

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 1607

By: Williamson

AS INTRODUCED

An Act relating to child support; amending 43 O.S. 2001, Section 118, which relates to child support guidelines; authorizing court to modify child support obligations under certain circumstances; and providing an effective date.

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

SECTION 1. AMENDATORY 43 O.S. 2001, 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.

B. The district or administrative court may deviate from the amount of child support indicated by the child support guidelines if the amount of support so indicated is unjust, inequitable, unreasonable, or inappropriate under the circumstances, or not in the best interests of any child involved. The district or administrative court may also deviate from the amount of child support indicated by the child support guidelines by increasing the amount if the court finds that the obligor has willfully and consistently failed to exercise the obligor's court-ordered visitation for a period exceeding nine (9) months. If the district

or administrative court deviates from the amount of child support indicated by the child support guidelines, the court shall make specific findings of fact supporting such action.

C. 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 the parent.

D. For purposes of this section and in determining child support, the noncustodial parent shall be designated the obligor and the custodial parent shall be designated the obligee.

E. The 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. The obligor's share shall be paid monthly to the obligee and shall be due on a specific date;

2. a. (1) "Gross income", subject to paragraph 3 of this subsection, includes earned and passive income from any source, except as excluded in this section.

(2) "Earned income" is defined as income received from labor, or the sale of goods or services and includes, but is not limited to, income from:

- (a) salaries,
- (b) wages,
- (c) commissions,
- (d) bonuses, and
- (e) severance pay.

(3) "Passive income" is defined as all other income and includes, but is not limited to, income from:

- (a) dividends,
- (b) pensions,
- (c) rent,
- (d) interest income,
- (e) trust income,
- (f) annuities,
- (g) social security benefits,
- (h) workers' compensation benefits,
- (i) unemployment insurance benefits,
- (j) disability insurance benefits,
- (k) gifts,
- (l) prizes, and
- (m) royalties.

b. Specifically excluded from gross income are:

(1) actual child support received for children not before the court, and

(2) benefits received from means-tested public assistance programs including, but not limited to:

- (a) Temporary Assistance for Needy Families (TANF),
- (b) Supplemental Security Income (SSI),
- (c) Food Stamps, and
- (d) General Assistance and State Supplemental Payments for Aged, Blind and the Disabled;

3. a. 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 operations.

- b. Specifically excluded from ordinary and necessary expenses for purposes of this paragraph are amounts determined by the district or administrative court to be inappropriate for determining gross income for purposes of calculating child support.
 - c. 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.
 - d. 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.
 - e. 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. a. For purposes of computing gross income of the parents, the district or administrative court shall include for each parent, whichever is most equitable, either:
- (1) all earned and passive monthly income,
 - (2) all passive income, and earned income equivalent to a forty-hour work week plus such overtime and supplemental income as the court deems equitable,

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

(4) the minimum wage paid for a forty-hour work week.

- b. 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.
- c. If a parent is permanently physically or mentally incapacitated, the child support obligation shall be computed on the basis of actual monthly gross income;

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

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

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

8. In cases in which one parent has sole custody, the adjusted monthly gross income of both parents shall be added together and the Child Support Guideline Schedule consulted for the total combined base monthly obligation for 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. a. In cases where shared parenting time has been ordered by a district court or agreed to by the parents, the base monthly obligation shall be adjusted. "Shared parenting time" means that each parent has physical custody of the child or children overnight for more than one hundred twenty (120) nights each year.

b. An adjustment for shared parenting time shall be made to the base monthly child support obligation by the following formula: The total combined base monthly child support obligation shall be multiplied by one and one-half (1 1/2). The result shall be designated the adjusted combined child support obligation.

c. To determine each parent's adjusted child support obligation, the adjusted combined child support obligation shall be divided between the parents in proportion to their respective adjusted gross incomes.

d. (1) The percentage of time a child spends with each parent shall be calculated by determining the number of nights the child is in the physical custody of each parent and dividing that number by three hundred sixty-five (365).

(2) Each parent's share of the adjusted combined child support obligation shall then be multiplied by the percentage of time the child spends with the other parent to determine the base child support obligation owed to the other parent.

- (3) The respective adjusted base child support obligations for each parent are then offset, with the parent owing more base child support paying the difference between the two amounts to the other parent. The base child support obligation of the parent owing the lesser amount is then set at zero dollars.
- e. The parent owing the greater amount of base child support shall pay the difference between the two amounts as a child support order. In no case, shall the amount of child support ordered to be paid exceed the amount of child support which would otherwise be ordered to be paid if the parents did not participate in shared parenting time.
- f. In no event shall the provisions of this paragraph be construed to authorize or allow the payment of child support by the custodial parent to the noncustodial parent;
11. a. The actual medical and dental insurance premium for the child shall be allocated between the parents in the same proportion as their adjusted gross income and shall be added to the base child support obligation. If the insurance policy covers a person other than the child before the court, only that portion of the premium attributed to the child before the court shall be allocated and added to the base child support obligation.
- b. If the obligor pays the medical insurance premium, the obligor shall receive credit against the base child support obligation for the obligee's allocated share of the medical insurance premium.

