursuant to the assignment.

3. If an assignment has been made pursuant to this section or a proper application made by an individual not receiving aid to families with dependent children, support payments shall be made to

the ~~Department~~ Council. If a court has ordered support payments to be made to the recipient or the applicant, the ~~Department~~ Council may file notice of such assignment or application with the court ordering the payments. The notice shall include:

- a. a statement that the assignment or application has been made;
- b. the name of the child for whom support has been ordered by the court and the name of the recipient or custodian of the child;
- c. the style and cause number of the case in which support was ordered; and
- d. a request that payments so ordered be made to the ~~Department~~ Council. Upon receipt of the notice, and without a requirement of a hearing, the court shall order the payments to be made to the Department.

4. Said order to redirect the payments shall be sent to the obligor by regular mail with proof of mailing from the United States Postal Service. If after notice of said redirection the obligor does not make payments to the ~~Department~~ Council as ordered, said payments shall not be credited to the amount owed.

D. The ~~Department~~ Council may, when support rights have been assigned to it or upon proper application by an individual not receiving aid to families with dependent children, establish medical support and child support, enforce orders for medical support or other support, and make collection and distribution of child support monies, assist in the judicial determination of the paternity of a child born out of wedlock and in location of absent parents, in cooperation with federal agencies, other agencies of this state and of other states. The ~~Department~~ Council may petition the court to modify any order for support. A reasonable fee and costs may be assessed for services to individuals not receiving aid to families

with dependent children under rules and regulations adopted by the ~~Department~~ Council.

E. Child support payments made to the ~~Department~~ Council pursuant to this section shall be deposited in the Child Support Escrow Account for distribution as may be required by Section 235 of this title, or by 42 U.S.C., Section 651 et seq. Fees or reimbursements of costs collected by the ~~Department~~ Council shall be deposited in the Administration Fund of the ~~Department~~ Council and may be used and expended by the Department for the purposes of carrying out the provisions of this section.

F. Except as otherwise authorized by law, all files and records concerning the assistance and services provided under this section or concerning a putative father of a child born out of wedlock are confidential. Release of information from the files and records shall be restricted to purposes directly connected with the administration of the child support collection, paternity determination, parent location or aid to families with dependent children programs. Information may be released to public officials under rules and regulations adopted by the ~~Department~~ Council, consistent with federal rules or regulations.

G. Title to and possession of all equipment, files and records utilized in the administration of Title IV, Part D of the federal Social Security Act is hereby transferred from the Department of Human Services to the District Attorneys Council for the purpose of implementing the provisions of this section.

SECTION 4. AMENDATORY 56 O.S. 1991, Section 237.1, is amended to read as follows:

Section 237.1 ~~District attorneys may~~ The Council shall enter into agreements with the ~~Department of Human Services~~ district attorneys for the enforcement and collection of child support obligations under Part D of Title IV of the Federal Social Security Act, 42 U.S.C.A. Sections 651 et seq.; provided however, that where

it is in the best interest of the program, the Council shall be authorized to enter into agreements with other entities including but not limited to private attorneys and other agencies of state and local government. Such agreements may include provisions for the payment of federal or state funds ~~to the district attorney~~ for the payment of any expense incurred in the operation of his office for the purposes of said agreement. ~~All funds, except payroll funds, shall be transmitted to the county treasurer and deposited in a special fund to be known as the "District Attorney Child Support Contract Fund" and be disbursed in accordance with accounting procedures prescribed by the State Auditor and Inspector. Such special funds shall not be a part of the general fund of the county and shall not be subject to appropriation by the county excise board. Payroll funds, which shall be governed by Section 11 of this act, shall be paid pursuant to the agreement.~~

SECTION 5. AMENDATORY 56 O.S. 1991, Section 237.2, is amended to read as follows:

Section 237.2 ~~The Child Support Enforcement Division of the Department of Human Services~~ Council is authorized to provide information or referrals, including but not limited to, income assignments, tax refund offsets, liens and notices, by means of an abstract of the information, which may be submitted to any governmental or private entity by electronic media in the most economical, effective and timely method, including on-line, real time access or various methods of batch processing.

SECTION 6. AMENDATORY Section 3, Chapter 153, O.S.L. 1992 (56 O.S. Supp. 1992, Section 237.3), is amended to read as follows:

Section 237.3 A. Attorneys employed by the ~~Department of Human Services~~ Council for the establishment of paternity and the establishment, enforcement and collection of child support obligations under Part D of Title IV of the Federal Social Security

Act, 42 U.S.C., Section 651 et seq., or attorneys acting for said ~~Department~~ Council through an agreement as set forth in Section 237.1 of this title may represent the state or other states in administrative or civil actions.

