

SHORT TITLE: Child support; modifying paternity proceedings and certain administrative proceedings; repealer; effective date.

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

SENATE BILL NO. 1240

By: Smith

AS INTRODUCED

An Act relating to child support; amending 10 O.S. 1991, Sections 70, as amended by Section 3, Chapter 356, O.S.L. 1994, 77.1, as amended by Section 33, Chapter 356, O.S.L. 1994, 89, as last amended by Section 1, Chapter 273, O.S.L. 1995, 89.3, 90.5 and 502, as amended by Section 28, Chapter 356, O.S.L. 1994 (10 O.S. Supp. 1995, Sections 70, 77.1, 89 and 502), which relate to paternity proceedings and the Uniform Act on Blood Tests to Determine Paternity; clarifying language; allowing court order for genetic testing to determine paternity of more than one defendant; providing for certain court orders regarding paternity under certain circumstances; requiring dismissal under certain circumstances; limiting certain court jurisdiction for determination of custody or visitation; prohibiting certain representation of parties in custody or visitation proceedings; prohibiting award of certain costs and fees and providing exception; allowing judicial discretion for determination of visitation rights of certain party; requiring payment of certain costs by certain party; amending 56 O.S. 1991, Sections 240, as renumbered by Section 14, Chapter 365, O.S.L. 1994, and as last amended by Section 3, Chapter 354, O.S.L. 1995, 238.1, as amended by Section 2, Chapter 365, O.S.L. 1994, 238.3a, as amended by Section 3, Chapter 365, O.S.L. 1994, 238.4, as amended by Section 4, Chapter 365, O.S.L. 1994, 238.6A, as amended by Section 5, Chapter 365, O.S.L. 1994, Section 6, Chapter 356, O.S.L. 1994, 240.1, as amended by Section 6, Chapter 365, O.S.L. 1994, 240.2, as amended by Section 7, Chapter 365, O.S.L. 1994 and 240.3, as amended by Section 8, Chapter 365, O.S.L. 1994 (56 O.S. Supp. 1995, Sections 237.7, 238.1, 238.3a, 238.4, 238.6A, 238.6B, 240.1, 240.2 and 240.3), which relate to child support for neglected and dependent children; modifying definition; adding statutory references; changing required contents of certain notices; limiting circumstances under which certain administrative order may be entered; changing method of service of notice; providing additional venues for certain hearing; conforming language; clarifying circumstances under which income assignment may be made; stating required contents for certain record on appeal; providing for preparation of certain transcript; amending 68 O.S. 1991, Section 205.2, as last amended by Section 1, Chapter 29, O.S.L. 1994 (68

O.S. Supp. 1995, Section 205.2), which relates to claims against state income tax refunds; changing certain notice requirement; repealing Section 17, Chapter 346, O.S.L. 1995 (56 O.S. Supp. 1995, Section 233.1), which relates to prosecution of certain persons for indirect contempt; and providing an effective date.

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. 1995, 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~~ 1-311.3 of ~~this act~~ Title 63 of the Oklahoma Statutes. ~~Such~~ The statement acknowledging paternity shall have the same legal effect as an order of paternity entered in a court or administrative proceeding. ~~Such~~ The statement may be contested ~~for a period of not more than~~ at any time by the child or by another within two (2) years after signing the statement is signed. ~~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~~ District court or administrative court 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, 7. Proceedings may be brought by the mother, ~~the~~ 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 court, after determining paternity ~~in a civil action~~, shall ~~provide~~ enter an order providing 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 77.1, as amended by Section 33, Chapter 356, O.S.L. 1994 (10 O.S. Supp. 1995, Section 77.1), is amended to read as follows:

Section 77.1 A. When ~~the a~~ a paternity petition action is filed, the court shall order the defendant to appear and show cause why the court should not determine him to be the father. If the defendant fails to appear, the court shall upon the findings of the judge enter an order determining paternity. If the defendant appears and does not admit paternity, then the court shall enter at that time an order directing genetic testing to determine paternity.

B. 1. When more than one defendant is named or joined in a paternity action, and one or more defendants fail to appear after being duly served, the court shall order genetic testing of all defendants who are duly served. A court shall enter an order determining paternity for a specific defendant when genetic testing indicates a probability of paternity for that defendant at ninety-five percent (95%) or greater pursuant to Section 2 of this title.

2. If a defendant fails to appear for a show cause hearing or for genetic testing after being duly served and all other defendants have been excluded as possible fathers by genetic testing, the court shall enter an order establishing the defendant as the father.

3. If one or more defendants fail to appear for genetic testing after being duly served with an order to appear for testing, the court may proceed to determine paternity and related issues if sufficient, competent evidence is available to support an order.

4. After paternity is determined by the court, the court shall dismiss paternity actions against all other defendants.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 89, as last amended by Section 1, Chapter 273, O.S.L. 1995 (10 O.S. Supp. 1995, Section 89), is amended to read as follows:

Section 89. A. The mother, putative father, guardian or custodian of the child, the Department of Human Services, a public or private agency or authority chargeable with the support of the child, or the child may bring an action in a civil proceeding in district court or by an administrative action through the Department of Human Services, to determine paternity and the amount of child support due and owing for the maintenance of the child.

B. Venue of an action to determine the paternity of a child pursuant to this section shall be, at the option of the plaintiff, in either the county where the putative father, mother, or child resides. If the mother or child or both the mother and child reside out-of-state, venue of an action to determine the paternity of a child pursuant to this section, at the option of the plaintiff, may be in the county where the putative father resides.

