

EHB 1908

1 THE STATE SENATE  
2 Monday, April 11, 2005

3 ENGROSSED

4 House Bill No. 1908

5 As Amended

6 ENGROSSED HOUSE BILL NO. 1908 - By: SHUMATE of the House and CRAIN  
7 of the Senate.

8 [ marriage and family - divorce and alimony - age  
9 requirement - child support - Department of Human Services -  
10 effective date ]

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

12 SECTION 1. AMENDATORY 43 O.S. 2001, Section 112, as last  
13 amended by Section 22, Chapter 3, O.S.L. 2003 (43 O.S. Supp. 2004,  
14 Section 112), is amended to read as follows:

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

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

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

24 3. May modify or change any order whenever circumstances render  
25 the change proper either before or after final judgment in the

1 action; provided, that the amount of the periodic child support  
2 payment shall not be modified retroactively or payment of all or a  
3 portion of the past due amount waived, except by mutual agreement of  
4 the obligor and obligee, or if the obligee has assigned child  
5 support rights to the Department of Human Services or other entity,  
6 by agreement of the Department or other entity. Unless the parties  
7 agree to the contrary, a completed child support computation form  
8 provided for in Section 120 of this title shall be required to be  
9 filed with the child support order.

10 The social security numbers of both parents and the child shall  
11 be included on the child support order summary form provided for in  
12 Section 120 of this title, which shall be submitted to the Central  
13 Case Registry as provided for in Section 112A of this title with all  
14 child support or paternity orders.

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

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

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

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

10          3.    When in the best interests of the child, custody shall be  
11          awarded in a way which assures the frequent and continuing contact  
12          of the child with both parents.  When awarding custody to either  
13          parent, the court:

14               a.    shall consider, among other facts, which parent is  
15                   more likely to allow the child or children frequent  
16                   and continuing contact with the noncustodial parent,  
17                   and

18               b.    shall not prefer a parent as a custodian of the child  
19                   because of the gender of that parent.

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

1           5. In making an order for custody, the court shall require  
2 compliance with Section 8 of this act.

3           D. 1. Except for good cause shown, a pattern of failure to  
4 allow court-ordered visitation may be determined to be contrary to  
5 the best interests of the child and as such may be grounds for  
6 modification of the child custody order.

7           2. For any action brought pursuant to the provisions of this  
8 section which the court determines to be contrary to the best  
9 interests of the child, the prevailing party shall be entitled to  
10 recover court costs, attorney fees and any other reasonable costs  
11 and expenses incurred with the action.

12          E. Except as otherwise provided by Section 112.1A of this  
13 title, any child shall be entitled to support by the parents until  
14 the child reaches eighteen (18) years of age. If a ~~dependent child~~  
15 ~~is regularly and continuously attending high school, said child~~  
16 ~~shall be entitled to support by the parents through the age of~~  
17 ~~eighteen (18) years. No hearing shall be required to extend such~~  
18 ~~support through the age of eighteen (18) if the child is regularly~~  
19 ~~and continuously attending high school~~ child is regularly enrolled  
20 in and attending high school, as set forth in Section 11-103.6 of  
21 Title 70 of the Oklahoma Statutes, other means of education, or an  
22 alternative education program as a full-time student, the child  
23 shall be entitled to support by the parents until the child

1 graduates from high school or until the age of twenty (20) years,  
2 whichever occurs first. Full-time attendance shall include  
3 regularly scheduled breaks from the school year. If a child who has  
4 reached the age of eighteen (18) years ceases full-time attendance  
5 prior to graduation and later begins attending an education program  
6 as set forth in this subsection as a full-time student before the  
7 age of twenty (20) years, support shall resume the month following  
8 the resumption of attendance. No hearing or further order is  
9 required to extend support pursuant to this subsection after the  
10 child reaches the age of eighteen (18) years.

11 F. In any case in which provision is made for the custody or  
12 support of a minor child or enforcement of such order and before  
13 hearing the matter or signing any orders, the court shall inquire  
14 whether public assistance money ~~or,~~ medical support, or a child care  
15 subsidy pursuant to Section 230.50 of Title 56 of the Oklahoma  
16 Statutes has been provided by the Department of Human Services,  
17 hereafter referred to as the Department, for the benefit of each  
18 child. If public assistance money ~~or,~~ medical support, or a child  
19 care subsidy has been provided for the benefit of the child, the  
20 Department ~~of Human Services~~ shall be a necessary party for the ~~just~~  
21 adjudication ~~and establishment~~ of the debt due ~~and owing~~ to the  
22 State of Oklahoma, as defined in Section 238 of Title 56 of the  
23 Oklahoma Statutes, and for the ~~just~~ adjudication ~~and establishment~~

1 of paternity, ~~current~~ child support, and medical insurance coverage  
2 for the minor children in accordance with federal regulations. When  
3 an action is filed, the petitioner shall give the Department notice  
4 of the action by certificate of mailing to the district child  
5 support office for the county in which the action is filed. The  
6 Department shall not be required to intervene in the action to have  
7 standing to appear and participate in the action. When the  
8 Department is a necessary party to the action, any orders concerning  
9 paternity, child support, medical support, or the debt due to the  
10 State of Oklahoma shall be approved and signed by the Department.