B. ~~Department~~ Council attorneys represent the state and not the interests of any other party. Providing services under Title IV-D of the Federal Social Security Act does not create an attorney-client relationship with any other party.

C. Neither the ~~Department of Human Services~~ Council nor any attorney providing services under Title IV-D of the Federal Social Security Act shall be authorized to accept service, as authorized in Section 2005 of Title 12 of the Oklahoma Statutes, for any party other than the ~~Department of Human Services~~ Council.

SECTION 7. AMENDATORY 56 O.S. 1991, Section 237.6, is amended to read as follows:

Section 237.6 A. The ~~Department of Human Services~~ Council shall encourage parents or guardians receiving Aid to Families with Dependent Children to enroll their children in early childhood education programs, if available, in kindergarten programs, or in schooling deemed appropriate by school authorities. The ~~Department~~ Council shall allow said parents or guardians who attend all parent-teacher conferences requested by teachers or other officials, or who participate in parent education programs offered by a school district to apply an equivalent amount of time towards any work experience or job training requirements.

B. If waiver of federal regulations is required to effect the requirements of subsection A of this section, the ~~Department of Human Services~~ Council shall promptly request such waiver.

SECTION 8. AMENDATORY 56 O.S. 1991, Section 238.1, is amended to read as follows:

Section 238.1 A. For the purposes of establishing the amount of the debt provided for by the provisions of Section 238 of this

title or to establish an obligation for support in the absence of a court order of support, the ~~Department~~ Council may issue a notice of a support debt accrued or accruing based upon payment of public assistance to or for the benefit of any dependent child or if no public assistance is paid, the amount of monthly child support required by the custodian of the minor child as determined by the ~~Department~~ Council. Said notice of debt shall be served upon the debtor in the same manner prescribed for the service of summons in a civil action. The notice of debt shall include:

1. A statement of the support debt accrued, if any, based on payment of public assistance to or for the benefit of any dependent child and support debt accruing, if any, based on the payment of public assistance for the benefit of said child; and

2. A statement of the amount of monthly public assistance payment or if no payment is made, the amount of monthly child support required by the custodian of the minor child as determined by the ~~Department~~ Council; and

3. A statement that the debtor will be required to maintain health insurance for the child whenever the debtor has such insurance available through his employment or other group insurance plan; and

4. A statement containing the name of the child and the name of the custodian of the child; and

5. A statement that the debtor may object to all or any part of the notice of support debt and, within twenty (20) days of the date of service, may request a hearing to show cause why said debtor should not be determined liable for the support requested in the notice and for any or all of the debt accrued or accruing, and the amount to be paid thereon; and

6. A statement that if no hearing is requested on or before twenty (20) days from the date of the service, the support debt shall be made an administrative order subject to collection action

and may be docketed with the district court in the county of residence of the custodian of the child or if the custodian resides out of state, with the district court in the county of residence of the obligor. The support debt shall be enforced in the same manner as an order of the district court.

B. The ~~Department~~ Council may accept voluntary acknowledgments of support liability and stipulated support amounts. The debtor shall be informed, in the notice specified by this section, that he may make such voluntary acknowledgments.

SECTION 9. AMENDATORY 56 O.S. 1991, Section 238.2, is amended to read as follows:

Section 238.2 Any person, firm, corporation, association, political subdivision or department of the state employing a person owing a support debt or obligation shall honor, according to its terms, a duly executed assignment of earnings presented by the ~~Director~~ Executive Coordinator of the District Attorneys Council as a plan to satisfy or retire a support debt or obligation. This requirement to honor the assignment of earnings and the assignment of earnings itself shall be applicable whether said earnings are to be paid presently or in the future and shall continue in force and effect until released in writing by the ~~Director~~ Executive Coordinator. Payment of money pursuant to an assignment of earnings presented by the ~~Director~~ Executive Coordinator shall serve as full acquittance under any contract of employment, and the state warrants and represents it shall defend and hold harmless such action taken pursuant to said assignment of earnings. The ~~Director~~ Executive Coordinator shall be released from liability for improper receipt of monies under an assignment of earnings upon return of any monies so received.

SECTION 10. AMENDATORY 56 O.S. 1991, Section 238.3a, is amended to read as follows:

Section 238.3a If the debtor fails to request a hearing on or before twenty (20) days after proper service of the notice of support debt, an administrative order will be entered. Such order shall include findings of facts and conclusions of law and shall be consistent with the notice of support debt. The order shall be subject to collection action, and may be docketed with the district court in the county of residence of the custodian of the child or if the custodian resides out of state, with the district court in the county of residence of the obligor. The order shall be enforced in the same manner as an order of the district court. A copy of such order shall be mailed to the debtor by the ~~Department~~ Council.