C. A court may exercise personal jurisdiction over a person, whether or not a resident of this state, who is the subject of a paternity action. When a person who is subject to the jurisdiction of the court is outside the state, the person may be served outside of the state by any method that is authorized by the statutes of this state. In an action brought in this state to determine

paternity and which also seeks a support order, jurisdiction shall be determined pursuant to the Uniform Interstate Family Support Act.

D. The petition shall be verified as true by the affidavit of the plaintiff. A summons may be issued thereon and shall be served or publication made as in other civil cases.

E. The practice, pleading, and proceedings in such action shall conform to the rules prescribed by the code of civil procedure as far as the same may be applicable.

F. If the defendant fails to answer the petition of the plaintiff or appear for show cause hearing, then the court shall proceed to determine issues of paternity, support, custody and visitation in the same manner as provided for in actions for divorce.

G. Attorneys for the Department of Human Services may appear or initiate an action brought under this section on behalf of:

1. A recipient of Aid to Families with Dependent Children; or
2. A person not receiving Aid to Families with Dependent Children, including but not limited to the putative father, upon the request of such person and proper application pursuant to rules and regulations adopted by the Department. A reasonable fee and costs may be assessed for the services by the Department.

H. ~~In a proceeding brought under subsection C of this section by the Department of Human Services, the court may, and unless it is not in the best interests of the child, shall, limit the issues in that proceeding to issues of paternity and support, unless issues of custody and visitation are specifically and affirmatively pled by the father~~ A district court may make provision for custody and visitation; provided, however, in a proceeding brought by the Department of Human Services, the district court shall, unless it is not in the best interests of the child, limit the issues in the

proceeding to the issues of paternity and support, unless issues of custody and visitation are specifically and affirmatively pled by the father. The Department of Human Services, Office of Administrative Hearings: Child Support, shall not have jurisdiction to determine custody or visitation. Attorneys for the Department of Human Services, Child Support Enforcement Division may not represent a party in a proceeding to determine custody or visitation.

SECTION 4. AMENDATORY 10 O.S. 1991, Section 89.3, is amended to read as follows:

Section 89.3 In an action to determine paternity brought pursuant to Section 89 of ~~Title 10 of the Oklahoma Statutes~~ this title, the prevailing party shall be allowed reasonable costs and attorney fees to be set by the court; provided, however, costs and attorney fees may not be awarded against the state unless the court determines that the action was brought without reasonable basis or is frivolous.

SECTION 5. AMENDATORY 10 O.S. 1991, Section 90.5, is amended to read as follows:

Section 90.5 In all cases of ~~paternity and for arrearage of child support~~, the district court ~~shall~~ may make inquiry to determine if the noncustodial parent has been denied ~~reasonable court-ordered~~ visitation by the custodial parent. If ~~reasonable court-ordered~~ visitation has been denied by the custodial parent to the noncustodial parent, the court ~~shall~~ may include visitation provisions in the support order.

SECTION 6. AMENDATORY 10 O.S. 1991, Section 502, as amended by Section 28, Chapter 356, O.S.L. 1994 (10 O.S. Supp. 1995, 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~~ additional 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~~ the experts shall be determined by the court. A party requesting additional testing shall be responsible for the costs of the additional testing.

SECTION 7. AMENDATORY 56 O.S. 1991, Section 240, as renumbered by Section 14, Chapter 365, O.S.L. 1994, and as last amended by Section 3, Chapter 354, O.S.L. 1995 (56 O.S. Supp. 1995, Section 237.7), is amended to read as follows:

Section 237.7 For the purposes of Sections 238 through 240.14 of this title:

1. The "Child Support Enforcement Division of the Department of Human Services", hereinafter referred to as the "Division" or as the "Department", is the state agency designated to administer the child support enforcement program for the State of Oklahoma and its District Offices, which may be administered through contract or cooperative agreements. The District Offices provide enforcement services to individuals receiving Aid to Families with Dependent Children, hereinafter referred to as "AFDC", and to individuals not receiving AFDC who have made proper application for enforcement services to the Division;

2. "Office of Administrative Hearings: Child Support (Legal Division, Department of Human Services, State of Oklahoma)", hereinafter referred to as "OAH", conducts child support enforcement administrative hearings. All hearings are conducted by administrative law judges assigned to OAH;

3. "Support debt" means a debt owed to the State of Oklahoma or the custodial parent by the natural, legal, or adoptive parents who are responsible for support of a child or children receiving public assistance money from the Department or the reasonable expenses of providing for a child or children if no public assistance has been received. The amount of the debt shall be determined in accordance with the provisions of Section 118 of Title 43 of the Oklahoma Statutes;

4. "Arrearage" means the total amount of unpaid support obligations;

5. "Delinquency" means any payment under an order for support which becomes due and remains unpaid;

6. "Gross income", "income" or "earnings" means income from any source and includes but is not limited to income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, rent, interest income, trust income, annuities, compensation as an independent contractor, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, any form of periodic payment to an individual regardless of source, 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. Income 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 AFDC, Supplemental Security Income (SSI), Food Stamps, General Assistance and State Supplemental Payments for Aged, Blind and the Disabled.

