

ENGROSSED HOUSE  
BILL NO. 1557

By: Seikel and Pettigrew of  
the House

and

Cain of the Senate

An Act relating to child support; amending 10 O.S. 1991, Sections 70, 501, 502 and 504, as amended by Sections 3, 27, 28 and 30, Chapter 356, O.S.L. 1994 (10 O.S. Supp. 1994, Sections 70, 501, 502 and 504), which relate to child support; clarifying language; providing exception; requiring resolution of paternity; modifying authority of court; amending 43 O.S. 1991, Section 118, as last amended by Section 14, Chapter 356, O.S.L. 1994 (43 O.S. Supp. 1994, Section 118), which relates to marriage and family; modifying child support guidelines; amending 56 O.S. 1991, Section 240.7, which relates to consumer reporting agencies; expanding information released; removing certain authority; amending 63 O.S. 1991, Sections 1-311, as amended by Section 7, Chapter 356, O.S.L. 1994, Section 9, Chapter 356, O.S.L. 1994 and 1-321 (63 O.S. Supp. 1994, Sections 1-311 and 1-311.3), which relate to birth certificates; requiring certain mailings; removing certain fees and charges; modifying procedures; amending 21 O.S. 1991, Section 852, as last amended by Section 1, Chapter 132, O.S.L. 1994 (21 O.S. Supp. 1994, Section 852), which relates to

omission to provide for a child; requiring payment of at least fifty percent; making certain actions relating to aiding the nonpayment of child support a crime; providing for certain offenses; amending 12 O.S. 1991, Section 1171.3, as amended by Section 23, Chapter 356, O.S.L. 1994 (12 O.S. Supp. 1994, Section 1171.3), which relates to child support in civil law; limiting certain charges; repealing 10 O.S. 1991, Section 14, which relates to compensation for support of a child; 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 10 O.S. 1991, Section 70, as amended by Section 3, Chapter 356, O.S.L. 1994 (10 O.S. Supp. 1994, Section 70), is amended to read as follows:

Section 70. A. Except as otherwise provided by law, a woman who gives birth to a child is the natural mother of the child.

B. Paternity may be established by:

1. A notarized written statement of the father and mother acknowledging paternity pursuant to Section ~~9 of this act~~ 1-311.3 of Title 63 of the Oklahoma Statutes. Such statement acknowledging paternity shall have the same legal effect as an order of paternity entered in a court or administrative proceeding unless the natural mother was married at the time of birth. Such statement may be contested for a period of not more than two (2) years after signing the statement. Except for the child after two (2) years, paternity may not be disputed by anyone;

2. Scientifically reliable genetic tests, including but not limited to blood tests;

3. Court or administrative order; or

4. As otherwise provided by law.

C. Proceedings to establish paternity may be brought in the appropriate district court or through the Department of Human Services, Office of Administrative Hearings: Child Support, by the mother, the presumptive, putative father, father, guardian or custodian of the child, the Department of Human Services, the district attorney, a public or private agency or authority chargeable with the support of the child, or by the child. ~~The~~ If the proceedings are held in district court, the district court, after determining paternity in a civil action, shall provide for the support and maintenance of the child. The court shall further make provision for custody and visitation based upon the best interests of the child.

D. An action to establish paternity shall be available to a child if commenced within one (1) year after the child reaches the age of eighteen (18).

SECTION 2. AMENDATORY 10 O.S. 1991, Section 501, as amended by Section 27, Chapter 356, O.S.L. 1994 (10 O.S. Supp. 1994, Section 501), is amended to read as follows:

Section 501. In a civil action in which paternity is a relevant fact, the appropriate district or administrative court, upon its own initiative or upon suggestion made by or on behalf of any person whose blood or other genetic markers are involved may, or upon motion of any party to the action shall, order the mother, child and putative father to submit to genetic testing. If any party refuses to submit to such tests, the court ~~may~~ shall resolve the question of paternity against such party or enforce its order if the rights of others and the interests of justice so require unless such individual is found to have good cause for refusing to cooperate.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 502, as amended by Section 28, Chapter 356, O.S.L. 1994 (10 O.S. Supp. 1994, Section 502), is amended to read as follows:

Section 502. The tests shall be made by experts qualified as examiners of genetic markers in the human body. The experts ~~shall~~ may be called by the court or by a party as witnesses to testify as to their findings and shall be subject to cross-examination by the parties. Any party may request that other experts qualified as examiners of genetic markers in the human body perform independent tests subject to order of court, the results of which may be offered in evidence. The number and qualifications of said experts shall be determined by the court.