SECTION 11. AMENDATORY 56 O.S. 1991, Section 238.4, is amended to read as follows:

Section 238.4 A. If requested, a hearing shall be scheduled at the earliest available time with a duly qualified hearing examiner appointed for that purpose by the ~~Department~~ Council. The notice of hearing shall be served upon the debtor or upon his attorney of record by delivering a copy to said debtor or his attorney, or by mailing such notice, by certified mail, return receipt requested, at his last-known address. The hearing shall be held in the county of residence of the custodial parent or guardian of the child or if the custodian resides out of state, the hearing shall be held in the county of residence of the obligor. The hearing shall be conducted according to rules promulgated by the ~~Department~~ Council. The rules shall provide to both parties the right to confront and cross-examine witnesses, to present witnesses, to be represented by an attorney or other person, and to be notified of these rights in writing. After the evidence has been presented at a hearing, the hearing examiner shall enter an order which shall be in writing and contain findings and conclusions as to each contested issue of fact and law, as well as the order based on said findings and conclusions. The order shall be prepared in writing and copies

submitted to the ~~Department~~ Council and to the debtor by certified mail, return receipt requested, within twenty (20) days after the conclusion of the hearing.

B. If, during the hearing, the examiner finds that the issues presented will require further disposition either administratively or through the court, the examiner may enter a temporary order for child support, pending resolution of those issues during a subsequent administrative or court hearing. Such temporary order shall be docketed and enforced as a final order until superseded by a final administrative order or court order.

C. If the debtor feels aggrieved by the findings and judgment of the hearing examiner, within ten (10) days of receipt of notice of the rendition of a final judgment by said examiner, said debtor may give written notice to the ~~Department~~ Council of his intention to appeal said decision to the district court of the county in which said child resides. Said appeal must be filed in the district court within fifteen (15) days after the date of said notice and reviewed pursuant to the provisions of Sections 318 through 323 of Title 75 of the Oklahoma Statutes.

Any decision by the hearing examiner as to the amount of support owed or to be owed in the future by the debtor will be superseded by the decision of the district court.

D. If an appeal is not made by the debtor, the order of the hearing examiner shall be final, subject to collection action, and may be docketed with the district court in the county of residence of the custodian of the child or if the custodian resides out of state, with the district court of the county of residence of the obligor. The order shall be enforced in the same manner as an order of the district court.

E. If the debtor requests a hearing pursuant to this section but fails to appear for the hearing after proper service, an administrative order will be entered. Such order shall include

findings of facts and conclusions of law and shall be subject to collection action, and may be docketed with the district court in the county of residence of the custodian of the child or if the custodian resides out of state, with the district court in the county of the residence of the obligor. The order shall be enforced in the same manner as an order of the district court.

F. Any order for periodic support payments made pursuant to the provisions of this title shall be payable through the ~~Department~~ Council for as long as the ~~Department~~ Council is providing support enforcement. Thereafter, payments shall be made to the custodian or guardian of the child until further order of the court, or until the debtor is notified by the ~~Department~~ Council that said child has been recertified for receipt of public assistance, or until said child reaches the age of majority.

SECTION 12. AMENDATORY 56 O.S. 1991, Section 238.6, is amended to read as follows:

Section 238.6 A. The administrative procedures provided for by the provisions of Sections 238.1, ~~238.3~~ and 238.4 of this title shall be available, in the absence of a court order, to determine the support debt accrued and accruing for children receiving public assistance in other states where said sister state has requested the assistance of the ~~Department of Human Services~~ Council in establishing and enforcing the support debt created through payment of public assistance under the program of Aid to Families with Dependent Children, pursuant to the provisions of Title IV-D of the Social Security Act, as amended.

B. Said administrative procedures shall also be available, in the absence of a court order, to determine the amount of periodic support payments due from a debtor to the custodian or guardian of minor children not receiving Aid to Families with Dependent Children who has made proper application for services in establishing and enforcing the child support obligation of a debtor, pursuant to the

provisions of Title IV-D of the Social Security Act, as amended, whether said application was made in this state or in another state.

C. Said administrative procedures shall also be available to implement those provisions of subsection J of Section 1171.3 of Title 12 of the Oklahoma Statutes, with regard to immediate income withholding. Notice of immediate income withholding shall be sent by the ~~Department~~ Council in the same manner as prescribed in subsection E of Section 240.2 of this title.