For purposes of computing gross income of the parents, gross income shall include for each parent all actual monthly income

described in this paragraph, 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, gross monthly income for either parent may be imputed in an amount that a person with comparable education, training and experience could reasonably expect to earn. If a person is permanently physically or mentally incapacitated, the child support obligation shall be computed on the basis of actual monthly gross income;

7. "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;

8. "Obligor" means the person who is required to make payments under an order for support and/or the natural, legal, or adoptive parents who are responsible for the support of such child or children;

9. "Person entitled" means:

- a. a person to whom a support debt or support obligation is owed,
- b. the Department of Human Services or a public agency of another state that has the right to receive current or accrued support payments or that is providing support enforcement services, or
- c. a person designated in a support order or as otherwise specified by the court;

10. "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;

11. "Support order" means an order for the payment of support issued by a district or administrative court of this state or by any court or agency of another state;

12. "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, the support debt, and/or arrearages. In all other child support orders wherein child support is being paid to a recipient of 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. 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 this title, the court or administrative law judge shall order the wages of any person required by the court or administrative order to pay support be subject to immediate income assignment, unless:

- a. one of the parties demonstrates and the district or administrative court finds good cause not to require immediate income withholding, or
- b. a written agreement is reached between the parties which provides for an alternative arrangement.

The assignment shall be in an amount which is sufficient to meet the monthly child support payments, payments on support debt and arrearages or other maintenance payments imposed by the district or administrative court order. The income assignment shall be made a part of a support order or any order granting a judgment for a support debt or arrearages, or a review or modification of a support

order pursuant to Section 118.1 of Title 43 of the Oklahoma Statutes;

13. "Voluntary acknowledgment" means a written acknowledgment executed by the obligor wherein the obligor acknowledges paternity, support liability, a support debt or arrearage amount, and agrees to a judgment and an immediate income assignment to pay monthly support and payments on the support debt or arrearage judgments;

14. "Notice" means a written announcement served upon an obligor, a custodial person or any person or entity which might be affected by the noticed proceeding;

15. "Licensing board" means any bureau, department, division, board, agency or commission of this state or of a municipality in this state that issues a license;

16. "License" means a license, certificate, registration, permit, approval or other similar document issued by a licensing board granting to an individual a right or privilege to engage in a profession, occupation, or business or industry, or a driver license or other permit issued pursuant to Title 47 of the Oklahoma Statutes;

17. "Commission" means the Commission for Human Services; and

18. "Payment plan" includes but is not limited to a plan approved by the support enforcement entity that provides sufficient security to ensure compliance with a support order and/or that incorporates voluntary or involuntary income assignment or a similar plan for periodic payment of past-due support and, if applicable, current and future support.

SECTION 8. AMENDATORY 56 O.S. 1991, Section 238.1, as amended by Section 2, Chapter 365, O.S.L. 1994 (56 O.S. Supp. 1995, Section 238.1), is amended to read as follows:

Section 238.1 A. For the purposes of establishing the amount of the debt which has accrued as provided for in Section 238 of this title, or to establish an obligation for support in the absence of a court order of support, the Division 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 Division to~~ establish current support and support owed for past months in accordance with the child support guidelines, Section 118 of Title 43 of the Oklahoma Statutes. The notice of debt shall be served upon the obligor 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 the child or when public assistance has not been paid, the reasonable expenses of providing for the child~~ as defined in Section 237.7 of this title;

2. ~~A statement of the amount of monthly public assistance payment or if no payment is made, the~~ The amount of monthly child support required ~~by the custodian of~~ for the minor child as determined by the child support guidelines, Section 118 of Title 43 of the Oklahoma Statutes;

3. A statement that the obligor shall be required to maintain health insurance for the child whenever the obligor has such insurance available through ~~his~~ employment or other group insurance plan and pay the proportionate share of medical expenses not reimbursed by insurance, as determined by the court;

4. A statement that the obligor shall be required to keep the Division informed of the obligor's current address, the name and address of the obligor's current employer ~~of the obligor,~~ and the obligor's access to health insurance and other insurance policy information ~~of the obligor;~~

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

6. A statement that the obligor 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 ~~which will be held at a given location on a date specified in the notice~~ to show cause why the obligor 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

7. A statement that, if the obligor fails to appear at a scheduled hearing, or if no hearing is requested scheduled, the obligor fails to request a hearing on or before twenty (20) days from the date of ~~the service or if the obligor requests a hearing but fails to appear at the hearing,~~ the monthly support requested and the support debt shall be made an administrative order subject to collection action and shall be filed in the office of the court clerk in the county of residence of the custodian of the child or, if the custodian resides out of state, in the county of residence of the obligor or elsewhere as provided in this act. The administrative order shall be enforced in the same manner as an order of the district court.

B. The Division may elect to include a hearing date and location in the notice of support debt. If the Division does not include a hearing date and location, the obligor may request a hearing as provided in paragraph 7 of subsection A of this section.

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

SECTION 9. AMENDATORY 56 O.S. 1991, Section 238.3a, as amended by Section 3, Chapter 365, O.S.L. 1994 (56 O.S. Supp. 1995, Section 238.3a), is amended to read as follows:

Section 238.3a If the obligor fails to request a hearing on or before twenty (20) days after proper service of the notice of support debt, or fails to appear at the hearing on the date and at the hearing place given in the notice ~~or appears but absents the hearing prior to its conclusion~~, an administrative order will be entered. ~~Such~~ The order shall include findings of facts and conclusions of law and shall be consistent with the notice served upon the obligor. The order shall be subject to collection action, and shall be filed in the office of the court clerk in the county of residence of the custodian of the child or, if the custodian resides out of state, in the county of residence of the obligor or elsewhere as provided in this act. The administrative order shall be enforced by the district court in the same manner as an order of the district court. A copy of ~~such~~ the order shall be mailed to the obligor by the District Office at the last-known address of the obligor by ~~certified or registered mail, with return receipt requested~~ certificate of mailing.