SECTION 4. AMENDATORY 10 O.S. 1991, Section 504, as amended by Section 30, Chapter 356, O.S.L. 1994 (10 O.S. Supp. 1994, Section 504), is amended to read as follows:

Section 504. A. Evidence which shows a statistical probability of paternity is admissible and shall be weighed in addition to other evidence of the paternity of the child. Evidence which shows a statistical probability of paternity may include but is not limited to:

1. Genetic test results provided for in the Genetic Testing to Determine Paternity Act; and

2. Medical, scientific, or genetic evidence relating to the paternity of the child based on tests performed by said experts.

B. If the court finds that the evidence based upon the medical, scientific, and genetic tests, shows that the defendant is not the parent of the child, said evidence shall be conclusive proof of nonpaternity and the court shall dismiss the action.

C. Evidence of statistical probability of paternity established at ninety-five percent (95%) or more creates a presumption of paternity. Said presumption is rebuttable by clear and convincing evidence admitted on behalf of the defendant.

D. Evidence of statistical probability of paternity established at ninety-eight percent (98%) or more creates a conclusive presumption of paternity.

E. The party receiving the copy of the genetic test results from the court-appointed expert shall send all parties a copy of the genetic test results by certificate of mailing to the last-known address of the parties.

F. Any objection to genetic testing results must be made in writing within fifteen (15) days from the date of mailing of the genetic test results, and any hearing on the issue of paternity may not be held any sooner than fifteen (15) days after filing of objection to genetic test. If no objection is filed in the appropriate district court or through the Department of Human Services, Office of Administrative Hearings: Child Support within the specified time, the genetic testing results will be admitted as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy.

SECTION 5. AMENDATORY 43 O.S. 1991, Section 118, as last amended by Section 14, Chapter 356, O.S.L. 1994 (43 O.S. Supp. 1994, 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 district or administrative 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. The court shall not take into account any stepchildren of such parent in making the determination,

but in making such determination, the court may take into account the reasonable support obligations of either parent as to only natural, legal, or legally adopted minor children in the custody of said parent. If the district or administrative court deviates from the amount of support indicated by these guidelines, it shall make specific findings of fact supporting such action.

B. Child support guidelines are as follows:

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 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 district or administrative court to be

inappropriate for determining gross income for purposes of calculating child support. The district or administrative 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 district or administrative 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 district or administrative 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 district or administrative court order for current 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 debt is actually made. In any case where deduction for such debt service is made, the district or administrative 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 subsection 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 district or administrative court. The premium shall be allocated between the parents in the same proportion as base child support;

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

12. The district or administrative 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, or incurred as a result

of either parent actually attending school for the purpose of enhancing their employment or income, shall be allocated in the same proportion as base child support. Provided, if the district or administrative court determines that it will not cause detriment to the child, in lieu of payment of child care costs incurred while the custodial parent is attending school, the noncustodial parent may be allowed to provide alternate care of the child during such time. The noncustodial parent shall be designated the "obligor". The custodial parent shall be designated the "obligee". Obligor's proportionate amount of the child care fee for that month shall be paid to the obligee on or before the date the child care fee is due to the provider. The district or administrative court shall require the obligee to provide obligor 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 as an addition to or as a credit against the child support obligation of the obligor. 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 district or administrative 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 district or administrative court adopts a joint custody plan meeting the requirements of Section 109 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 district or administrative 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 "obligor" and one the "obligee", if the district or administrative 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 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 obligation in order to equalize the child support spent on all of the children, regardless of the custodial arrangements. The court shall not take into account any stepchildren of such parent in making the determination but only natural, legal, or legally adopted minor children in the custody of either parent may be taken into account in determining child support;