D. The Council is authorized to create an Administrative Law Unit to provide administrative law judges and support staff who are responsible for fulfilling the requirements of the administrative procedures required by this section.

SECTION 13. AMENDATORY 56 O.S. 1991, Section 238.6A, is amended to read as follows:

Section 238.6A A. In any case in which the same issues of fact involving minor children are pending before the district court and before the Administrative Law Unit of the ~~Department of Human Services~~ Council, those issues shall be decided and relief granted by the district court and not by the Administrative Law Unit, unless said issues are remanded for determination to the Administrative Law Unit by the district court.

B. In any case in which different issues of fact involving minor children are pending before the district court and before the Administrative Law Unit of the ~~Department of Human Services~~ Council, all issues may be decided and all relief granted by the district court and not by the Administrative Law Unit, if the district court finds that it is in the interests of justice and judicial economy.

SECTION 14. AMENDATORY 56 O.S. 1991, Section 238.7, is amended to read as follows:

Section 238.7 A final order of the ~~Department of Human Services~~ Council providing for the payment of child support which has not been set aside on appeal by the district court shall not be modified

retroactively or payment of all or a portion of the past due amount waived, except by mutual agreement of the obligor and obligee or, if the child support rights have been assigned to the ~~Department~~ Council or other entity, by agreement of the ~~Department~~ Council or such entity.

SECTION 15. AMENDATORY 56 O.S. 1991, Section 239, is amended to read as follows:

Section 239. On or before January 31 of each year, the ~~Department~~ Council shall file a written report with the Division of the Budget and Division of Central Accounting and Reporting, the Director of the Legislative Service Bureau, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives, containing an accounting of all monies received by the ~~Department~~ Council from the federal programs pursuant to Title IV-D of the Social Security Act, as amended, and all monies received pursuant to orders for child support or administrative determinations of the ~~Department~~ Council for the preceding calendar year. The report shall also specify any expenditures made by the ~~Department~~ Council pursuant to orders for child support or administrative determinations of the ~~Department~~ Council for the preceding calendar year.

SECTION 16. AMENDATORY 56 O.S. 1991, Section 240, is amended to read as follows:

Section 240. For the purposes of this section and Sections 240.1 and 240.4 of this title:

1. "Arrearage" means the total amount of unpaid support obligations;
2. "Delinquency" means any payment under an order for support which becomes due and remains unpaid;
3. "Income" or "earnings" means any form of periodic payment to an individual regardless of source including but not limited to wages, salary, commission, compensation as an independent

contractor, workers' compensation, disability, annuity and retirement benefits, and any other payments made by any person, private entity, federal or state government, any unit of local government, school district, or any entity created by law;

4. "Disposable income" means income or earnings less any amounts required by law to be withheld, including but not limited to federal, state, and local taxes, Social Security, and public assistance payments;

5. "Obligor" means the person who is required to make payments under an order for support;

6. "Person entitled" means the person or entity to whom a duty of support is owed;

7. "Payor" means any person or entity paying monies, income or earnings to an obligor. In the case of a self-employed person, the "payor" and "obligor" may be the same person;

8. "Support order" means an order for the payment of support issued by a district court or the ~~Department of Human Services~~ Council;

9. "Income assignment" is a provision of a support order which directs the obligor to assign a portion of the monies, income, or periodic earnings due and owing to the obligor to the person entitled to the support or to another person or entity designated by the support order or assignment for payment of support or arrearages or both. An income assignment may be initiated when the obligor has failed to make child support payments required by a child support order in an amount equal to the child support payable for one (1) month. The assignment shall be in an amount which is sufficient to meet the periodic child support arrearages or other maintenance payments or both imposed by the court order or administrative order. The income assignment shall be made a part of the support order; and

10. "Council" means the District Attorneys Council.

SECTION 17. AMENDATORY 56 O.S. 1991, Section 240.1, is amended to read as follows:

Section 240.1 A. The ~~Department~~ Council, upon application, by a person entitled to receive child support who is not receiving aid to families with dependent children, may initiate proceedings to effectuate an income assignment and receive payments pursuant to Section ~~24~~ 240.2 of this ~~act~~ title. ~~A reasonable fee and costs may be assessed for the services pursuant to the rules and regulations promulgated by the Department. Such fee, not to exceed Twenty-five Dollars (\$25.00), shall be paid by the applicant and such other costs shall be in addition to the amount withheld pursuant to the income assignment.~~

B. The ~~Department~~ Council is authorized to initiate proceedings and receive payments pursuant to Section ~~24~~ 240.2 of this ~~act~~ title to effectuate an income assignment for spousal support or the support of a minor child or both for an applicant or any person who is the recipient of aid to families with dependent children.