SECTION 10. AMENDATORY 56 O.S. 1991, Section 238.4, as amended by Section 4, Chapter 365, O.S.L. 1994 (56 O.S. Supp. 1995, Section 238.4), is amended to read as follows:

Section 238.4 A. ~~If requested,~~ A hearing shall be held at the time and place given on the notice of support debt served upon the obligor or the attorney ~~of~~ for the obligor with a duly qualified

administrative law judge appointed for that purpose by the Department. ~~The~~ At the election of the District Office, the hearing ~~shall~~ may be held in the county of residence of the custodial parent or guardian of the child, or if in the appointed child support office for that county. If the custodian resides out of state, the hearing ~~shall~~ may be held in the county of residence of the obligor, or the appointed child support office for that county. Additionally, the hearing may be held in the county of the underlying child support order, or the appointed child support office for that county. The hearing shall be conducted according to rules promulgated by the Department. 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 administrative law judge shall enter an order which shall be in writing and contain findings of fact and conclusions of law as to each contested issue. Each order shall include provisions requiring the obligor to inform the Division of the obligor's current address, the name and address of the obligor's current employer, and the obligor's access to health insurance and other insurance policy information. The order shall be submitted to the District Office and to the obligor or the attorney of the obligor by hand delivery by the administrative law judge or by ~~certified mail, return receipt requested~~ certificate of mailing, within twenty (20) days after the conclusion of the hearing.

B. If, during the hearing, the administrative law judge finds that the issues presented will require further consideration or evidence either administratively or through the district court before adjudication, the administrative law judge may enter a

temporary order for child support, pending resolution of those issues during a subsequent administrative or court hearing. ~~Such~~ The temporary order shall be enforced until superseded by a final administrative order or district court order and may be filed in the office of the court clerk.

C. 1. Within ten (10) days ~~of receipt~~ of the final order of the administrative law judge, the obligor or the Division shall give written notice to OAH and other parties of the intent to appeal the decision. The appeal must be filed in the district court in the county where the District Office is located or in the county in which a district court order of support is filed within fifteen (15) days after the mailing date of ~~said~~ the notice of intent to appeal and reviewed pursuant to the provisions of Sections 318 through 323 of Title 75 of the Oklahoma Statutes.

2. The certified transcript, exhibits, pleadings, recordings of the hearing, and any written orders shall constitute the record on appeal to the district court. OAH shall prepare or direct the preparation of the official transcript by a licensed court reporter, if a transcript is requested. The party seeking a copy of the transcript of the hearing shall prepay all costs of transcription ~~and~~ pay a reasonable deposit, or provide adequate indemnity prior to preparation of the transcript. If a party is financially unable to pay the transcription costs, the party shall provide OAH and the District Office with an informa pauperis affidavit which verifies the inability to pay. If OAH determines the party is financially unable to pay transcription costs, a transcript will be provided by OAH. The transcript shall not be provided prior to full payment ~~of,~~ payment of a deposit, provision of adequate indemnity for all transcription costs, or an order finding OAH will bear the cost of transcription.

D. If an appeal is not ~~made~~ perfected by the obligor or District Office, the order of the administrative law judge shall be final, subject to collection action, and shall be filed in the office of the court clerk in the county of residence of the custodian of the child or, if the custodian resides out of state, in the county of residence of the obligor, or elsewhere as provided in this act. The administrative order shall be enforced by the district court in the same manner as an order of the district court.

E. If the obligor requests a hearing pursuant to this section but fails to appear for the hearing after proper service, an administrative order will be entered. ~~Such~~ The order shall include findings of facts and conclusions of law and shall be subject to collection action, and shall be filed in the office of the court clerk in the county of residence of the custodian of the child or, if the custodian resides out of state, in the county of the residence of the obligor, or elsewhere as provided in this act. The administrative order shall be enforced by the district court 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 to the Division for as long as the Division is providing support enforcement services. Thereafter, if AFDC is not being paid, the custodian or guardian notifies the Division in writing that IV-D services are no longer requested and/or the obligor has not applied for services, current support payments shall be redirected to the ~~custodian or guardian of the child until further order of the district or administrative court, or until the obligor is notified by the Division that the child has been recertified for receipt of public assistance, or until the child reaches the age of majority~~ person or entity entitled to the support.

SECTION 11. AMENDATORY 56 O.S. 1991, Section 238.6A, as amended by Section 5, Chapter 365, O.S.L. 1994 (56 O.S. Supp. 1995, 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 OAH, those issues may be decided and relief granted by the district court, or be remanded by the district court to OAH for determination.

B. In any case in which different issues of fact involving minor children are pending before the district court and before the OAH, all issues may be decided and all relief granted by the district court, if the district court finds it is in the interests of justice and judicial economy.

C. The Department of Human Services, Office of Administrative Hearings: Child Support, shall not have jurisdiction to determine issues of custody and visitation.

