ENGROSSED HOUSE
BILL NO. 2809

By: Peterson (Pam), BigHorse, McAffrey, Pittman, Shumate, Faught, Johnson (Dennis), Kern, McDaniel (Jeannie), Rousselot, Sherrer and Tibbs of the House

and

Lamb of the Senate

An Act relating to child support; amending 21 O.S. 2001, Section 566, as last amended by Section 1, Chapter 140, O.S.L. 2007 (21 O.S. Supp. 2007, Section 566), which relates to punishment for contempt in child support proceedings; relocating statutory authority for the Supreme Court to promulgate guidelines for sentence and purge fees for indirect contempt; specifying criteria for indirect contempt determinations; providing indirect contempt punishment options; providing for alternative programs for indirect contempt; amending 21 O.S. 2001, Section 852, as amended by Section 1, Chapter 219, O.S.L. 2006 (21 O.S. Supp. 2007, Section 852), which relates to punishment for delinquent child support; requiring the Department of Human Services to assist district attorneys in prosecution; providing administrative or district courts authority to order participation in problem-solving court programs in certain child support cases; specifying child support or federal enforcement remedies not affected by participation in problem-solving court program; amending 56 O.S. 2001, Section 233, which relates to Department of Human Services responsibilities for monitoring and reporting delinquent child support; making referral to district attorneys discretionary; amending 56 O.S. 2001, Section 240.10, which relates to employment requirements in child support proceedings; providing alternative job programs; repealing 56 O.S. 2001, Section 233.1, which relates to nonpayment of child

support; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2001, Section 566, as last amended by Section 1, Chapter 140, O.S.L. 2007 (21 O.S. Supp. 2007, Section 566), is amended to read as follows:

Section 566. A. Unless otherwise provided for by law, punishment for direct or indirect contempt shall be by the imposition of a fine in a sum not exceeding Five Hundred Dollars ($500.00) or by imprisonment in the county jail not exceeding six (6) months, or by both, at the discretion of the court.

B. ~~1. In the case of indirect contempt for the failure to comply with an order for child support, child support arrears, other support, visitation, or other court orders regarding minor children the Supreme Court shall promulgate guidelines for determination of the sentence and purge fee. If the court fails to follow said guidelines, the court shall make a specific finding stating the reasons why the imposition of the guidelines would result in inequity. The factors that shall be used in determining the sentence and purge fee are:~~

~~a. the proportion of the child support, child support arrearage payments, or other support that was unpaid~~

~~in relation to the amount of support that was ordered paid,~~

~~b. the proportion of the child support, child support arrearage payments, or other support that could have been paid by the party found in contempt in relation to the amount of support that was ordered paid,~~

~~c. the present capacity of the party found in contempt to pay any arrearages,~~

~~d. any willful actions taken by the party found in contempt to reduce factor c,~~

~~e. the past history of compliance or noncompliance with the support or visitation order, and~~

~~f. willful acts to avoid the jurisdiction of the court.~~

~~2. When a court of competent jurisdiction makes an order compelling a parent to furnish monetary support, necessary food, clothing, shelter, medical attention, medical insurance or other remedial care for the minor child of the parent:~~

~~a. proof that:~~

~~(1) the order was made, filed, and served on the parent, or~~

~~(2) the parent had actual knowledge of the existence of the order, or~~

~~(3) the order was granted by default after prior due process notice to the parent, or~~

~~(4) the parent was present in court at the time the order was pronounced, and~~

~~b. proof of noncompliance with the order,~~

~~shall be prima facie evidence of an indirect civil contempt of court.~~

~~C.~~ Any court in this state has the power to enforce an order for current child support, past due child support and child support arrearage payments, other support, visitation, or other court orders regarding minor children and to punish an individual for failure to comply therewith, as set forth in subsection A of this section. Venue for an action under this section is proper, at the option of the ~~obligee~~ petitioner:

1. In the county in this state in which the support order was entered, docketed or registered;

2. In the county in this state in which the obligee resides; or

3. In the county in this state in which the obligor resides or receives income.

Orders for current child support, past due child support and child support arrearage payments are enforceable until paid in full. The remedies provided by this section are available regardless of the age of the child.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 566.1 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. When a court of competent jurisdiction has entered an order compelling a parent to furnish child support, necessary food, clothing, shelter, medical support, payment of child care expenses, or other remedial care for the minor child of the parent:

1. Proof that:

a. the order was made, filed, and served on the parent,

b. the parent had actual knowledge of the existence of the order,

c. the order was granted by default after prior due process notice to the parent, or

d. the parent was present in court at the time the order was pronounced; and

2. Proof of noncompliance with the order,

shall be prima facie evidence of an indirect civil contempt of court.