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

14 SECTION 2. AMENDATORY 43 O.S. 2001, Section 118, as last  
15 amended by Section 3, Chapter 393, O.S.L. 2004 (43 O.S. Supp. 2004,  
16 Section 118), is amended to read as follows:

17 Section 118. A. Except in those cases where parties  
18 represented by counsel have agreed to a different disposition, there  
19 shall be a rebuttable presumption in any judicial or administrative  
20 proceeding for the award of child support, that the amount of the  
21 award which would result from the application of the following  
22 guidelines is the correct amount of child support to be awarded.

1           B. The district or administrative court may deviate from the  
2 amount of child support indicated by the child support guidelines if  
3 the amount of support so indicated is unjust, inequitable,  
4 unreasonable, or inappropriate under the circumstances, or not in  
5 the best interests of the child. If the district or administrative  
6 court deviates from the amount of child support indicated by the  
7 child support guidelines, the court shall make specific findings of  
8 fact supporting such action.

9           C. The court shall not take into account any stepchildren of  
10 such parent in making the determination, but in making such  
11 determination, the court may take into account the reasonable  
12 support obligations of either parent as to only natural, legal, or  
13 legally adopted minor children in the custody of the parent.

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

17           E. The child support guidelines are as follows:

18           1. All child support shall be computed as a percentage of the  
19 combined gross income of both parents. The Child Support Guideline  
20 Schedule as provided in Section 119 of this title shall be used for  
21 such computation. The child support obligations of each parent  
22 shall be computed. The obligor's share shall be paid monthly to the  
23 obligee and shall be due on a specific date;



- 1 (j) disability insurance benefits,
- 2 (k) gifts,
- 3 (l) prizes, and
- 4 (m) royalties.

5 b. Specifically excluded from gross income are:

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

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

11 (a) Temporary Assistance for Needy Families  
12 (TANF),

13 (b) Supplemental Security Income (SSI),

14 (c) Food Stamps, and

15 (d) General Assistance and State Supplemental  
16 Payments for Aged, Blind and the Disabled;

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

- 1           b.   Specifically excluded from ordinary and necessary  
2                    expenses for purposes of this paragraph are amounts  
3                    determined by the district or administrative court to  
4                    be inappropriate for determining gross income for  
5                    purposes of calculating child support.
- 6           c.   The district or administrative court shall carefully  
7                    review income and expenses from self-employment or  
8                    operation of a business to determine an appropriate  
9                    level of gross income available to the parent to  
10                  satisfy a child support obligation.
- 11          d.   The district or administrative court shall deduct from  
12                    self-employment gross income an amount equal to the  
13                    employer contribution for F.I.C.A. tax which an  
14                    employer would withhold from an employee's earnings on  
15                    an equivalent gross income amount. A determination of  
16                    business income for tax purposes shall not control for  
17                    purposes of determining a child support obligation.
- 18          e.   Expense reimbursements or in-kind payments received by  
19                    a parent in the course of employment, self-employment,  
20                    or operation of a business shall be counted as income  
21                    if they are significant and reduce personal living  
22                    expenses. Such payments may include but are not

1           limited to a company car, free housing, or reimbursed  
2           meals;

3           4.    a.   For purposes of computing gross income of the parents,  
4           the district or administrative court shall include for  
5           each parent, whichever is most equitable, either:  
6           (1)   all earned and passive monthly income,  
7           (2)   all passive income, and earned income equivalent  
8           to a forty-hour work week plus such overtime and  
9           supplemental income as the court deems equitable,  
10          (3)   the average of the gross monthly income for the  
11          time actually employed during the previous three  
12          (3) years, or  
13          (4)   the minimum wage paid for a forty-hour work week.