SECTION 12. AMENDATORY Section 6, Chapter 356, O.S.L. 1994 (56 O.S. Supp. 1995, Section 238.6B), is amended to read as follows:

Section 238.6B A. The Department of Human Services may serve a notice of paternity and support obligations on an individual alleged to be the parent of a child for whom paternity has not been judicially or administratively established. Venue for ~~such~~ this action shall be, at the option of the plaintiff, in the county where the mother, father, or child resides. Service of the notice shall be in the same manner as a summons in a civil action pursuant to Section 2004 of Title 12 of the Oklahoma Statutes.

B. The notice shall be verified and have attached to it a copy of any affidavit acknowledging paternity or any blood or other genetic test results, if available, and shall state:

1. The name and date of birth of any minor children, along with the name of the natural mother and custodian, if different than the mother or putative father;

2. The amount of child support and other support, including the amounts ordered pursuant to paragraph 3 of this subsection, to be ordered in accordance with the Child Support Guidelines provided in Section 118 of Title 43 of the Oklahoma Statutes;

3. The amount of reimbursement for the costs of the birth and the reasonable expenses of providing for ~~said~~ the child which has accrued or is accruing, provided that the liability for the above costs shall be imposed for five (5) years preceding the issuance of the notice;

4. That health insurance for the child whenever ~~such~~ insurance is available through employment or other group health insurance plan and that payment of proportionate share of any unreimbursed health costs shall be required;

5. The amount of reimbursement requested for the costs of the genetic test to determine paternity, if any;

6. That an immediate income assignment will be effectuated for payment of current support and any judgments entered;

7. That in the absence of genetic test results or an affidavit acknowledging paternity ~~an order~~ a notice to appear and show cause why the administrative judge should not determine him to be the father will be issued;

8. That at the show cause hearing the Department will determine paternity, child support, and other related issues as set forth in the notice;

9. That a father not served with a notice to appear and show cause may object to the notice of paternity and support obligations. To object he must, within twenty (20) days of the date of service,

in writing, request a hearing to show cause why he should not be determined to be the father of any such children, liable for the support requested in the notice, for the costs accrued and accruing or the amount to be paid thereon;

~~9.~~ 10. That if the affidavit acknowledging paternity was signed within two (2) years prior to the date of the notice, or in the absence of ~~such~~ any affidavit, paternity may be disputed. If paternity is disputed, the Administrative Law Judge shall enter an order directing genetic tests to determine paternity and advise the putative father that if he fails to appear he will be in default and an order will be entered against him. If the putative father is not excluded, and the statistical probability of paternity according to scientifically reliable genetic tests including but not limited to blood tests is ninety-eight percent (98%) or less and he is contesting the issue of paternity, he may request the Department to remove the action to district court to determine paternity. If the statistical probability of paternity is greater than ninety-eight percent (98%), or the statistical probability is ninety-eight percent (98%) or less and the father does not request the Department to remove to district court within fifteen (15) days of the Department mailing the genetic test or other test results, determination of paternity shall become final for all intents and purposes and may be overturned only by appeal to district court. Any such request shall be in writing and served on the Department personally or by ~~registered or certified mail~~ certificate of mailing;

~~10.~~ 11. That if the putative father fails to appear at the show cause hearing ~~or if no notice to appear and show cause was served and no hearing is requested on or before twenty (20) days from the date of service,~~ the finding of paternity shall become final. The

order may be docketed with the district court in the county of residence of the custodian, child or father; ~~and~~

~~11. After paternity is determined, the Department will set a hearing to determine the child support amounts and send the parties notice of such hearing by certificate of mailing. Failure to appear at such hearing will result in a support order being entered against the father. The order may be docketed with the district court in the county of residence of the custodian, child or father. The support order shall be enforced in the same manner as an order of the district court.~~

C. The Department shall determine paternity, child support, and other related issues as set forth in the notice at the show cause hearing.

D. The Department may accept voluntary acknowledgments of support liability and support amounts.

~~D. If the father's name has not been entered on the child's birth certificate, the Department of Human Services shall notify the State Registrar of Vital Statistics who shall enter the father's name on the birth certificate.~~

E. If child support services are being provided pursuant to Section 237 of this title, prior to the issuance of the notice of paternity and support obligation, a father who denies paternity may request that a genetic test or other test be administered. The request for testing shall be in writing and served on the Department personally or by registered or certified mail.

F. If a request for testing is made pursuant to subsection B or E of this section, the Department shall arrange for the test and, pursuant to rules promulgated by the Department, may advance the cost of such testing. The Department shall mail a copy of the test results by a certificate of mailing to the father's last-known

address. If a request for genetic tests was made pursuant to subsection E of this section, the Department shall mail the notice of paternity and support obligations to the father by certificate of mailing to the father's last-known address.

G. If the test ordered pursuant to this section excludes the alleged father from being a natural parent, the Department shall ~~file a copy of the results with the State Registrar of Vital Statistics and shall~~ dismiss any pending court or administrative collection proceedings ~~based upon the affidavit acknowledging paternity~~ against the alleged father excluded by genetic testing. The State Registrar of Vital Statistics shall remove the alleged father's name from the birth certificate.