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

19. Child support orders may be modified if the support amount is not in accordance with the child support guidelines or upon other material change in circumstances. Unless the parties agree to the contrary, a completed child support computation form provided for in Section 120 of this title shall be required to be filed with the child support order. The child support guidelines provided in this act shall be used in computing child support, subject to the discretion of the district or administrative court 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. A child support order shall not

be construed to be a per child order unless specified by the district or administrative court in the order. Child support is not automatically modified in a child support order which provides for more than one child when one of those children reaches majority or is not otherwise entitled to support pursuant to the support order; however, such circumstance shall constitute a material change in circumstances;

20. The child support computation worksheet provided in Section 120 of this title shall be signed by the district court judge or administrative law judge;

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

22. The district or administrative court shall require and enforce a complete disclosure of assets by both parents; and

23. Child support orders issued for prior-born children of the payor may not be modified for the purpose of providing support for later-born children.

SECTION 6. AMENDATORY 56 O.S. 1991, Section 240.7, is amended to read as follows:

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

1. The person is 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~~ obligations and payments 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 may charge a reasonable fee based in 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 7. AMENDATORY 63 O.S. 1991, Section 1-311, as amended by Section 7, Chapter 356, O.S.L. 1994 (63 O.S. Supp. 1994, Section 1-311), is amended to read as follows:

Section 1-311. A. A certificate of birth for each live birth which occurs in this state shall be filed with the local registrar of the district in which the birth occurs, within seven (7) days after such birth. Provided, that when a birth occurs on a moving conveyance, a birth certificate shall be filed in the district in which the child was first removed from the conveyance.

B. When a birth occurs in an institution, the person in charge of the institution or his designated representative shall obtain the personal data, prepare the certificate, secure the signatures required by the certificate and file it with the local registrar. The physician in attendance shall certify to the facts of birth and provide the medical information required by the certificate within five (5) days after the birth.

C. When a birth occurs outside an institution, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

1. The physician in attendance at or immediately after the birth;
2. Any other person in attendance at or immediately after the birth; or
3. The father, the mother, or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred and present at the birth.

D. 1. If the mother was married at the time of conception ~~and~~ or birth, the name of the husband shall be entered on the certificate as the father of the child unless paternity has been determined otherwise by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered.

2. Except as otherwise provided by paragraph 3 of this subsection, if the mother was not married at the time of conception ~~and~~ or birth, the name of the father shall be entered on the certificate of birth only if:

- a. a determination of paternity has been made by an administrative action through the Department of Human Services or a court of competent jurisdiction, in which case the name of the father shall be entered, or
- b. the mother and father have signed an affidavit acknowledging paternity pursuant to Section ~~9~~ 1-311.3 of this ~~act~~ title and filed it with the State Registrar of Vital Statistics.

3. Effective November 1, 1994:

- a. If the mother was not married at the time of conception or birth and paternity has not been established or acknowledged as specified in paragraph

2 of this subsection, the name of the putative father shall be entered on a putative father affidavit attached to and maintained with the certificate of birth. The affidavit shall be prescribed by the State Department of Health in conjunction with the Department of Human Services and made available in such manner as birth certificate forms. The affidavit shall be prepared and filed by such persons and in such manner as birth certificates required by this section. The affidavit shall be signed by the mother and shall contain information identifying whether the mother wants the Department of Human Services to pursue child support for the child. The State Registrar of Vital Statistics shall maintain such affidavit in the birth certificate registry for each birth. Except as otherwise provided by subparagraph b of this paragraph, the State Registrar of Vital Statistics shall keep such affidavit confidential until paternity has been established or acknowledged in which case the name of the father shall be entered on the birth certificate.

- b. The State Registrar of Vital Statistics shall make available upon request the name of the putative father to the Department of Human Services and to a court of competent jurisdiction for paternity actions, child support determinations or termination proceedings.
- c. The State Registrar shall provide for the destruction of the putative father affidavit after paternity has been legally established and the name of the father has been entered on the birth certificate. The Department and the State Registrar may enter into interagency agreement for implementation of this

paragraph. If paternity has not been established within twelve (12) months from the date of birth, the State Registrar shall forward a certified copy of the Certificate of Birth and the original "putative father affidavit" to the Department of Human Services for filing.

