

SHORT TITLE: Child support; modifying procedures for hearing;
codification; effective date.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 731

By: Smith

AS INTRODUCED

An Act relating to child support enforcement;

amending 10 O.S. 1991, Sections 70, as last amended by Section 3, Chapter 356, O.S.L. 1994, 89.1, 89.3 and 502, as amended by Section 28, Chapter 356, O.S.L. 1994 (10 O.S. Supp. 1996, Sections 70 and 502), which relate to paternity proceedings and genetic testing; modifying period of time during which certain statement can be contested; providing procedures for genetic testing and determination of paternity; allowing court to award and tax fees and costs; requiring certain party to be responsible for costs of additional testing; amending 12 O.S. 1991, Sections 1171.3, as amended by Section 23, Chapter 356, O.S.L. 1994 (12 O.S. Supp. 1996, Section 1171.3), which relates to garnishments; providing procedure for initiating income assignment proceedings; modifying contents of notice; modifying procedures for hearing; requiring filing of notice; requiring entering of order granting judgment; modifying amount to be deducted from earnings as reimbursement; deleting language relating to issuance of new notice of income assignment; stating availability of income assignment proceedings for collection of certain judgments and payments; amending 22 O.S. 1991, Section 60.2, as last amended by Section 30, Chapter 247, O.S.L. 1996 (22 O.S. Supp. 1996,

Section 60.2), which relates to protective orders; stating contents of warning and oath to be placed on petition for protective order; amending 43 O.S. 1991, Sections 110, as amended by Section 1, Chapter 252, O.S.L. 1992 and 112, as last amended by Section 10, Chapter 131, O.S.L. 1996 (43 O.S. Supp. 1996, Sections 110 and 112), which relate to child support and custody; modifying time period when temporary orders can be vacated or modified; modifying circumstances under which orders may be modified or changed; requiring consideration of certain facts in making a custody order; requiring certain written order and submission of such to certain persons; allowing administrative law judge to conduct hearings by electronic means; stating location of filing of administrative order; amending 56 O.S. 1991, Sections 238.1, 238.3a, 238.4 and 238.6A, as amended by Sections 2, 3, 4 and 5, Chapter 365, O.S.L. 1994, Section 6, Chapter 356, O.S.L. 1994, 240.1, 240.2 and 240.3, as amended by Sections 6, 7 and 8, Chapter 365, O.S.L. 1994 (56 O.S. Supp. 1996, Sections 238.1, 238.3a, 238.4, 238.6A, 238.6B, 240.1, 240.2 and 240.3), which relate to payment of child support collected by the Department of Human Services; modifying procedure for issuance of a support debt; modifying contents of notice; deleting language related to request for a hearing; modifying location where order is to be mailed; requiring hearing to be held; deleting requirement that certain persons be notified of rights in writing; deleting language relating to appeal and record on appeal; modifying

language relating to redirection of support payments; stating that certain jurisdiction is not divested upon filing an action in district court; allowing relief to be granted by district court if parties agree to transfer matter; allowing OAH to determine issues and enter final order; requiring certain issues be determined by district court; modifying contents of notice of paternity and support obligations; allowing the Department to determine certain issues at show cause hearing and set certain hearing; requiring removal of or addition of name on birth certificate; stating procedure for change of surname of child; requiring administrative support orders be modified and enforced in certain manner; requiring initiation of enforcement proceedings under certain circumstances; modifying contents of notice to obligor; modifying language relating to administrative order; modifying contents of notice of income assignment; modifying venue for income assignment proceedings; stating procedures for appeal of final order of the OAH; amending 68 O.S. 1991, Section 205.2, as last amended by Section 1, Chapter 146, O.S.L. 1996 (68 O.S. Supp. 1996, Section 205.2), which relates to claims against state income tax refunds; modifying language relating to notice to debtor; providing for codification; repealing 10 O.S. 1991, Sections 79 and 90.5, which relate to paternity proceedings; repealing Section 17, Chapter 346, O.S.L. 1995 (56 O.S. Supp. 1996, Section 233.1), which relates to

certain referrals for prosecution; 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 last amended by Section 3, Chapter 356, O.S.L. 1994 (10 O.S. Supp. 1996, 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 two (2) years~~ by the child or by another within sixty (60) days after ~~signing~~ the statement. ~~Except for the child after two (2) years, paternity may not be disputed by anyone~~ is signed;