C. The ~~Department of Human Services~~ Council is authorized to initiate proceedings and receive payments pursuant to Section ~~24~~ 240.2 of this ~~act~~ title to effectuate an income assignment for any debt due and owing to this state by the natural or adoptive parents or parent who are responsible for the support of a minor child pursuant to Section 238 of ~~Title 56 of the Oklahoma Statutes~~ this title or found to be responsible for the support of a minor child pursuant to Sections 238.1 through 238.6 of ~~Title 56 of the Oklahoma Statutes~~ this title.

SECTION 18. AMENDATORY 56 O.S. 1991, Section 240.2, is amended to read as follows:

Section 240.2 A. The person entitled to receive child support payments may request an income assignment order to take effect by submitting to the ~~Department~~ Council an affidavit specifying:

1. That the obligor has failed to make child support payments required by a child support order in an amount equal to the child support payable for one (1) month;

2. A certified copy of the support order and all subsequent modifications or orders thereto;

3. The amount of the support order and the amount of arrearage;

4. That some person or entity, known or unknown, is indebted to or has earnings in his possession or under his control belonging to the obligor; and

5. That the indebtedness or earnings specified in the affidavit are, to the best of the knowledge and belief of the person making such affidavit, not exempt by law.

B. 1. Upon application by the person entitled to receive child support payments, verifying that the obligor has failed to make child support payments in an amount equal to the child support payable for one (1) month, the ~~Department~~ Council shall advise the obligor of the intention to effectuate income assignment by a notice of delinquency. The ~~Department~~ Council may give such notice by mailing the notice of delinquency, by certified mail, return receipt requested, to the last-known address of the obligor, a notice of delinquency. The notice of delinquency shall be postmarked no later than ten (10) days after the date on which the application was submitted. The notice shall inform the obligor of the following:

- a. that the obligor is alleged to be delinquent under a support order in a specified amount,
- b. that an assignment will become effective against the obligor's earnings unless within fifteen (15) days of the date of mailing of the delinquency notice, said date of mailing to be specified in the notice, the obligor requests a hearing,
- c. that at the hearing, if requested, the obligor may contest the claimed delinquency only with regards to

mistakes of identity or to the existence or the amount of the delinquency, and

- d. that the assignment shall remain in effect for as long as the order for support upon which it is based and that payment of any arrearages will not prevent an income assignment from taking effect.
2. a. An obligor may request a hearing pursuant to this section by delivering written notice, with his address thereon, to the ~~Department of Human Services~~ Council on or before the 15th day from the date of mailing of the delinquency notice. On receipt of the request for hearing, the ~~Department~~ Council shall promptly enter the appearance of the obligor, set the matter for a hearing within fifteen (15) days of the request for a hearing, and shall send written notice of the hearing to all parties. The ~~Department~~ Council shall promptly hear and determine the matter and, unless the obligor successfully shows that there is a mistake of identity or a mistake to the existence, or the amount of the delinquency, the ~~Department~~ Council shall order that the assignment of earnings take effect against the nonexempt earnings of the obligor.
 - b. The ~~Department~~ Council may order an obligor to pay all costs involved in an income assignment proceeding under this subsection.
 - c. The order shall be a final judgment for purposes of appeal. The effect of the income assignment shall not be stayed on appeal except by order of the court pursuant to Section 240.3 of this title.
 - d. The ~~Department~~ Council shall send a notice of the income assignment to the payor to effectuate the assignment pursuant to subsection E of this section.

C. If within fifteen (15) days of date of mailing of the delinquency notice, the obligor fails to request a hearing, pursuant to subsection B of this section, the ~~Department~~ Council shall enter an order approving the income assignment and the administrative order shall thereafter be subject to collection action and may be docketed with the district court and thereafter enforced in the same manner as an order of the district court.

D. The ~~Department~~ Council shall ensure that such documents are in order and shall send a notice of the income assignment to the payor pursuant to subsection E of this section to effectuate the assignment.