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

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

22          5.   The amount of any preexisting district or administrative  
23          court order for current child support for children not before the

1 court or for support alimony arising in a prior case shall be  
2 deducted from gross income to the extent payment is actually made  
3 under the order;

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

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

14 8. In cases in which one parent has sole custody, the adjusted  
15 monthly gross income of both parents shall be added together and the  
16 Child Support Guideline Schedule consulted for the total combined  
17 base monthly obligation for child support;

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

- 1           10. a.    In cases where shared parenting time has been ordered  
2                            by a district court or agreed to by the parents, the  
3                            base monthly obligation shall be adjusted. "Shared  
4                            parenting time" means that each parent has physical  
5                            custody of the child or children overnight for more  
6                            than one hundred twenty (120) nights each year.
- 7           b.    An adjustment for shared parenting time shall be made  
8                            to the base monthly child support obligation by the  
9                            following formula: The total combined base monthly  
10                           child support obligation shall be multiplied by one  
11                           and one-half (1 1/2). The result shall be designated  
12                           the adjusted combined child support obligation.
- 13           c.    To determine each parent's adjusted child support  
14                           obligation, the adjusted combined child support  
15                           obligation shall be divided between the parents in  
16                           proportion to their respective adjusted gross incomes.
- 17           d.    (1) The percentage of time a child spends with each  
18                           parent shall be calculated by determining the  
19                           number of nights the child is in the physical  
20                           custody of each parent and dividing that number  
21                           by three hundred sixty-five (365).
- 22                           (2) Each parent's share of the adjusted combined  
23                           child support obligation shall then be multiplied

1 by the percentage of time the child spends with  
2 the other parent to determine the base child  
3 support obligation owed to the other parent.

4 (3) The respective adjusted base child support  
5 obligations for each parent are then offset, with  
6 the parent owing more base child support paying  
7 the difference between the two amounts to the  
8 other parent. The base child support obligation  
9 of the parent owing the lesser amount is then set  
10 at zero dollars.

11 e. The parent owing the greater amount of base child  
12 support shall pay the difference between the two  
13 amounts as a child support order. In no case shall  
14 the amount of child support ordered to be paid exceed  
15 the amount of child support which would otherwise be  
16 ordered to be paid if the parents did not participate  
17 in shared parenting time.

18 f. In no event shall the provisions of this paragraph be  
19 construed to authorize or allow the payment of child  
20 support by the custodial parent to the noncustodial  
21 parent;

22 11. a. The actual medical and dental insurance premium for  
23 the child shall be allocated between the parents in

1 the same proportion as their adjusted gross income and  
2 shall be added to the base child support obligation.  
3 If the insurance policy covers a person other than the  
4 child before the court, only that portion of the  
5 premium attributed to the child before the court shall  
6 be allocated and added to the base child support  
7 obligation.

8 b. If the obligor pays the medical insurance premium, the  
9 obligor shall receive credit against the base child  
10 support obligation for the obligee's allocated share  
11 of the medical insurance premium.

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

16 12. a. In cases of split custody, where each parent is  
17 awarded custody of at least one of their natural or  
18 legally adopted children, the child support obligation  
19 for each parent shall be calculated by application of  
20 the child support guidelines for each custodial  
21 arrangement. ~~The~~

22 b. In cases of joint custody, where the parents share  
23 physical and legal custody of at least one of their

1                   natural or legally adopted children, the child support  
2                   obligation for each parent shall be calculated by  
3                   applying the child support guidelines.

4           c.   In all cases the parent with the larger child support  
5                   obligation shall pay the difference between the two  
6                   amounts to the parent with the smaller child support  
7                   obligation;

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

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

15           b.   When the obligee is participating in the Department of  
16                   Human Services child care subsidy program as provided  
17                   under Section 230.50 of Title 56 of the Oklahoma  
18                   Statutes, the Child Care Eligibility/Rates Schedule  
19                   established by the Department shall be used to  
20                   determine the amount to be treated as actual child  
21                   care costs incurred. When applying the schedule to  
22                   determine the family share copayment amount, the  
23                   obligor's share of the base monthly obligation for

1 child support and the obligee's gross income shall be  
2 considered as the obligee's monthly income. The  
3 actual child care costs incurred shall be the family  
4 share copayment amount indicated on the schedule which  
5 shall be allocated and paid monthly in the same  
6 proportion as base child support. The Department of  
7 Human Services shall promulgate rules, as necessary,  
8 to implement the provisions of this subparagraph.

9 c. The actual child care costs incurred for the purposes  
10 authorized by this paragraph shall be allocated and  
11 paid monthly in the same proportion as base child  
12 support.

13 d. The district or administrative court shall require the  
14 obligee to provide the obligor with timely  
15 documentation of any change in the amount of the child  
16 care costs. Upon request by the obligor, whose  
17 requests shall not exceed one each month, or upon  
18 order of the court, the obligee shall provide the  
19 documentation of the amount of incurred child care  
20 costs which are related to employment, employment  
21 search or education or training as authorized by this  
22 paragraph.