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

3. ~~Court~~ District 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, l 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~~ may 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 89.1, is amended to read as follows:

Section 89.1 A. All persons who have had sexual intercourse with a woman during the possible time of conception of a child for whom paternity is not determined may be joined as defendants in an action to determine the paternity of ~~said~~ the child.

B. When more than one defendant is named or joined in a paternity action, the court shall order all defendants to appear. The court shall order genetic testing of all defendants who are duly served, including defendants who fail to answer or appear. The court may order the mother, the child, or other individuals necessary to make a determination of paternity to submit to genetic testing.

C. 1. When genetic testing indicates a probability of paternity greater than ninety-eight percent (98%) or a specific defendant pursuant to Section 504 of Title 10 of the Oklahoma Statutes, the court shall enter an order establishing that defendant as the father.

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

3. If one or more defendants fail to appear for genetic testing after being ordered to appear for testing, the court may proceed to

determine paternity and related issues based upon competent testimony and genetic test results, if any.

D. The court has the authority to enforce a subpoena or order to appear or to submit to genetic testing, or any other order entered pursuant to this section.

E. After paternity is determined by the court, the court shall dismiss the paternity action against the other defendants.

SECTION 3. 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~~ court may award and tax fees and costs, and apportion them between the parties as in actions for dissolution, legal separation, or annulment. In an action brought by a state agency, fees and costs shall be awarded in accordance with Section 941 of Title 12 of the Oklahoma Statutes.

SECTION 4. AMENDATORY 10 O.S. 1991, Section 502, as amended by Section 28, Chapter 356, O.S.L. 1994 (10 O.S. Supp. 1996, 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~~ Except as otherwise provided in this act, the experts shall ~~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 5. AMENDATORY 12 O.S. 1991, Section 1171.3, as amended by Section 23, Chapter 356, O.S.L. 1994 (12 O.S. Supp. 1996, 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~~ a notice of delinquency or other notice of enforcement. Notice shall be served upon 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:

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~~ The amount of support monies owed, if any;

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~~ That the obligor may object to all or any part of the notice at 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 relief requested in the notice;

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 3. That at the hearing, if requested, the obligor may contest the ~~elaimed delinquency~~ allegations in the notice only with regards to mistake of identity, or to the existence or the amount of ~~the delinquency~~ support monies owed; and~~

~~e. that 4. 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. B. 1.~~ 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~~ sent to the obligor by certificate of mailing. 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~~ support monies owed, the court shall enter a judgment, determine the amount of judgment payments, if any, and order that the income assignment take effect against the disposable earnings of the obligor~~;~~.

~~b. 2.~~ 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. 3.~~ 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~~ Once an income assignment has been ordered by the court, the applicant shall file the original notice of income assignment with the court and send a copy of the 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~~ enforcement notice, the obligor fails to request a hearing pursuant to subsection B of this section, the court or having requested a hearing fails to appear at the hearing, the court shall enter an order granting judgment for arrearage, if any, establishing a judgment payment plan, if any, and approving the income assignment. After the court has ordered an income assignment, the applicant shall file the original notice with the court and send a copy of the 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~~ applicant 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)~~ seven (7) 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†L

- 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†L
- 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†L
- 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†L
- 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 within ten (10) days of 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, as required by this paragraph as well as subparagraph g of this paragraph, 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 each 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 by the payor in the income assignment.

5. The assignment shall remain effective ~~upon notice to the new payor~~ regardless of a change of 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~~ Income assignment proceedings shall be available to collect

day care and health expense judgments as well as support alimony payments.