SECTION 13. AMENDATORY 56 O.S. 1991, Section 240.1, as amended by Section 6, Chapter 365, O.S.L. 1994 (56 O.S. Supp. 1995, Section 240.1), is amended to read as follows:

Section 240.1 A. In cases where child support services are being provided by the Division, the Division may initiate enforcement proceedings to obtain a judgment for arrearages; to effectuate an income assignment; to receive current support and judgment payments; to review and modify support orders pursuant to child support guidelines in Section 118 of Title 43 of the Oklahoma Statutes; and to initiate any other legal proceeding in the district or administrative court to implement the collection of support from an obligor. A reasonable fee and costs may be assessed for the services pursuant to the rules and regulations promulgated by the Department. ~~Such~~ The 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. In any hearing on a notice of delinquency or other enforcement proceeding, the district or administrative court may

include the amount of the fee paid by the person entitled to support payments in any judgment against the obligor.

B. The Division is authorized to initiate enforcement proceedings and receive payments pursuant to Section 240.2 of this 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, regardless of whether the obligor is delinquent in payment of support.

C. The Division is authorized to initiate enforcement proceedings and receive payments pursuant to Section 240.2 of this 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 this title or found to be responsible for the support of a minor child pursuant to Sections 238.1 through 238.6 of this title.

D. Upon application by an obligor who requests support enforcement services, the Division is authorized to initiate any proceedings necessary to provide support enforcement services to the obligor and to receive payments of the support obligation or any judgment. A reasonable fee and costs may be assessed for the services pursuant to the rules promulgated by the Department. ~~Such~~ The fee, not to exceed Twenty-five Dollars (\$25.00), shall be paid by the applicant.

SECTION 14. AMENDATORY 56 O.S. 1991, Section 240.2, as amended by Section 7, Chapter 365, O.S.L. 1994 (56 O.S. Supp. 1995, Section 240.2), is amended to read as follows:

Section 240.2 A. After receiving a referral or application for services, the Division may initiate enforcement proceedings, as defined in Section 240.1 of this title.

1. The Division shall advise the obligor of the intention to initiate enforcement proceedings by a notice of delinquency, ~~support debt~~ or other notice. The Division shall give notice by serving the obligor in the same manner prescribed for the service of summons in a civil action. The notice shall inform the obligor of the following:

- a. the amount of support monies owed, if any,
- b. an assignment will become effective against the obligor's earnings unless the obligor requests a hearing within fifteen (15) days of the date of service of the notice, or upon the obligor's failure to appear for a duly scheduled hearing,
- c. the obligor may contest the allegations in the notice only with regards to mistakes of identity or ~~the existence or~~ the amount of support monies owed,
- d. the assignment shall remain as long as the order upon which it is based is in effect. Payment of any support monies will not prevent an income assignment from taking effect, and
- e. the obligor shall be required to keep the Division informed of the obligor's current address, the name and address of the obligor's current employer of the obligor, and the obligor's access to health insurance and other insurance policy information ~~of the obligor.~~

2. a. ~~An obligor may request a hearing pursuant to this section by delivering written notice to the District Office on a form provided which states the date and location of the hearing if requested on or before the 15th day from the date of service of the notice. On~~

~~receipt of the hearing request, the Division shall promptly enter the appearance of the obligor on the administrative court hearing docket~~ At the election of the District Office, the hearing may be held in either the county of residence of the custodial parent of the child or the appointed child support office for that county. If the custodial parent or guardian of the child resides out of state, the hearing may be held in the county of residence of the obligor or in the designated child support office for the county where the obligor resides. Additionally, at the election of the District Office, the hearing may be held in the county in which the support order being enforced is filed, or in the designated child support office for that county. The hearing shall be conducted according to rules promulgated by the Department. The administrative court shall hear and determine the matter and, unless Unless the obligor successfully shows there is a mistake of identity or a mistake in the ~~existence or the~~ amount of support monies owed, the administrative court shall enter a judgment, determine the amount of judgment payments, if any, and order the assignment of nonexempt earnings of the obligor pay the judgment and future monthly support payments.

- b. The administrative court may order an obligor to pay all costs involved in enforcement proceedings under this subsection and shall order interest at the rate of ten percent (10%) per year from the date court-ordered child support payments became delinquent, to

be collected in the same manner as the payments upon which the interest accrued.

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 Division shall send a notice of the income assignment to the payor to effectuate the assignment pursuant to subsection D of this section ~~and shall file the original of such notice with OAH.~~

B. If within fifteen (15) days of date of service of the notice required in subsection A of this section, the obligor fails to request a hearing, pursuant to subsection A of this section, or after ~~having requested~~ a hearing is scheduled, fails to appear at the hearing, the administrative court shall enter an order granting judgment for arrearage, if any, establishing a judgment payment plan and approving the income assignment. The administrative order shall thereafter be subject to collection action and shall be filed in the office of the court clerk in the county of residence of the custodian of the child or, if the custodian resides out of state, in the county of residence of the obligor, or elsewhere as provided in this act. The administrative order shall be enforced ~~by the district court~~ in the same manner as an order of the district court. A copy of the order shall be hand delivered or mailed to the obligor by the District Office at the last-known address of the obligor by ~~certified or registered mail, with return receipt requested~~ certificate of mailing.

C. After the administrative court has ordered an income assignment, the Division shall send a notice of the income

assignment to the payor pursuant to subsection D of this section to effectuate the assignment.