E. 1. The notice of the income assignment required pursuant to subsections B and C of this section shall be sent by the ~~Department~~ Council to the payor listed on the application. The notice shall be sent by certified mail, return receipt requested, or served in accordance with law. The payor shall be required to comply with the provisions of this subsection as stated in the notice. The notice shall specify:

- a. the effective date of the assignment. The assignment shall take effect on the next payment of earnings to the obligor after the payor received notice thereof and the amount withheld shall be sent to the ~~Department~~ Council within ten (10) days of the date upon which the obligor is paid;
- b. the amount to be withheld from the obligor's earnings each pay period for support and for arrearage. The amount withheld by the payor shall not exceed the limits on the percentage of an obligor's income which may be assigned for support pursuant to Section 1171.2 of Title 12 of the Oklahoma Statutes;

- c. that the income assignment is binding upon the payor until order of the court or the ~~Department~~ Council, or as long as the order for support on which it is based;
- d. that the payor is liable for any amount up to the accumulated amount that should have been withheld if the payor fails to withhold the earnings in accordance with the provisions of the assignment;
- e. that two or more income assignments may be levied concurrently up to the wage withholding restrictions. Any current support due shall be paid before the payment of any arrearages;
- f. that if the payor is the obligor's employer, the payor shall notify the ~~Department~~ Council when the obligor terminates employment. The payor shall provide to the ~~Department~~ Council, the obligor's last-known address and the name of the obligor's new employer, if known;
- g. that if the payor has no income due or to be due to the obligor in his possession or control, or if the obligor has terminated employment with the payor prior to the receipt of notice required pursuant to subsection D of this section, or the amount of the assignment exceeds the amount authorized pursuant to Section 1171.2 of Title 12 of the Oklahoma Statutes, the payor shall send written notice to the ~~Department~~ Council within ten (10) days of receipt of said notice. Failure to notify the ~~Department~~ Council within the required time limit may subject the payor to liability for an amount up to the accumulated amount that is due and owing upon receipt of the notice; and

h. that the payor may also be fined not more than Two Hundred Dollars (\$200.00) for failure to make the required deductions.

2. The payor may combine withheld amounts from earnings of two or more obligors in a single payment and separately identify that portion of the single payment which is attributable to each individual obligor.

3. An income assignment issued pursuant to the provisions of this section shall have priority over any prior or subsequent garnishments of the same wages.

4. The payor may deduct from any earnings of the obligor a sum not exceeding Five Dollars (\$5.00) per pay period as reimbursement for costs incurred in the income assignment.

5. The assignment shall remain effective upon notice to the new payor.

6. The income assignment issued pursuant to this section shall remain in effect for as long as current support is due or until all arrearages for support are paid, whichever is later. Payment of any arrearages shall not prevent the income assignment from taking effect.

7. The payor, if the employer of the obligor, shall verify employment of the obligor with the payor and the last address of the obligor known to the payor upon the request of the ~~Department~~ Council.

8. The payor may not discipline, suspend, or discharge an obligor because of an income assignment executed pursuant to this section. Any payor who violates this section shall be liable to such obligor for all wages and employment benefits lost by the obligor from the period of unlawful discipline, suspension, or discharge to the period of reinstatement.

F. Any person obligated to pay support, who has left or is beyond the jurisdiction of the court, may be prosecuted under any

other proceedings available pursuant to the laws of this state for the enforcement of the duty of support and maintenance.

G. The income assignment proceedings specified in this section shall be available to other states for the enforcement of child support and maintenance or to enforce out-of-state orders. Venue for such proceedings is, at the option of the obligee:

1. In the county in Oklahoma in which the support order was entered; or

2. In the county in Oklahoma in which the obligee resides; or

3. In the county in Oklahoma in which the obligor resides or receives income.

H. Any payment made pursuant to the provisions of this section by the payor shall be made payable through the ~~Department~~ Council, and in such manner as provided by the administrative order.

I. 1. In the event the obligor is in arrears, any payment which exceeds the amount due for the period in which the payment is made shall be applied to past due and unpaid amounts owed in the order in which the payments came due.

2. If at any time an obligor is entitled to receive a refund, the ~~Department~~ Council shall send the excess amount to the obligor within ten (10) working days after such excess is determined.

J. The obligated party may execute a voluntary income assignment at any time. The voluntary income assignment shall be submitted to the ~~Department~~ Council and shall take effect after service on the payor as required by subsection E of this section.

K. The ~~Department of Human Services~~ Council shall promulgate rules and regulations to effectuate the provisions of this section.

L. The ~~Department~~ Council is authorized to prorate the payment of the support between two or more income assignments levied concurrently.

M. The ~~Department~~ Council shall distribute the monies due a person entitled to support who is not receiving aid to families with

dependent children within ten (10) working days after receipt of such monies.

SECTION 19. AMENDATORY 56 O.S. 1991, Section 240.3, is amended to read as follows:

Section 240.3 A. 1. Final orders of the ~~Department~~ Council may be appealed to the district court pursuant to this section and ~~Sections 318 through 323 of Title 75 of the Oklahoma Statutes~~ the Administrative Procedures Act by any party directly affected and showing aggrievement by the order.