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 6. AMENDATORY 22 O.S. 1991, Section 60.2, as last amended by Section 30, Chapter 247, O.S.L. 1996 (22 O.S. Supp. 1996, Section 60.2), is amended to read as follows:

Section 60.2 A. A victim of domestic abuse, a victim of stalking, a victim of harassment, any adult or emancipated minor household member on behalf of any other family or household member who is a minor or incompetent, or any minor age sixteen (16) or seventeen (17) years may seek relief under the provisions of the Protection from Domestic Abuse Act.

1. Such person may seek relief by filing a petition for protective order with the district court in either the county in which the victim resides or the county in which the defendant resides.

2. When the abuse occurs when the court is not open for business, such person may request an emergency temporary order of protection as provided by Section 40.3 of this title.

B. The petition forms shall be provided by the clerk of the court and shall be in substantially the following form:

IN THE DISTRICT COURT IN AND FOR _____ COUNTY

STATE OF OKLAHOMA

_____)

Plaintiff)

)

vs.) Case No. _____

)

)

_____)

Defendant)

PETITION FOR PROTECTIVE ORDER

Plaintiff, being sworn, states:

1. (Check one or more)

[] The defendant caused or attempted to cause serious physical harm to _____.

[] The defendant threatened _____ with imminent serious physical harm.

[] The defendant has stalked or harassed _____.

2. The incident causing the filing of this petition occurred on or about _____.

(date)

(Describe what happened:)

3. The victim and the defendant are related as follows:

(check one)

[] married

[] divorced

[] parent and child

[] persons related by blood

[] persons related by marriage

[] present spouse of an ex-spouse

[] persons living in the same household

[] persons formerly living in the same household

biological parents of the same child

not related

4. (Answer this question only if the plaintiff is filing on behalf of someone)

The plaintiff and the victim are related as follows:

married

divorced

parent and child

persons related by blood

persons related by marriage

present spouse of an ex-spouse

persons living in the same household

persons formerly living in the same household

biological parents of the same child

5. (Check A or B)

(A) The victim is in immediate and present danger of abuse from the defendant and an emergency ex parte order is necessary to protect the victim from serious harm. The plaintiff requests the following relief in the emergency ex parte order: (check one or more)

order the defendant not to abuse or injure the victim.

order the defendant not to visit, assault, molest or otherwise interfere with the victim.

order the defendant not to threaten the victim.

order the defendant to cease stalking the victim.

order the defendant to cease harassment of the victim.

order the defendant to leave the residence located at _____ on or before _____.

order the defendant who is a minor child to leave the residence located at _____ by immediately placing the defendant in any type of care authorized for children taken into custody pursuant to subsection A of Section 7303-1.1 of Title 10 of the Oklahoma Statutes.

Circle age of defendant: Thirteen (13), fourteen (14), fifteen (15), sixteen (16), or seventeen (17) years.

_____ (describe other relief that plaintiff requests)

(B) The plaintiff does not request an emergency ex parte order.

6. Plaintiff requests the following order to be made by the court following notice to the defendant and a hearing: (check one or more)

order the defendant not to abuse or injure the victim.

order the defendant not to visit, assault, molest or otherwise interfere with the victim.

order the defendant not to threaten the victim.

order the defendant to cease stalking the victim.

order the defendant to cease harassment of the victim.

order the defendant to leave the residence located at _____ on or before _____.

order the defendant who is a minor child to leave the residence located at _____ by immediately placing the defendant in any type of care authorized for children taken into custody pursuant to subsection A of Section 7303-1.1 of Title 10 of the Oklahoma Statutes.

Circle age of defendant: Thirteen (13), fourteen (14), fifteen (15), sixteen (16), or seventeen (17) years.

_____ (describe other relief that plaintiff requests)

order the defendant to pay attorney fees of the plaintiff in the sum of _____ on or before _____.

order the defendant to pay the court costs of this action in the sum of _____ on or before _____.

7. [] Victim is a resident of the county wherein this petition is filed.

[] Defendant is a resident of the county wherein this petition is filed.