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

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

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

20 16. a. (1) Child support orders may be modified upon a  
21 material change in circumstances.

22 (2) Modification of the Child Support Guideline  
23 Schedule shall not alone be a material change in

1                   circumstances for child support orders in  
2                   existence on November 1, 1999.

3                   (3) Providing support for children born to or adopted  
4                   by either parent after the entry of a child  
5                   support order shall not alone be considered a  
6                   material change in circumstances.

7                   (4) An order of modification shall be effective upon  
8                   the date the motion to modify was filed, unless  
9                   the parties agree to the contrary or the court  
10                  makes a specific finding of fact that the  
11                  material change of circumstance did not occur  
12                  until a later date.

13                  b.   (1) A child support order shall not be modified  
14                       retroactively regardless of whether support was  
15                       ordered in a temporary order, a decree of  
16                       divorce, an order establishing paternity,  
17                       modification of an order of support, or other  
18                       action to establish or to enforce support.

19                  (2) All final orders shall state whether past due  
20                       support and interest has accrued pursuant to any  
21                       temporary order and the amount due, if any;  
22                       however, failure to state a past due amount shall

1 not bar collection of that amount after entry of  
2 the final support order.

3 c. The amount of a child support order shall not be  
4 construed to be an amount per child unless specified  
5 by the district or administrative court in the order.  
6 A child reaching the age of majority or otherwise  
7 ceasing to be entitled to support pursuant to the  
8 support order shall constitute a material change in  
9 circumstances, but shall not automatically serve to  
10 modify the order;

11 17. a. When a child support order is entered or modified, the  
12 parents may agree or the district or administrative  
13 court may require a periodic exchange of information  
14 for an informal review and adjustment process.

15 b. When an existing child support order does not contain  
16 a provision which requires an informal review and  
17 adjustment process, either parent may request the  
18 other parent to provide the information necessary for  
19 the informal review and adjustment process.  
20 Information shall be provided to the requesting parent  
21 within forty-five (45) days of the request.

22 c. Requested information may include verification of  
23 income, proof and cost of children's medical

1 insurance, and current and projected child care costs.  
2 If shared parenting time has been awarded by the  
3 court, documentation of past and prospective overnight  
4 visits shall be exchanged.

5 d. Exchange of requested information may occur once a  
6 year or less often, by regular mail.

7 e. (1) If the parents agree to a modification of a child  
8 support order, their agreement shall be in  
9 writing on a standard agreed order form provided  
10 for in Section 120 of this title and shall comply  
11 with the child support guidelines.

12 (2) The standard agreed order form, the standard  
13 child support guideline calculation form, and the  
14 standard financial affidavit form shall be  
15 submitted to the district or administrative  
16 court.

17 (3) The standard agreed order form and supporting  
18 documents submitted shall be reviewed by the  
19 district or administrative court for approval to  
20 confirm that the standard agreed order form and  
21 documents comply with the child support  
22 guidelines and that all necessary parties have

1                   been notified. The approved standard agreed  
2                   order form shall be filed with the court.

3                   (4) If the standard agreed order form does not comply  
4                   with the child support guidelines, or all  
5                   necessary parties have not been notified, the  
6                   matter shall be set for hearing.

7                   f.    (1) If the parents fail to cooperate in the exchange  
8                   of information, either parent may move for a  
9                   modification hearing or for mediation. The  
10                  district or administrative court on its own  
11                  motion may refer the parents to a mediator.

12                  (2) If referred to mediation, and modification is  
13                  subsequently found to be appropriate, the  
14                  modification shall be effective on the date the  
15                  motion was filed.

16                  (3) Costs for mediation, if any, shall be paid by the  
17                  parent who failed to cooperate in the exchange of  
18                  information. Otherwise, the court may assess  
19                  costs equally between the parents, or as  
20                  determined by the court;

21                  18. Child support orders may include such provisions as the  
22                  district or administrative court deems appropriate to assure that

1 the child support payments to the custodial parent are used for the  
2 support of the child;

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

7 20. Child support orders issued for prior-born children of the  
8 payor may not be modified for the purpose of providing support for  
9 later-born children;

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

15 22. The social security numbers of both parents and the  
16 children who are the subject of a paternity or child support order  
17 shall be included in the support order summary form provided for in  
18 Section 120 of this title; and

19 23. A completed support order summary form shall be presented  
20 to the judge with all paternity and child support orders, and no  
21 such order shall be signed by the judge without presentation of the  
22 form.

23 SECTION 3. This act shall become effective November 1, 2005.

1 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 4-5-05 - DO PASS,  
2 As Amended.