D. 1. The notice of the income assignment required pursuant to subsections A and B of this section shall be sent by the Division to the payor. The notice shall be sent by ~~certified mail, return receipt requested, or served in accordance with law~~ certificate of mailing. 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 Division within ten (10) days of the date upon which the obligor is paid. The payor shall attach to each payment a statement reporting the date on which the support obligation of the obligor was withheld;
- b. the amount to be withheld from the obligor's earnings each pay period for support monies. 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. the income assignment is binding upon the payor until modified by order of the district or administrative court or released by the Division;
- d. 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. 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 or support debt judgment;
- f. if the amount of support due under the assignments exceeds the maximum amount authorized by Section 1171.2 of Title 12 of the Oklahoma Statutes, the payor shall pay the amount due up to the statutory limit and shall send written notice to the ~~court~~, Division ~~and person entitled to support~~ that the amount due exceeds the amount subject to withholding. If the 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. if the payor is the obligor's employer, the payor shall notify the Division within ten (10) days of the date when the obligor terminates employment or if the employment of the obligor is terminated and shall provide the Division with the obligor's last-known address and the name of the obligor's new employer, if known;
- h. if the payor has no current or future income due to the obligor in his possession or control, or if the obligor has terminated employment prior to the receipt of the notice required pursuant to subsection C of this section, the payor shall send written notice to the Division within ten (10) days of receipt of said notice. Failure to notify the Division 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;

- i. the payor may also be fined not more than Two Hundred Dollars (\$200.00) for each failure to make the required deductions; and
- j. the Division and/or the obligor may bring an action against the payor to enforce the provisions of the notice in the underlying district court case or by separate proceeding in district court.

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 but not to exceed Ten Dollars (\$10.00) per month as reimbursement for costs incurred by the payor in complying with the income assignment.

5. The income assignment shall remain effective regardless of any change of a payor.

6. The income assignment issued pursuant to this section shall remain in effect as long as any support monies are owed. Payment of any support monies shall not prevent the income assignment from taking effect.

7. If the employer of the obligor is the payor, the payor shall verify employment of the obligor upon the request of the Division.

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~~ the 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.

E. Any person obligated to pay support, who has left or is beyond the jurisdiction of the court, may be subjected to or prosecuted under any other proceedings available pursuant to the laws of this state for the enforcement of the duty of support and maintenance.

F. 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 the designated child support office for that county; or

2. In the county in Oklahoma in which the obligee resides or the designated child support office for that county; or

3. In the county in Oklahoma in which the obligor resides or receives income or the designated child support office for that county.

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

H. 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 shall send the excess amount to the obligor within ten (10) working days after ~~such~~ the excess is determined.

I. The obligated party may execute a voluntary income assignment and acknowledgment at any time and submit it to the District Office.

J. The Division is authorized to prorate the payment of the support between two or more income assignments levied concurrently.

K. The Division 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~~ the monies.

SECTION 15. AMENDATORY 56 O.S. 1991, Section 240.3, as amended by Section 8, Chapter 365, O.S.L. 1994 (56 O.S. Supp. 1995, Section 240.3), is amended to read as follows:

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

2. An appeal shall be commenced by filing a petition in error with the clerk of the district court, within fifteen (15) days from the date of the decision. The time limit prescribed in this paragraph for filing the petition in error shall 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 of the OAH unless the district court, for cause shown, shall order the administrative order be stayed pending such appeal pursuant to Section 319 of Title 75 of the Oklahoma Statutes.

4. The district court may affirm the decision or remand the case for further proceedings. Additionally, the district 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 the judgment is rendered, the order of the administrative court shall become final and binding on all parties. The order shall be filed in the office of the court clerk in the county of the residence of the custodian of the child or, if the custodian resides out of state, in the county of the residence of the obligor, or elsewhere as provided in this act. The administrative order shall be enforced by the district court in the same manner as an order of the district court.

C. The certified transcript, exhibits, pleadings, recordings of the hearing, and any written orders shall constitute the record on appeal to the district court. OAH shall prepare or direct the preparation of the official transcript by a licensed court reporter, if a transcript is requested. The party seeking a copy of the transcript of the hearing shall prepay all costs of transcription, pay a reasonable deposit, or provide adequate indemnity prior to preparation of the transcript. If a party is financially unable to pay the transcription costs, the party shall provide OAH and the District Office with an in forma pauperis affidavit which verifies the inability to pay. If OAH determines the party is financially unable to pay transcription costs, a transcript will be provided by OAH. The transcript shall not be provided prior to full payment, payment of a deposit, provision of adequate indemnity for all transcription costs, or an order finding OAH will bear the costs of transcription.

SECTION 16. AMENDATORY 68 O.S. 1991, Section 205.2, as last amended by Section 1, Chapter 29, O.S.L. 1994 (68 O.S. Supp. 1995, Section 205.2), is amended to read as follows:

Section 205.2 A. A state agency or a district court seeking to collect a debt of at least Fifty Dollars (\$50.00) from an individual who has filed a state income tax return may file a claim with the Oklahoma Tax Commission requesting that the amount owed to the agency or a district court be deducted from any state income tax refund due to that individual. The claim shall be in a form prescribed by the Oklahoma Tax Commission and shall contain information necessary to identify the person owing the debt, including the full name and Social Security number of the debtor.

1. Upon receiving a claim from a state agency or a district court, the Tax Commission shall notify the agency or the district court whether there are funds available to pay the claim. ~~Provided;~~ provided, the Tax Commission need not report available funds of less than Fifty Dollars (\$50.00).