- d. The Department of Human Services shall give notice to such putative father as required by Section 6 of this act and provide for determination of paternity and child support.

E. Either of the parents of the child shall sign the certificate of live birth to attest to the accuracy of the personal data entered thereon, in time to permit its filing within the seven (7) days prescribed in this section.

SECTION 8. AMENDATORY Section 9, Chapter 356, O.S.L. 1994 (63 O.S. Supp. 1994, Section 1-311.3), is amended to read as follows:

Section 1-311.3 A. Upon the birth of a child to an unmarried woman, the person required by Section 1-311 of Title 63 of the Oklahoma Statutes to prepare and file a birth certificate shall:

1. Provide an opportunity for the child's mother and natural father to complete an affidavit acknowledging paternity on a form prescribed by the Department of Human Services. The completed affidavit shall be filed with the local registrar. The affidavit shall contain or have attached:

- a. a sworn statement by the mother consenting to the assertion of paternity and stating that this is the father,
- b. a statement by the father that he is the natural father of the child,
- c. written information, furnished by the Department of Human Services, explaining the implications of

signing, including parental rights and responsibilities, and

d. the social security numbers of both parents;

2. Provide written information, furnished by the Department of Human Services, to the mother regarding the benefits of having her child's paternity established and of the availability of paternity establishment services, including a request for support enforcement services; ~~and~~

3. ~~Mail~~ Provide a copy of the completed affidavit acknowledging paternity to the ~~Department of Human Services and to the~~ mother and ~~putative~~ acknowledged father of the child; and

4. Mail copies of the completed affidavits acknowledging paternity to the Department of Human Services, Child Support Enforcement Division, on a weekly basis.

~~B. The person required by Section 1-311 of Title 63 of the Oklahoma Statutes to prepare and file a birth certificate is entitled to reimbursement for reasonable costs, which the State Board of Health shall establish by rule, when an affidavit acknowledging paternity is filed with the State Registrar of Vital Statistics.~~

~~C.~~ The Department of Human Services shall make such affidavits acknowledging paternity available at each county office of the Department and at the Office of the State Registrar of Vital Statistics and at the office of each local registrar.

SECTION 9. AMENDATORY 63 O.S. 1991, Section 1-321, is amended to read as follows:

Section 1-321. ~~(a)~~ A. A certificate or record registered under this article may be amended only in accordance with this article and regulations thereunder adopted by the State Board of Health to protect the integrity and accuracy of vital statistics records.

~~(b)~~ B. A certificate that is amended under this section shall be marked "amended", except as provided in subsection ~~(d)~~ D of this

section. The date of amendment and a summary description of the evidence submitted in support of the amendment shall be endorsed on or made a part of the record. The Board shall prescribe by regulation the conditions under which additions or minor corrections shall be made to birth certificates within one (1) year after the date of birth without the certificate being considered as amended.

~~(e)~~ C. Upon receipt of a certified copy of a court order changing the name of a person born in this state and upon request of such person or his parent, guardian, or legal representative, the State Commissioner of Health shall amend the certificate of birth to reflect the new name.

~~(d)~~ D. When a child is born out of wedlock, the Commissioner shall amend a certificate of birth to show paternity, if paternity is not currently shown on the birth certificate, in the following situations:

~~(1)~~ 1. Upon request and receipt of a ~~sworn acknowledgment of~~ completed affidavit acknowledging paternity ~~of~~ for a child born out of wedlock signed by both parents; or

~~(2)~~ 2. Upon receipt of a certified copy of a court order establishing paternity.

The Commissioner shall also change the surname of the child on the certificate to the surname of the father upon receipt of a notarized written request signed by both parents, receipt of an affidavit acknowledging paternity requesting such name change or upon receipt of a certified copy of a court order directing such name be changed. Such certificate amended pursuant to this subsection shall not be marked "amended".