8. ~~Plaintiff has stated the truth, the whole truth and nothing but the truth in this petition~~ WARNING: Whoever makes a statement or allegation in this Petition for Protective Order but does not believe that the statement or allegation is true, or knows that it is not true, or intends thereby to avoid or obstruct the ascertainment of the truth, may be found guilty of perjury.
Pursuant to Sections 500 and 504 of Title 21 of the Oklahoma Statutes, the penalty for perjury, or subornation of perjury, is imprisonment for not more than five (5) years.

9. Plaintiff, being first duly sworn on oath states: That I have read the above and foregoing document, understand the meaning thereof, and declare, under penalty of perjury, that the facts and statements contained herein are believed to the best of my knowledge to be the truth, and nothing but the truth.

Plaintiff

Witness my hand and seal, affixed on the ___ day of _____, 19__.

Court Clerk, Deputy Court Clerk,
or Notary Public

C. No filing fee shall be charged the plaintiff at the time the petition is filed. The court may assess court costs and filing fees to either party at the hearing on the petition.

D. The plaintiff shall prepare the petition as set forth above or, at the request of the plaintiff, the clerk of the court or the victim-witness coordinator shall prepare or assist the plaintiff in preparing the same.

SECTION 7. AMENDATORY 43 O.S. 1991, Section 110, as amended by Section 1, Chapter 252, O.S.L. 1992 (43 O.S. Supp. 1996, Section 110), is amended to read as follows:

Section 110. A. After a petition has been filed in an action for divorce or separate maintenance either party may request the court to issue:

1. A temporary order:

- a. regarding child custody, support or visitation,
- b. regarding spousal maintenance,
- c. regarding payment of debt,
- d. regarding possession of property,
- e. regarding attorney fees,
- f. restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring such person to notify the other party reasonably in advance of any proposed extraordinary expenditures made after the order is issued,
- g. enjoining a party from molesting or disturbing the peace of the other party or of any child,
- h. excluding a party from the family home or from the home of the other party,
- i. enjoining a party from removing a child from the jurisdiction of the court, and
- j. providing other injunctive relief proper in the circumstances.

All applications for temporary orders shall set forth the factual basis for the application and shall be verified by the party seeking relief. The application and a notice of hearing shall be served on the other party in any manner provided for in the Rules of Civil Procedure.

The court shall not issue a temporary order until at least five (5) days' notice of hearing is given to the other party.

After notice and hearing, a court may issue a temporary order granting the relief as provided by this paragraph; and/or

2. A temporary restraining order. If the court finds on the basis of a verified application and testimony of witnesses that irreparable harm will result to the moving party, or a child of a party if no order is issued before the adverse party or attorney for the adverse party can be heard in opposition, the court may issue a temporary restraining order which shall become immediately effective and enforceable without requiring notice and opportunity to be heard to the other party. If a temporary restraining order is issued pursuant to this paragraph, the motion for a temporary order shall be set within ten (10) days.

B. ~~Temporary~~ Any temporary orders may be vacated or modified ~~before~~ prior to or in conjunction with a final decree on a showing by either party of facts necessary for vacation or modification. Temporary orders terminate when the final judgment on all issues, except attorney fees and costs, is rendered or when the action is dismissed. The court may reserve jurisdiction to rule on an application for a contempt citation for a violation of a temporary order which is filed any time prior to the time the temporary order terminates.

C. Upon granting a decree of divorce or separate maintenance, the court may require either party to pay such reasonable expenses of the other as may be just and proper under the circumstances.

D. The court may in its discretion make additional orders relative to the expenses of any such subsequent actions, including but not limited to writs of habeas corpus, brought by the parties or their attorneys, for the enforcement or modification of any interlocutory or final orders in the divorce action made for the benefit of either party or their respective attorneys.