2. The state agency or the district court shall send notice to the debtor by ~~certified regular mail, return receipt requested~~ at the last-known address of the debtor as shown by the records of the Tax Commission. The notice shall be signed for by the addressee or ~~his~~ the addressee's agent at ~~said~~ the address. The notice shall state:

- a. that a claim has been filed, and
- b. the basis for the claim, and
- c. that ~~such~~ the state agency or district court has applied to the Tax Commission for any portion of the tax refund due to the debtor which would satisfy the debt in full or in part, and

- d. that the debtor has the right to contest the claim by sending a written request to the state agency or the district court for a hearing to protest the claim and if the debtor fails to apply for a hearing within thirty (30) days after the receipt of the notice, ~~he~~ the debtor shall be deemed to have waived ~~his~~ opportunity to contest the claim, and
 - e. that a collection expense of five percent (5%) of the gross proceeds owed to the state agency or district court shall be charged to the debtor and withheld from the refund upon final determination of the debt at the hearing or upon failure of the debtor to request a hearing, and
 - f. if the taxpayer settles the outstanding debt with the agency or district court before the thirty (30) days expire, the agency or the district court shall notify the Tax Commission in writing or by electronic media that ~~said~~ the claim has been released.
3. In the case of a joint return, the notice shall state:
- a. the name of any taxpayer named in the return against whom no debt is claimed, and
 - b. the fact that a debt is not claimed against ~~said~~ the taxpayer, and
 - c. the fact that ~~said~~ the taxpayer is entitled to receive a refund if it is due regardless of the debt asserted against the debtor, and
 - d. that in order to obtain the refund due, ~~said~~ the taxpayer must apply, in writing, for a hearing with the district court or the agency named in the notice

within thirty (30) days after the date of the mailing of the notice, and

- e. if ~~said~~ the taxpayer against whom no debt is claimed fails to apply in writing for a hearing within thirty (30) days after the mailing of ~~said~~ the notice, ~~said~~ the taxpayer shall have waived ~~his~~ any right to a refund.

B. If the district court or agency asserting the claim receives a written request from the debtor or taxpayer against whom no debt is claimed requesting a hearing, the agency or the district court shall grant a hearing according to the provisions of the Administrative Procedures Act, Sections 250 et seq. of Title 75 of the Oklahoma Statutes. It shall be determined at the hearing whether the claimed sum is correct or whether an adjustment to the claim shall be made. Pending final determination at the hearing of the validity of the debt asserted by the district court or the agency, no action shall be taken in furtherance of the collection of the debt. Appeals from actions taken at the hearing shall be in accordance with the provisions of the Administrative Procedures Act.

C. Upon final determination at a hearing, as provided for in subsection B of this section, of the amount of the debt or upon failure of the debtor or taxpayer against whom no debt is claimed to request such a hearing, the district court or the agency shall submit in the manner prescribed by the Tax Commission notification of the action taken on the claim and a request that the amount owed including the collection expense be deducted from the tax refund due to the debtor and transferred to the district court or the agency. However, if the tax refund due is inadequate to pay the collection expense and debt, the balance due the state agency or the district court shall be a continuing debt until paid in full.

D. Upon receipt of notification provided in subsection C of this section, the Tax Commission shall:

1. Deduct from the refund five percent (5%) of the gross proceeds owed to the state agency or district court and distribute it by retaining two percent (2%) and transferring three percent (3%) to the district court or the state agency as an expense of collection. The two percent (2%) retained by the Tax Commission shall be deposited in the Oklahoma Tax Commission Fund; and

2. Transfer the amount of debt or so much thereof as is available to the state agency or the district court; and

3. Notify the debtor in writing as to how the refund was applied; and

4. Refund to the debtor any balance remaining after deducting the collection expense and debt.

E. The Tax Commission shall deduct from any state tax refund due to a taxpayer the amount of delinquent state tax, and penalty and interest thereon, which such taxpayer owes pursuant to any state tax law prior to payment of such refund.

F. The Tax Commission shall have first priority over all other agencies or district courts when the Tax Commission is collecting a debt pursuant to the provisions of this section. Priority in multiple claims by other agencies or district courts pursuant to the provisions of this section shall be in the order in time, in which the Tax Commission receives the claim from the agencies and district courts required by the provisions of subsection A of this section.

G. The Tax Commission shall prescribe or approve forms and promulgate rules and regulations for implementing the provisions of this section.

H. The information obtained by an agency or by the district court from the Tax Commission pursuant to the provisions of this

section shall be used only to aid in collection of the debt owed to the agency or a district court. Disclosure of the information for any other purpose shall constitute a misdemeanor. Any agency or court employee or person convicted of violating this provision shall be subject to a fine not exceeding One Thousand Dollars (\$1,000.00) or imprisonment in the county jail for a term not exceeding one (1) year, or both said fine and imprisonment and, if still employed by the agency or the courts, shall be dismissed from employment.

I. The Oklahoma Tax Commission may employ the procedures provided by this section in order to collect a debt owed to the Internal Revenue Service if the Internal Revenue Service requires such procedure as a condition to providing information to the Commission concerning federal income tax.

SECTION 17. REPEALER Section 17, Chapter 346, O.S.L. 1995 (56 O.S. Supp. 1995, Section 233.1), is hereby repealed.

SECTION 18. This act shall become effective November 1, 1996.

45-2-1593 KSM