2. An appeal shall be commenced by filing with the clerk of the district court, within fifteen (15) days from the date of the order or decision, a petition in error with a copy of the order or decision appealed from. The time limit prescribed in this paragraph for filing the petition in error may not be extended. The manner of perfection of the record of the proceedings to be reviewed and the time for its completion shall be in accordance with rules prescribed by the district court.

3. The appeal shall not stay the execution of any order or decision of the ~~Department~~ Council unless the district court, for cause shown, shall order that said decision or order be stayed pending such appeal pursuant to Section 319 of Title 75 of the Oklahoma Statutes.

4. The court may affirm the decision or remand the case for further proceedings. Additionally, the court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the findings, inferences, or conclusions are not supported by substantial evidence in the record.

B. If an appeal pursuant to subsection A of this section is not made by the person to whom such an order is directed within fifteen (15) days after notice has been sent to the parties, the order of the ~~Department~~ Council shall become final and binding on all parties and may be docketed with the district court in the county of the

residence of the obligor, or otherwise in the district court of Oklahoma County and thereafter enforced in the same manner as an order of the district court.

SECTION 20. AMENDATORY 56 O.S. 1991, Section 240.4, is amended to read as follows:

Section 240.4 A report of payments made by the obligor or payor with a certification of authenticity executed by the ~~Department of Human Services Council~~ or the court clerk is admissible into evidence in court or in an administrative proceeding as self-authenticated.

SECTION 21. AMENDATORY 56 O.S. 1991, Section 240.5, as amended by Section 4, Chapter 153, O.S.L. 1992 (56 O.S. Supp. 1992, Section 240.5), is amended to read as follows:

Section 240.5 A. Those persons not receiving aid to families with dependent children shall be given equal access to the services provided by the ~~Department of Human Services Council~~ through its statewide plan for child support authorized by the Federal Social Security Act, 42 U.S.C., Section 301 et seq.

B. The ~~Department Council~~ is authorized to study, develop and propose to the Legislature a fee schedule for child support enforcement services provided through the ~~Child Support Enforcement Division of the Department Council~~.

SECTION 22. AMENDATORY 56 O.S. 1991, Section 240.6, is amended to read as follows:

Section 240.6 In addition to the powers and duties of the ~~Department Council~~ provided in Section 237 of ~~Title 56 of the Oklahoma Statutes~~ this title, the ~~Department of Human Services Council~~ is authorized to enforce a support payment of a spouse or former spouse pursuant to a court order requiring such support if a child support obligation is being enforced under the state plan of the ~~Department Council~~ authorized by the federal Social Security Act.

SECTION 23. AMENDATORY 56 O.S. 1991, Section 240.7, is amended to read as follows:

Section 240.7 A. The ~~Department of Human Services~~ Council shall establish procedures for the release of the amount of child support arrearages information to consumer reporting agencies. Such information shall be released if:

1. The person obligated to pay child support pursuant to a support order is in arrears for more than One Thousand Dollars (\$1,000.00); and

2. The information regarding the amount of the support in arrears is requested by the consumer reporting agencies.

B. For purposes of this section the term consumer reporting agencies means any person who for a fee, dues or on a cooperative nonprofit basis regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties and who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

C. The ~~Department~~ Council may charge a reasonable fee based ~~in~~ on actual costs of supplying such services.

D. The person obligated for such support shall be notified prior to the release of such information and shall be given an opportunity to be heard as to the accuracy of the information to be released.

SECTION 24. AMENDATORY 56 O.S. 1991, Section 240.8, is amended to read as follows:

Section 240.8 A. The ~~Department of Human Services~~ Council shall provide, from any available funds, for the publication and statewide distribution to the public of information as to the availability of the services offered by the ~~Department~~ Council for the collection of child support.

B. The ~~Department of Human Services Council~~ shall provide copies of the information specified in subsection A of this section to the court clerks of each county for distribution to the public.

SECTION 25. AMENDATORY 56 O.S. 1991, Section 240.9, is amended to read as follows:

Section 240.9 A. In filing cases involving concurrent jurisdiction between the administrative proceedings of the ~~Department of Human Services Council~~ and the district court, the cases shall be filed in the administrative proceedings of the ~~Department of Human Services Council~~. The ~~Department of Human Services Council~~, by regulation, may establish exceptions from this requirement subject to federal approval.

B. Child support orders originating from other states shall be enforced to the same extent as orders originating within this state. Said orders to be filed in the county of residence of the obligor or in the county of residence of the person entitled to support.

