

SHORT TITLE: Child support; modifying child support guidelines;
effective date.

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

SENATE BILL NO. 999

By: Williamson

AS INTRODUCED

An Act relating to child support; amending 43 O.S. 1991, Section 118, as last amended by Section 11, Chapter 403, O.S.L. 1997 (43 O.S. Supp. 1997, Section 118), which relates to child support guidelines; authorizing court to exclude certain income from computation of gross income; deleting unnecessary language; determining effective date of modification order; and providing an effective date.

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

SECTION 1. AMENDATORY 43 O.S. 1991, Section 118, as last amended by Section 11, Chapter 403, O.S.L. 1997 (43 O.S. Supp. 1997, Section 118), is amended to read as follows:

Section 118. A. Except in those cases where parties represented by counsel have agreed to a different disposition, there shall be a rebuttable presumption in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the following guidelines is the correct amount of child support to be awarded. The district or administrative court may deviate from the level of child support suggested by these guidelines where the amount of support so indicated is unjust, inequitable, unreasonable or inappropriate under the circumstances, or not in the best interests

of the child or children involved. The court shall not take into account any stepchildren of such parent in making the determination, but in making such determination, the court may take into account the reasonable support obligations of either parent as to only natural, legal, or legally adopted minor children in the custody of said parent. If the district or administrative court deviates from the amount of support indicated by these guidelines, it shall make specific findings of fact supporting such action.

B. Child support guidelines are as follows:

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

2. Gross income includes income from any source, except as excluded in this act, ~~Section 101 et seq. of this title~~ and includes but is not limited to income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, rent, interest income, trust income, annuities, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts and prizes. Specifically excluded are actual child support received for children not before the court and benefits received from means-tested public assistance programs, including but not limited to Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Food Stamps, General Assistance and State Supplemental Payments for Aged, Blind and the Disabled;

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

or business operation. Specifically excluded from ordinary and necessary expenses for purposes of this section are amounts determined by the district or administrative court to be inappropriate for determining gross income for purposes of calculating child support. The district or administrative court shall carefully review income and expenses from self-employment or operation of a business to determine an appropriate level of gross income available to the parent to satisfy a child support obligation. The district or administrative court shall deduct from self-employment gross income an amount equal to the employer contribution for F.I.C.A. tax which an employer would withhold from an employee's earnings on an equivalent gross income amount. A determination of business income for tax purposes shall not control for purposes of determining a child support obligation.

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

4. For purposes of computing gross income of the parents~~;~~:

a. the district or administrative court shall include for each parent, either~~:~~:

(1) the actual monthly gross income,

(2) the average of the gross monthly income for the time actually employed during the previous three
(3) years, or

(3) the minimum wage paid for a forty-hour week,
whichever is the most equitable~~;~~.

b. ~~If~~ if equitable, the district or administrative court may instead impute as gross monthly income for either parent the amount a person with comparable education, training~~,~~, and experience could reasonably expect to

earn; provided, ~~however, that~~ if a person is permanently physically or mentally incapacitated, the child support obligation shall be computed on the basis of actual monthly gross income, and

c. if equitable, the court may limit the computation of gross income to wages paid for a forty-hour week and exclude wages paid for any other wage-earning job;

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

6. The amount of reasonable expenses of the parties attributable to debt service for preexisting, jointly acquired debt of the parties may be deducted from gross income to the extent payment of such debt is actually made. In any case where deduction for such debt service is made, the district or administrative court may make provision for prospective upward adjustments of support made possible by the reasonable anticipated reduction or elimination of such debt service;

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

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

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

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

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

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

13. The actual child care costs incurred due to employment or active employment search of either parent, or incurred as a result of either parent actually attending school for the purpose of enhancing their employment or income, shall be allocated in the same proportion as base child support. If the district or administrative court determines that it will not cause detriment to the child, in lieu of payment of child care costs incurred during employment, active employment search, or while the custodial parent is attending school, the noncustodial parent may be allowed to provide care of the child during such time. The noncustodial parent shall be designated the "obligor". The custodial parent shall be designated the "obligee". Obligor's proportionate amount of the child care fee for that month shall be paid to the obligee on or before the date the child care fee is due to the provider. The district or administrative court shall require the obligee to provide obligor with timely documentation of any change in the amount of the child care fee. Upon request by the obligor whose requests shall not exceed one each month, the obligee shall provide the obligor with documentation of the amount of incurred child care costs which are

related to employment or education as required by this paragraph. The court may require the obligee to periodically verify that incurred child care costs are related to employment or education as required by this paragraph;

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

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

16. If the district or administrative court adopts a joint custody plan meeting the requirements of Section 109 of this title, the plan must provide for the support of the child equivalent to the amount of combined support the child would otherwise receive under these guidelines. The district or administrative court shall have the authority, however, to accept a plan which allocates the payment of actual expenses of the children, rather than designating one custodial parent the "obligor" and one the "obligee", if the district or administrative court finds the payments allocated to each respective parent are substantially equivalent to the amount of the child support obligation of the parent under these guidelines;

17. If each parent is awarded custody of one or more children, the child support obligation of each parent shall be computed for each custodial arrangement separately using the percentage applicable for the children residing with each parent. The obligation of each parent shall be compared with the other. The

difference between the obligations of each parent shall be paid to the parent with the smaller obligation in order to equalize the child support spent on all of the children, regardless of the custodial arrangements. The court shall not take into account any stepchildren of such parent in making the determination but only natural, legal, or legally adopted minor children in the custody of either parent may be taken into account in determining child support;

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

19. Child support orders may be modified if the support amount is not in accordance with the child support guidelines or upon other material change in circumstances. An order of modification shall be effective upon the date the motion to modify was filed, unless the parties agree to the contrary or the court makes a specific finding of fact that the material change in circumstances did not occur until a later date. Unless the parties agree to the contrary, a completed child support computation form provided for in Section 120 of this title shall be required to be filed with the child support order. The child support guidelines provided in this act shall be used in computing child support, subject to the discretion of the district or administrative court to deviate from the guidelines where the amount of support is unjust, inequitable, unreasonable or inappropriate under the circumstances, or not in the best interests of the child or children involved, and such deviation is supported by specific findings. A child support order shall not be construed to be a per child order unless specified by the district or administrative court in the order. Child support is not automatically modified in a child support order which provides for more than one child when one of those children reaches majority or is not otherwise entitled to support pursuant to the support order;

however, such circumstance shall constitute a material change in circumstances;

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

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

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

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

SECTION 2. This act shall become effective November 1, 1998.

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