SECTION 10. AMENDATORY 21 O.S. 1991, Section 852, as last amended by Section 1, Chapter 132, O.S.L. 1994 (21 O.S. Supp. 1994, Section 852), is amended to read as follows:

Section 852. A. Unless otherwise provided for by law, any parent, guardian, or person having custody or control of a child as

defined in Section 1101 of Title 10 of the Oklahoma Statutes who willfully omits, without lawful excuse, to furnish necessary food, clothing, shelter, monetary child support, or medical attendance for such child which is imposed by law, upon conviction, is guilty of a misdemeanor; provided, any person obligated to make child support payments who willfully and without lawful excuse becomes delinquent in said child support payments of at least fifty percent (50%) of court-ordered support after September 1, 1993, and such delinquent child support accrues without payment by the obligor for a period of one (1) year, or exceeds Five Thousand Dollars (\$5,000.00) shall, upon conviction thereof, be guilty of a felony which is punishable in the same manner as any subsequent conviction pursuant to the provisions of this section. Any subsequent conviction pursuant to this section shall be a felony, punishable by imprisonment for not more than four (4) years in the State Penitentiary or by the imposition of a fine of not more than Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. As used in this section, the duty to furnish medical attention shall mean that the parent or person having custody or control of a child must furnish medical treatment in such manner and on such occasions as an ordinarily prudent person, solicitous for the welfare of a child, would provide; such parent or person having custody or control of a child is not criminally liable for failure to furnish medical attendance for every minor or trivial complaint with which the child may be afflicted.

B. Any person who leaves the state to avoid providing necessary food, clothing, shelter, court-ordered monetary child support, or medical attendance for such child, upon conviction, is guilty of a felony, punishable by imprisonment for not more than four (4) years in the State Penitentiary or by the imposition of a fine of not more than Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

C. Nothing in this section shall be construed to mean a child is endangered for the sole reason the parent, guardian or person having custody or control of a child, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child; provided, that medical care shall be provided where permanent physical damage could result to such child; and that the laws, rules, and regulations relating to communicable diseases and sanitary matters are not violated.

D. Nothing contained in this section shall prevent a court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect the child's health or welfare.

E. Psychiatric and psychological testing and counseling are exempt from the provisions of this section.

F. Except for a third or subsequent conviction, all felony convictions herein shall be administered under the provisions of the Community Sentencing Act.

G. It is the duty of any parent having legal custody of a child who is an alcohol-dependent person or a drug-dependent person, as such terms are defined by Section 3-403 of Title 43A of the Oklahoma Statutes, to provide for the treatment, as such term is defined by Section 3-403 of Title 43A of the Oklahoma Statutes, of such child. Any parent having legal custody of a child who is an alcohol-dependent person or a drug-dependent person who without having made a reasonable effort fails or willfully omits to provide for the treatment of such child shall be guilty of a misdemeanor. For the purpose of this subsection, the duty to provide for such treatment shall mean that the parent having legal custody of a child must provide for the treatment in such manner and on such occasions

as an ordinarily prudent person, solicitous for the welfare of a child, would provide.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 852.2 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. A person commits the crime of aiding the nonpayment of child support if the person:

1. Knows that an obligor has a duty under an administrative or judicial order for payment of child support; and

2. Intentionally:

a. withholds information about the residence or employment of the obligor when that information is requested by a child support enforcement agency unless done pursuant to attorney-client privilege, or

b. participates in a commercial, business, or employment arrangement with the obligor, knowing at the time that the arrangement is made that it will allow the obligor to avoid paying all or some of the support when it is due or to avoid having a lien placed on assets for the payment of delinquent support; receipt of a substantial asset for less than fair market value from an obligor after the obligor's support order has been established constitutes a rebuttable presumption that the person receiving the asset knew that the transfer would allow the obligor to avoid paying all or some of the support or to avoid having a lien placed on the asset.

B. In a prosecution under this section, it is a defense that:

1. The defendant did not intend to assist the obligor in the nonpayment of child support; or

2. The obligor did not intend to avoid paying child support.

C. This section does not prohibit an arrangement entered into with an attorney for the purpose of paying the attorney who represents the child support obligor in proceedings to contest or modify a child support order.