SECTION 8. AMENDATORY 43 O.S. 1991, Section 112, as last amended by Section 10, Chapter 131, O.S.L. 1996 (43 O.S. Supp. 1996, Section 112), is amended to read as follows:

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

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

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

3. May modify or change any order whenever circumstances render such change proper ~~either before or~~ and equitable after final judgment in the action; provided, that the amount of the periodic child support payment shall not be modified retroactively or payment of all or a portion of the past due amount waived, except by mutual agreement of the obligor and obligee, or if the obligee has assigned child support rights to the Department of Human Services or other entity, by agreement of the Department or such entity, or if the court determines that the circumstances require a retroactive modification in order to be equitable. 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.

B. In any action if there are minor unmarried children concerned in awarding the custody of the child or in appointing a general guardian for the child, the court shall be guided by the provisions of Section 21.1 of Title 10 of the Oklahoma Statutes and shall consider what appears to be in the best interests of the child.

C. 1. When it is in the best interests of a minor unmarried child, the court shall:

- a. assure children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and
- b. encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

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

3. When in the best interests of the child, custody shall be awarded in such a way so as to assure the frequent and continuing contact of the child with both parents. To this effect, in making an order for custody to either parent, the court:

- a. ~~may~~ shall consider, among other facts, which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent, and
- b. shall not prefer a parent as a custodian of the child because of the gender of that parent.

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

5. In making an order for custody, the court may specify that:

- a. unless there is a prior written agreement to change the permanent residence of the child either parent shall notify the other parent if such parent plans to change the permanent residence of the child, and

b. the noncustodial parent is to notify the custodial parent if such noncustodial parent plans to change permanent residence.

D. Any child shall be entitled to support by the parents until the child reaches eighteen (18) years of age. If a dependent child is regularly and continuously attending high school, said child shall be entitled to support by the parents through the age of eighteen (18) years. No hearing shall be required to extend such support through the age of eighteen (18) if the child is regularly and continuously attending high school.

E. In any case in which provision is made for the custody or support of a minor child or enforcement of such order, the court shall inquire whether public assistance money has been provided by the Department of Human Services for the benefit of each child. If public assistance money has been provided for the benefit of the child, the Department of Human Services shall be a necessary party for the just adjudication and establishment of the debt due and owing the State of Oklahoma, as defined in Section 238 of Title 56 of the Oklahoma Statutes and for the just adjudication and establishment of current child support.

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

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 237.8 of Title 56, unless there is created a duplication in numbering, reads as follows:

After evidence has been presented at a hearing, the administrative law judge shall enter a written order which shall contain findings of fact and conclusions of law as to each contested issue. The order shall be submitted to the district office and to the obligor or the attorney of the obligor by certificate of mailing within twenty (20) days after the conclusion of the hearing.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 237.9 of Title 56, unless there is created a duplication in numbering, reads as follows:

Upon agreement or a showing of hardship by one of the parties, or upon the court's own motion, the administrative law judge may conduct administrative hearings telephonically or by other electronic means.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 237.10 of Title 56, unless there is created a duplication in numbering, reads as follows:

Administrative orders entered pursuant to this title, if docketed, shall be docketed in the county of the underlying district court order, if any. If there is no underlying district court order filed in this state, the administrative order shall be filed 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.

SECTION 12. AMENDATORY 56 O.S. 1991, Section 238.1, as amended by Section 2, Chapter 365, O.S.L. 1994 (56 O.S. Supp. 1996, 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 237.3 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 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~~ at 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 ~~no hearing is requested 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 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 13. AMENDATORY 56 O.S. 1991, Section 238.3a, as amended by Section 3, Chapter 365, O.S.L. 1994 (56 O.S. Supp. 1996, 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, 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 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 order shall be mailed to the obligor by the district office at the ~~last-known~~ address ~~of the~~ where the obligor was served

with the notice. The order shall be mailed to the obligor by certified or registered mail, with return receipt requested certificate of mailing to the service address.