B. 1. In the case of indirect contempt for the failure to comply with an order for child support, child support arrears, or other support, punishment shall be, at the discretion of the court:

a. incarceration in the county jail not exceeding six (6) months,

b. incarceration in the county jail on weekends or at other times that allow the obligor to be employed, seek employment or engage in other activities ordered by the court, and

c. a house detention with electronic monitoring program in which the obligor is required to remain at obligor's residence unless the court authorizes the obligor to leave for the purpose of employment, counseling, treatment, educational training, social skills training or employment training. The obligor shall be required to wear a device which permits electronic monitoring. If the obligor fails to comply with the conditions of the electronic monitoring program, the court may impose punishment under subparagraph a or b of this paragraph.

2. Punishment may also include imposition of a fine in a sum not exceeding Five Hundred Dollars ($500.00).

C. 1. During proceedings for indirect contempt of court, the court may order the obligor to complete an alternative program and comply with a payment plan for child support and arrears. If the obligor fails to complete the alternative program and comply with the payment plan, the court shall proceed with the indirect contempt and shall impose punishment pursuant to subsection B of this section.

2. An alternative program may include:

a. a problem-solving court program for obligors when child support services under the state child support plan as provided in Section 237 of Title 56 of the

Oklahoma Statutes are being provided for the benefit of the child. A problem-solving court program is an immediate and highly structured judicial intervention process for the obligor and requires completion of a participation agreement by the obligor and monitoring by the court. A problem-solving court program differs in practice and design from the traditional adversarial contempt prosecution and trial systems. The problem-solving court program uses a team approach administered by the judge in cooperation with a child support state's attorney and a child support court liaison who focuses on removing the obstacles causing the nonpayment of the obligor. The obligors in this program shall be required to sign an agreement to participate in this program as a condition of the Department of Human Services agreement to stay contempt proceedings or in lieu of incarceration after a finding of guilt. The court liaisons assess the needs of the obligor, develop a community referral network, make referrals, monitor the compliance of the obligor in the program, and provide status reports to the court, and

b. participation in programs such as counseling, treatment, educational training, social skills

training or employment training to which the obligor reports daily or on a regular basis at specified times for a specified length of time.

D. In the case of indirect contempt for the failure to comply with an order for child support, child support arrears, or other support, the Supreme Court shall promulgate guidelines for determination of the sentence and purge fee. If the court fails to follow the guidelines, the court shall make a specific finding stating the reasons why the imposition of the guidelines would result in inequity. The factors that shall be used in determining the sentence and purge fee are:

1. The proportion of the child support, child support arrearage payments, or other support that was unpaid in relation to the amount of support that was ordered paid;

2. The proportion of the child support, child support arrearage payments, or other support that could have been paid by the party found in contempt in relation to the amount of support that was ordered paid;

3. The present capacity of the party found in contempt to pay any arrearages;

4. Any willful actions taken by the party found in contempt to reduce the capacity of that party to pay any arrearages;

5. The past history of compliance or noncompliance with the support order; and

6. Willful acts to avoid the jurisdiction of the court.

SECTION 3. AMENDATORY 21 O.S. 2001, Section 852, as amended by Section 1, Chapter 219, O.S.L. 2006 (21 O.S. Supp. 2007, Section 852), is amended to read as follows:

Section 852. A. Unless otherwise provided for by law, any parent, guardian, or person having custody or control of a child as defined in Section 7001-1.3 of Title 10 of the Oklahoma Statutes who willfully omits, without lawful excuse, to furnish necessary food, clothing, shelter, monetary child support, medical attendance, payment of court-ordered day care or payment of court-ordered medical insurance costs for such child which is imposed by law, upon conviction, is guilty of a misdemeanor; provided, any person obligated to make child support payments who willfully and without lawful excuse becomes delinquent in said child support payments after September 1, 1993, and such delinquent child support accrues without payment by the obligor for a period of one (1) year, or exceeds Five Thousand Dollars ($5,000.00) shall, upon conviction thereof, be guilty of a felony which is punishable in the same manner as any subsequent conviction pursuant to the provisions of this section. Any subsequent conviction pursuant to this section shall be a felony, punishable by imprisonment for not more than four (4) years in the ~~State Penitentiary~~ custody of the Department of Corrections or by the imposition of a fine of not more than Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