SECTION 12. AMENDATORY 12 O.S. 1991, Section 1171.3, as amended by Section 23, Chapter 356, O.S.L. 1994 (12 O.S. Supp. 1994, Section 1171.3), is amended to read as follows:

Section 1171.3 A. Any person or entity entitled to receive child support payments for the current or for any prior month or months, or such person's legal representative may initiate income assignment proceedings by filing with the court an application signed under oath 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 at least one (1) month;

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

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

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

5. The amount of the support order and the amount of arrearage.

B. 1. Upon application by the person or entity entitled to receive child support payments or such person's legal representative, the court shall mail, by certified mail, return receipt requested, to the last-known address of the obligor, or shall serve in accordance with law, a notice of delinquency. The notice of delinquency shall be postmarked or issued no later than ten (10) days after the date on which the application was filed and shall specify:

- 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 or service on the obligor of the delinquency notice, said date of mailing to be specified in the notice, the obligor requests a hearing with the district court pursuant to this section;
- c. that on or prior to the date of the hearing, in any case in which services are not being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes, the obligor may prevent the income assignment from taking effect by paying the full amount of the arrearage plus costs and attorney's fees provided, that the obligor shall only be entitled to prevent such income assignment from taking effect under this subparagraph a maximum of two times, thereafter, payment of any arrearages will not prevent an income assignment from taking effect;
- d. that at the hearing, if requested, the obligor may contest the claimed delinquency only with regards to mistake of identity, or to the existence or the amount of the delinquency; and
- e. that the assignment shall remain in effect for as long as current child support is due or child support arrearages remain unpaid and that payment of any arrearages, except as provided in subparagraph c of this subsection, will not prevent an income assignment from taking effect.

2. a. An obligor may request a hearing with the court pursuant to this section on or before the fifteenth day from date of mailing or service of the delinquency notice. Upon request for hearing, the court shall set the matter for a hearing. A file-stamped copy of the request and a copy of the order for hearing shall be served in accordance with law upon the person or entity filing the affidavit for income assignment or his/its legal representative. The court shall promptly hear and determine the matter and, unless the obligor successfully shows that there is a mistake of identity or a mistake as to the existence or the amount of delinquency, the court shall order that the income assignment take effect against the disposable earnings of the obligor;
- b. The court may order an obligor to pay all court costs and attorneys' fees involved in an income assignment proceeding pursuant to 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; and
- d. In all cases of paternity and for arrearage of child support, the court shall make inquiry to determine if the noncustodial parent has been denied reasonable visitation. If reasonable visitation has been denied by the custodial parent to the noncustodial parent, the court or administrative judge shall include visitation provisions in the support order.

C. The court shall send a notice of the income assignment to the payor to effectuate the assignment pursuant to subsection E of this section.

D. If, within fifteen (15) days of the date of mailing or service on the obligor of the delinquency notice, the obligor fails to request a hearing pursuant to subsection B of this section, the court 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, C and D of this section shall be sent by the court to the payor listed on the application. The notice shall be sent by certified mail, return receipt requested or served according to 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 receives notice thereof and the amount withheld shall be sent to the person entitled to the child support within ten (10) days after the date upon which the obligor is paid. The payor shall include with each payment a statement reporting the date on which the obligor's support obligation was withheld;
- b. the amount specified in the support order and the amount of the arrearage to be withheld from the obligor's earnings. 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 this title;
- c. that the withholding is binding upon the payor until further order of the court or as long as the order for support on which it is based remains in effect;
- 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, but if the total levy exceeds the maximum permitted under Section 1171.2 of this title, all current child support due shall be paid before the payment of any arrearages. If total current child support exceeds the maximum permitted under Section 1171.2 of this title, the amount available shall be paid pro rata by the percentage of total current support owed to all obligees. After current support, the sums due under the first assignment issued under this section shall be paid before the payment of any sums due on any subsequent income assignment; provided, that the court which issued the initial income assignment, upon notice to all interested parties, is authorized to prorate the payment of the support between two or more income assignments levied concurrently;
- f. If the amount of support due under the assignments exceeds the maximum amount authorized by Section 1171.2 of this title, the payor shall pay the amount due up to the statutory limit, and payor shall send written notice to the court and person entitled to support that the amount due exceeds the amount subject to withholding; if payor fails to pay or notify as required herein, the payor may be liable for an amount up to the accumulated amount that is due and owing upon receipt of the notice;
- g. that, if the payor is the obligor's employer, the payor shall notify the person entitled to the support payment, and the court when the obligor terminates