- c. If the obligee pays the medical insurance premium, the obligor shall pay the obligor's allocated share of the medical insurance premium to the obligee as part of the base child support obligation;

12. In cases of split custody, where each parent is awarded custody of at least one of their natural or legally adopted children, the child support obligation for each parent shall be calculated by application of the child support guidelines for each custodial arrangement. The parent with the larger child support obligation shall pay the difference between the two amounts to the parent with the smaller child support obligation;

- 13. a. The district or administrative court shall determine the "actual" child care expenses reasonably necessary to enable either or both parents to:

- (1) be employed,
- (2) seek employment, or
- (3) attend school or training to enhance employment income.

- b. The actual child care costs incurred for the purposes authorized by this paragraph shall be allocated and paid monthly in the same proportion as base child support.
- c. The district or administrative court shall require the obligee to provide the obligor with timely documentation of any change in the amount of the child care costs. Upon request by the obligor, whose requests shall not exceed one each month, or upon order of the court, the obligee shall provide the documentation of the amount of incurred child care costs which are related to employment, employment search or education or training as authorized by this paragraph.

- d. If the court determines that it will not cause detriment to the child or will not cause undue hardship to either parent, in lieu of payment of child care expenses incurred during employment, employment search, or while the obligee is attending school or training, the obligor may provide care for the child during that time;

14. Reasonable and necessary medical, dental, orthodontic, optometric, psychological, or any other physical or mental health expenses of the child incurred by either parent and not reimbursed by insurance may be allocated in the same proportion as the parents' adjusted gross income as separate items that are not added to the base child support obligation. If reimbursement is required, the parent who incurs the expense shall be reimbursed by the other parent within thirty (30) days of receipt of documentation of the expense;

15. Transportation expenses of a child between the homes of the parents may be divided between the parents in proportion to their adjusted gross income;

16. a. (1) Child support orders may be modified upon a material change in circumstances.
- (2) Modification of the Child Support Guideline Schedule shall not alone be a material change in circumstances for child support orders in existence on November 1, 1999.
- (3) Providing support for children born to or adopted by either parent after the entry of a child support order shall not alone be considered a material change in circumstances.
- (4) 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 of circumstance did not occur until a later date.

- b. (1) A child support order shall not be modified retroactively regardless of whether support was ordered in a temporary order, a decree of divorce, an order establishing paternity, modification of an order of support, or other action to establish or to enforce support.
 - (2) All final orders shall state whether past due support and interest has accrued pursuant to any temporary order and the amount due, if any; however, failure to state a past due amount shall not bar collection of that amount after entry of the final support order.
 - c. The amount of a child support order shall not be construed to be an amount per child unless specified by the district or administrative court in the order. A child reaching the age of majority or otherwise ceasing to be entitled to support pursuant to the support order shall constitute a material change in circumstances, but shall not automatically serve to modify the order;
17. a. When a child support order is entered or modified, the parents may agree or the district or administrative court may require a periodic exchange of information for an informal review and adjustment process.
- b. When an existing child support order does not contain a provision which requires an informal review and adjustment process, either parent may request the other parent to provide the information necessary for the informal review and adjustment process.

Information shall be provided to the requesting parent within forty-five (45) days of the request.

- c. Requested information may include verification of income, proof and cost of children's medical insurance, and current and projected child care costs. If shared parenting time has been awarded by the court, documentation of past and prospective overnight visits shall be exchanged.
- d. Exchange of requested information may occur once a year or less often, by regular mail.
- e.
 - (1) If the parents agree to a modification of a child support order, their agreement shall be in writing on a standard agreed order form provided for in Section 120 of this title and shall comply with the child support guidelines.
 - (2) The standard agreed order form, the standard child support guideline calculation form, and the standard financial affidavit form shall be submitted to the district or administrative court.
 - (3) The standard agreed order form and supporting documents submitted shall be reviewed by the district or administrative court for approval to confirm that the standard agreed order form and documents comply with the child support guidelines and that all necessary parties have been notified. The approved standard agreed order form shall be filed with the court.
 - (4) If the standard agreed order form does not comply with the child support guidelines, or all necessary parties have not been notified, the matter shall be set for hearing.

- f. (1) If the parents fail to cooperate in the exchange of information, either parent may move for a modification hearing or for mediation. The district or administrative court on its own motion may refer the parents to a mediator.
- (2) If referred to mediation, and modification is subsequently found to be appropriate, the modification shall be effective on the date the motion was filed.
- (3) Costs for mediation, if any, shall be paid by the parent who failed to cooperate in the exchange of information. Otherwise, the court may assess costs equally between the parents, or as determined by the court;

18. 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;

19. The district or administrative court shall require and enforce a complete disclosure of assets by both parents on a financial affidavit form prescribed by the Administrative Office of the Courts;

20. 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;

21. The court, to the extent reasonably possible, shall make provision in an order for prospective adjustment of support to address any foreseen changes including, but not limited to, changes in medical insurance, child care expenses, medical expenses, and extraordinary costs; and

22. The social security numbers of both parents and the children who are the subject of the order shall be included in all paternity or child support orders.

SECTION 2. This act shall become effective November 1, 2002.

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