As used in this section, the duty to furnish medical attendance shall mean that the parent or person having custody or control of a child must furnish medical treatment in such manner and on such occasions as an ordinarily prudent person, solicitous for the welfare of a child, would provide; such parent or person having custody or control of a child is not criminally liable for failure to furnish medical attendance for every minor or trivial complaint with which the child may be afflicted.

B. Any person who leaves the state to avoid providing necessary food, clothing, shelter, court-ordered monetary child support, or medical attendance for such child, upon conviction, shall be guilty of a felony punishable by imprisonment for not more than four (4) years in the ~~State Penitentiary~~ custody of the Department of Corrections or by the imposition of a fine of not more than Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

C. Nothing in this section shall be construed to mean a child is endangered for the sole reason the parent, guardian or person having custody or control of a child, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child; provided, that medical care shall be provided where permanent physical damage could result to such child; and that the

laws, rules, and regulations relating to communicable diseases and sanitary matters are not violated.

D. Nothing contained in this section shall prevent a court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect the ~~child's~~ health or welfare of the child.

E. Psychiatric and psychological testing and counseling are exempt from the provisions of this section.

F. If any parent of a child in cases in which the Department of Human Services is providing services pursuant to Section 237 of Title 56 of the Oklahoma Statutes is determined by the Department to be willfully violating the provisions of this section, the Department may refer the case to the proper district attorney for prosecution. The Department shall provide assistance to the district attorneys in such prosecutions. Any child support or arrears payments made pursuant to this section shall be made payable to the Department and paid through the centralized support registry pursuant to Section 413 of Title 43 of the Oklahoma Statutes.

G. Except for a third or subsequent conviction, all felony convictions herein shall be administered under the provisions of the Community Sentencing Act.

~~G.~~ H. It is the duty of any parent having legal custody of a child who is an alcohol-dependent person or a drug-dependent person, as such terms are defined by Section 3-403 of Title 43A of the

Oklahoma Statutes, to provide for the treatment, as such term is defined by Section 3-403 of Title 43A of the Oklahoma Statutes, of such child. Any parent having legal custody of a child who is an alcohol-dependent person or a drug-dependent person who without having made a reasonable effort fails or willfully omits to provide for the treatment of such child shall be guilty of a misdemeanor. For the purpose of this subsection, the duty to provide for such treatment shall mean that the parent having legal custody of a child must provide for the treatment in such manner and on such occasions as an ordinarily prudent person, solicitous for the welfare of a child, would provide.

~~H.~~ I. Venue is proper in prosecutions for violations of this section in:

1. Any county where the child resides;

2. The county in which the court-ordered support was entered or registered pursuant to the provisions of the Uniform Interstate Family Support Act; or

3. The county in which the defendant resides.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 140 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. In cases in which child support services under the state child support plan as provided in Section 237 of Title 56 of the Oklahoma Statutes are being provided for the benefit of the child,

the administrative or district court may order the obligor to participate in the problem-solving court program of the Department of Human Services. The problem-solving court program is an immediate and highly structured judicial intervention process for the obligor and requires completion of a participation agreement by the obligor and monitoring by the court. A problem-solving court program differs in practice and design from the traditional adversarial prosecution and trial systems. The problem-solving court program uses a team approach administered by the judge in cooperation with a child support state's attorney and a child support court liaison who focuses on removing the obstacles causing the nonpayment of the obligor. The obligors in this program shall be required to sign an agreement to participate in this program. The court liaisons assess the needs of the obligor, develop a community referral network, make referrals, monitor the compliance of the obligor in the program, and provide status reports to the court.

B. Participation in the problem-solving court program shall not act as a stay of federally mandated automated enforcement remedies. The child support obligation of the obligor shall not be suspended or abated during participation in the program.