SECTION 26. AMENDATORY 56 O.S. 1991, Section 240.10, is amended to read as follows:

Section 240.10 A. Anyone who is ordered to pay support for a child in an administrative or court action, hereinafter referred to as "obligor", is required by law to obtain and maintain gainful employment sufficient to meet the support obligation.

B. The ~~Department~~ Council, when support rights have been assigned to it or proper application made by an individual not receiving Aid to Families with Dependent Children, may initiate an administrative action to obtain an order to require an unemployed or underemployed obligor to participate in job-finding or job-training programs. "Underemployed" is defined as being employed less than full-time or in an occupation which pays less than employment which someone of obligor's skills and education could be reasonably expected to earn, so that the obligor cannot meet his support obligation. The ~~Department~~ Council shall give notice of this

requirement to the obligor who is not complying with a court or administrative order for support and who the ~~Department~~ Council has reason to believe is unemployed or underemployed. Said notice shall be served upon the obligor in the same manner prescribed for service of summons in a civil action. The notice shall state:

1. The name of the child for whom support is ordered and the custodian of the child;

2. That the obligor is not complying with the court or administrative order for support and is delinquent in a certain amount;

3. That it appears that the obligor is unemployed or underemployed so that he cannot meet his support obligation;

4. That the obligor shall appear for a conference in his county of residence on a date certain to show cause why he should not be ordered to participate in job-finding or job-training programs and to accept available employment; and

5. That if it is determined that the obligor is unemployed or underemployed or if the obligor fails to appear, an order will be entered which will require the obligor to participate in job-finding and job-training programs and to accept available employment and that such order may be docketed with the district court in the county of residence of the obligor and shall be enforced as any other order of the district court by indirect civil contempt proceedings.

C. At the conference the ~~Department~~ Council shall determine if the obligor is unemployed or is underemployed. If it is determined that the obligor is unemployed or underemployed, the ~~Department~~ Council shall enter an order setting forth the ~~Department's~~ Council's findings and requiring that the obligor shall participate in job-finding or job-training programs and accept available employment. The order shall state when the obligor shall report and to what location. The order may be docketed with the district court

in the obligor's county of residence and shall be enforced as any other order of the district court by indirect civil contempt proceedings. A copy of the order will be mailed by the ~~Department~~ Council to the obligor's last-known address.

D. If the obligor fails to appear for the conference, the ~~Department~~ Council shall enter an administrative order requiring that the obligor report to the ~~Department~~ Council to participate in job-finding or job-training programs and accept available employment. The order shall state when and where the obligor is to report to participate in said programs. The order may be docketed with the district court in the county of residence of the obligor and shall be enforced as any other order of the district court by indirect civil contempt proceedings. A copy of the order will be mailed by the ~~Department~~ Council to the obligor's last-known address.

E. The obligor may show good cause why an administrative order should not be entered requiring him to participate in job-finding or job-training programs and accept available employment. "Good cause" is defined as establishing by expert medical opinion that the person is mentally or physically unable to work or such other grounds as the ~~Department~~ Council determines by regulation constitutes good cause.

F. If the obligor feels aggrieved by the findings and order of the ~~Department~~ Council, the obligor may appeal the decision of the ~~Department~~ Council by filing a petition in error in the district court of the county of residence of the obligor within thirty (30) days of the date the obligor is notified of the order, pursuant to the provisions of ~~Sections 318 through 323 of Title 75 of the Oklahoma Statutes~~ the Administrative Procedures Act.

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 240.11 of Title 56, unless there is created a duplication in numbering, reads as follows:

The Council may provide that the state remedies made available to the Council to collect and enforce child support obligations are also available to all attorneys within the State of Oklahoma engaged in the practice of law.

SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 240.12 of Title 56, unless there is created a duplication in numbering, reads as follows:

The Department of Human Services shall enter into all agreements with the District Attorneys Council which are necessary to make the transfer of the child support program smooth, orderly and efficient. The Department of Human Services shall enter into all agreements with the District Attorneys Council which are necessary to maintain the smooth and orderly operation of the child support program after the transfer of administration of the program to the District Attorneys Council, including, but not limited to, agreements to provide continued support for data processing, automated system development and financial operations. These agreements shall provide for compensation to the Department of Human Services only for the actual, reasonable and direct costs of the particular services provided. Any agreement in this section shall remain in effect until canceled by the District Attorneys Council.

SECTION 29. REPEALER 56 O.S. 1991, Section 236, as last amended by Section 1, Chapter 288, O.S.L. 1992 (56 O.S. Supp. 1992, Section 236), is hereby repealed.

SECTION 30. This act shall become effective July 1, 1993.

SECTION 31. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