SECTION 14. AMENDATORY 56 O.S. 1991, Section 238.4, as amended by Section 4, Chapter 365, O.S.L. 1994 (56 O.S. Supp. 1996, Section 238.4), is amended to read as follows:

Section 238.4 A. ~~If requested,~~ a 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 hearing shall be held in the county of residence of the custodial parent or guardian of the child or if the custodian resides out of state, the hearing shall be held in the county of residence of the obligor. The hearing shall be conducted according to rules promulgated by the Department. The rules shall provide to both parties the right to confront and cross-examine witnesses, to present witnesses, and 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~~ for 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 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 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 of 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.~~ D. 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.~~ E. 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. Thereafter, if ~~AFDC~~ TANF is not being paid, the custodian or guardian notifies the Division in writing that ~~IV-D~~ TANF 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 15. AMENDATORY 56 O.S. 1991, Section 238.6A, as amended by Section 5, Chapter 365, O.S.L. 1994 (56 O.S. Supp. 1996, Section 238.6A), is amended to read as follows:

Section 238.6A A. If an action is pending before the OAH, filing of an action involving the same issues in district court shall not divest the OAH of jurisdiction to hear the matter and shall not prevent the OAH from making a determination of the issues and entering a final administrative order which may be appealed to the district court pursuant to Section 240.3 of Title 56 of the Oklahoma Statutes. 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~~ if the parties agree to transfer the matter to the district court. Any appropriate matter may 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~~ the OAH may determine the issues pending before it and enter a final order which may be appealed to the district court pursuant to Section 240.3 of Title 56 of the Oklahoma Statutes. 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. Issues of custody and visitation, if contested, shall be determined by the district court.

SECTION 16. AMENDATORY Section 6, Chapter 356, O.S.L. 1994 (56 O.S. Supp. 1996, 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 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 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 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. 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 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; and

10. That if the putative father fails to appear at the show cause hearing, or any subsequent 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 and a support order entered. The order ~~may~~ shall be docketed with the district court in the county of residence of the custodian, ~~child or father; and~~ or the child. If neither the custodian nor the child reside in the state, the order shall be docketed in the county of residence of the obligor.

~~11. After~~ C. The Department may determine paternity, child support, and other related issues as set forth in the notice at the show cause hearing. Any time after paternity is determined, the Department ~~will~~ may set a hearing to determine the child support amounts and ~~send the parties notice of such hearing by certificate of mailing~~ obligation, if child support has not already been established. 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~~ noncustodial parent.

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

~~D.~~ E. 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.~~ F. 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.~~ G. If a request for testing is made pursuant to subsection B or ~~E~~ F 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~~ F 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. H. If ~~the test~~ genetic testing excludes ~~the father~~ a person 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 person.

The State Registrar of Vital Statistics shall remove the ~~father's~~ name of the person listed as the father from the birth certificate. Once paternity is established, the State Registrar of Vital Statistics shall correct its records and amend the birth certificate to reflect the father's name.

I. If both the custodian and the father agree to change the surname of the child to that of the father, the Department may order the name changed. Upon receipt of an order changing the child's surname, the State Registrar of Vital Statistics shall correct its records and amend the birth certificate to reflect the name change.

J. All docketed administrative support orders shall be modified and enforced in the same manner as an order of the district court.

SECTION 17. AMENDATORY 56 O.S. 1991, Section 240.1, as amended by Section 6, Chapter 365, O.S.L. 1994 (56 O.S. Supp. 1996, 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 18. AMENDATORY 56 O.S. 1991, Section 240.2, as amended by Section 7, Chapter 365, O.S.L. 1994 (56 O.S. Supp. 1996, 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 that the obligor may object to all or any part of the notice at 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 relief requested in the notice,
- c. the obligor may contest the allegations in the notice only with regards to mistakes of identity or ~~the existence of~~ 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. The~~ administrative court shall hear and determine the matter and, 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,~~ pursuant to Section 237 of Title 43 of the Oklahoma Statutes and order the assignment of ~~nonexempt earnings~~ income of the obligor to 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, the obligor fails to request a hearing, pursuant to subsection A of this section, or after having requested a hearing 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 pursuant to this section.~~ The administrative order shall thereafter be subject to collection action and ~~shall~~ may 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 underlying district court order, if any. If there is no underlying district court order filed in this state, the administrative order may be filed in the county of residence of the obligor. 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 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.~~