employment. The payor shall provide by written notice to the person entitled to support and to the court, the obligor's last-known address and the name of the obligor's new employer, if known;

- h. 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 C of this section, the payor shall send written notice to the court and the person entitled to support within ten (10) days of receipt of said notice. Failure to notify the person entitled to support and the court 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
- i. 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 subject to the same support order 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; provided, however, income assignments issued pursuant to the provisions of this section and garnishments for child support issued pursuant to the provisions of Section 1173.1 of this title shall be of equal priority, except as may otherwise be provided for in this section.

4. The payor may deduct from any earnings of the obligor a sum not exceeding Five Dollars (\$5.00) per pay period but not to exceed

Ten Dollars (\$10.00) per month 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 child 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 may not discipline, suspend, or discharge an obligor because of an 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. Upon written notification of the name and address of a new employer or payor and payment of the required fees for mailing by the person or entity entitled to support, the court shall issue a new notice of income assignment pursuant to subsection E of this section.

G. Any existing support order or income assignment which is brought before the court shall be modified by such court to conform to the provisions of this section.

H. 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.

I. 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.

J. 1. Effective November 1, 1989, in all child support orders wherein child support is being paid to a recipient of Aid to Families with Dependent Children (AFDC), the wages of any parent required by court or administrative order to pay support shall be subject to immediate income assignments regardless of whether support payments by such parent are in arrears on the effective date of this act.

2. Effective November 1, 1990, in all child support orders in which child support services are being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes, the court or administrative hearing officer shall order the wage of any parent required by court or administrative order to pay support, be subject to immediate income assignment, regardless of whether support payments by such parent are in arrears, unless (1) one of the parties demonstrates and the court or administrative hearing officer finds that there is good cause not to require immediate income withholding or (2) a written agreement is reached between the parties which provides for an alternative arrangement.

3. Effective January 1, 1994, in all child support cases arising out of an action for divorce, paternity or other proceeding in which services are not being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes, the court shall order the wages of any parent ordered to pay child support be subject to immediate income assignment regardless of whether support payments are in arrears at the time of the order, unless (1) one of the parties demonstrates

and the court finds that there is good cause not to require immediate income withholding, or (2) a written agreement is reached between the parties which provides for an alternative arrangement.

K. Notwithstanding the provisions of subsection J of this section, an income assignment shall be established pursuant to subsections A through I of this section or pursuant to Section 240.2 of Title 56 of the Oklahoma Statutes when there exists a delinquency equal to at least one month's payment.

L. In all orders which are not subject to immediate income withholding pursuant to subsection J of this section and which were issued prior to November 1, 1990, the wages of any parent ordered to pay child support shall be subject to immediate income assignment without regard to whether there is an arrearage, on the earliest of:

1. The date the obligor requests that such withholding begin;

2. The date as of which the custodian requests that such withholding begin to enforce a child support order entered on or before the date of the custodian's request for income withholding if a court of competent jurisdiction finds that immediate income withholding would be in the best interest of the child. In making such determination, the court shall consider, at a minimum, the timeliness of payment of previously ordered support and the agreement of the parent required to pay support to keep the court and custodian advised of his or her current employer and information on any employment-related health insurance coverage to which that parent has access; or

3. Such date as may be ordered by a court of competent jurisdiction.

SECTION 13. REPEALER 10 O.S. 1991, Section 14, is hereby repealed.

SECTION 14. This act shall become effective July 1, 1995.

SECTION 15. 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 in full force from and after its passage and approval.

Passed the House of Representatives the 13th day of March, 1995.

Speaker of the House of  
Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 1995.

President of the Senate