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. 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 or income to the obligor after the payor receives notice thereof and the amount withheld shall be sent to the Division within ~~ten (10)~~ seven (7) 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 income or 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.~~ e. 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.~~ f. 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.~~ g. 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;~~

h. that the payor is liable for any amount up to the accumulated amount that should have been withheld and paid, and may be fined up to Two Hundred Dollars (\$200.00) for each failure to make the required deductions if the payor:

(1) fails to withhold or pay the support in accordance with the provisions of the assignment,

or

(2) fails to notify the Division as required, and

~~j.~~ i. 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~~ obligor for all income, 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~~ obligations in both in-state and out-of-state orders. Venue for ~~such~~ the 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~~ shall be in the county of the underlying district court order, if any. If there is no underlying district court order filed in this state, venue shall be 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.

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 19. AMENDATORY 56 O.S. 1991, Section 240.3, as amended by Section 8, Chapter 365, O.S.L. 1994 (56 O.S. Supp. 1996, 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, in the county of the underlying district court order, if any, or if there is no underlying district court order filed in this state, the petition in error shall be filed 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 within ~~fifteen (15)~~ thirty (30) days from the date ~~of the decision~~ order is either provided in person or mailed by OAH to all parties. The time limit prescribed in this paragraph for filing the petition in error shall not be extended. The petition in error shall be served by certified mail on the district child support office. Further, a copy of the petition in error shall be mailed by regular mail to the Office of Administrative Hearings: Child Support.

3. 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.~~ 4. 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.~~ 5. 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) thirty (30) days ~~after the judgment is rendered~~ from the date the order is either provided in person or mailed by OAH to all parties, 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 may 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 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 20. AMENDATORY 68 O.S. 1991, Section 205.2, as last amended by Section 1, Chapter 146, O.S.L. 1996 (68 O.S. Supp. 1996, 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 or final judgment 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, 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 when seeking to collect a debt not reduced to final judgment. ~~The notice shall be signed for by the addressee or the addressee's agent at that address.~~ The state agency or the district court shall send notice to the judgment debtor by first class mail at the last-known address of the judgment debtor as shown by the

records of the Tax Commission when seeking to collect a final judgment. The notice shall state:

- a. that a claim has been filed,
 - b. the basis for the claim,
 - c. that such 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 or final judgment in full or in part,
 - 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, the debtor shall be deemed to have waived his or her opportunity to contest the claim,
 - 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 or final judgment at the hearing or upon failure of the debtor to request a hearing, and
 - f. if the taxpayer settles the outstanding debt or final judgment 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 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 or final judgment is claimed,
 - b. the fact that a debt or final judgment is not claimed against the taxpayer,

- c. the fact that the taxpayer is entitled to receive a refund if it is due regardless of the debt or final judgment asserted against the debtor,
- d. that in order to obtain the refund due, 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 the taxpayer against whom no debt or final judgment is claimed fails to apply in writing for a hearing within thirty (30) days after the mailing of the notice, the taxpayer shall have waived his or her 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 or final judgment is claimed requesting a hearing, the agency or the district court shall grant a hearing according to the provisions of the Administrative Procedures Act, Section 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 or final judgment asserted by the district court or the agency, no action shall be taken in furtherance of the collection of the debt or final judgment. 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 final judgment or upon failure of the debtor or taxpayer against whom no debt or final judgment 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 or final judgment, the balance due the state agency or the district court shall be a continuing debt or final judgment 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;

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

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 or final judgment.

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 or final judgment 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 or final judgment 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 21. REPEALER 10 O.S. 1991, Sections 79 and 90.5, are hereby repealed.

SECTION 22. REPEALER Section 17, Chapter 346, O.S.L. 1995 (56 O.S. Supp. 1996, Section 233.1), is hereby repealed.

SECTION 23. This act shall become effective November 1, 1997.

46-1-0632 KSM