SECTION 5. AMENDATORY 56 O.S. 2001, Section 233, is amended to read as follows:

Section 233. A. ~~The Department of Human Services shall have authority to investigate and ascertain the reasons why parents of children for whom the Department is making payments in its program for Aid to Families with Dependent Children are not providing for the maintenance and support of their children.~~

~~B. 1.~~ If any parent of a child is determined by the Department of Human Services to be willfully violating the provisions of Section 852 of Title 21 of the Oklahoma Statutes ~~by not providing for the maintenance and support of the child and the amount of the child support delinquency accrues for more than one (1) year or exceeds Five Thousand Dollars ($5,000.00)~~, the Department ~~shall notify~~ may refer the case to the proper district attorney ~~of the names of pertinent witnesses and information gained from the investigation~~ for prosecution.

~~2. Complaints necessary to institute prosecutions against such parents may be made by the Department's investigators.~~ B. The Department shall provide ~~legal~~ assistance to the district attorneys in such prosecutions.

~~C. A parent of a child for whom the Department is making payments in its program for Aid to Families with Dependent Children who willfully fails or refuses to accept employment when employment is available shall be deemed to have failed to provide for the child and upon conviction thereof shall be punished as provided by~~

~~subsection E of this section or pursuant to Section 852 of Title 21 of the Oklahoma Statutes.~~

~~D. A parent omitting to provide for the maintenance and support of a child shall be afforded an opportunity to report to the Department for training or assistance in finding employment without referral for prosecution on the condition that the parent provide for such maintenance and support.~~

~~E. If a parent is convicted pursuant to subsection A of this section it shall be mandatory that the punishment of the parent shall include imprisonment in the county jail for not more than ninety (90) days; provided, that the parent may be released on probation, subject to supervision of the Department, on condition that the parent register with the Oklahoma Employment Security Commission and obtain or accept employment or training that will enable the parent to provide for the support and maintenance of the parent's child or children.~~

~~F. These provisions shall not apply to an only parent, caring for the child or children in the home, when day care services are not available or when it is unreasonable to place the child or children in day care services.~~

SECTION 6. AMENDATORY 56 O.S. 2001, Section 240.10, is amended to read as follows:

Section 240.10 A. Anyone who is ordered to pay support for a child in an administrative or court action, hereinafter referred to

as "obligor", is required by law to obtain and maintain gainful employment sufficient to meet the support obligation.

B. ~~The Department, when support rights have been assigned to it or proper application made by an individual not receiving Aid to Families with Dependent Children,~~ When child support services are being provided for the benefit of the child under the state child support plan as provided in Section 237 of this title, the Department may initiate an administrative or district court action to obtain an order to require an unemployed or underemployed obligor to participate in counseling, treatment, educational training, social skills training, employment training or job-finding ~~or job training~~ programs, or the problem-solving court program under Section 4 of this act. "Underemployed" is defined as being employed less than full-time or in an occupation which pays less than employment which someone ~~of obligor's~~ with the skills and education of the obligor could be reasonably expected to earn, so that the obligor cannot meet his support obligation. The Department shall give notice of this requirement to the obligor who is not complying with a district or administrative court ~~or administrative~~ order for support and who the Department has reason to believe is unemployed or underemployed. ~~Said~~ The notice shall be served by the Department upon the obligor ~~in the same manner prescribed for service of summons in a civil action~~ as provided in Section 2005 of Title 12 of the Oklahoma Statutes, or if there is an address of record on file

with the central case registry pursuant to Section 112A of Title 43 of the Oklahoma Statutes, the notice may be served by regular mail at the address of record.

C. The notice shall state:

1. The name of the child for whom support is ordered and the custodian of the child;

2. That the obligor is not complying with the district or administrative court ~~or administrative~~ order for support and is delinquent in a certain amount;

3. That it appears that the obligor is unemployed or underemployed so that he cannot meet his support obligation;

4. That the obligor shall appear ~~for a conference in his county of residence~~ on a date certain for a hearing to show cause why ~~he~~ the obligor should not be ordered to participate in counseling, treatment, educational training, social skills training, employment training or job-finding ~~or job training~~ programs or the problem-solving court program, and to accept available employment; and

5. That if it is determined that the obligor is unemployed or underemployed or if the obligor fails to appear, an order will be entered which will require the obligor to participate in counseling, treatment, educational training, social skills training, employment training or job-finding ~~and job training~~ programs or the problem-solving court program and to accept available employment ~~and that such order may be docketed with the district court in the county of~~

~~residence of the obligor and shall be enforced as any other order of the district court by indirect civil contempt proceedings~~.

~~C.~~ D. 1. At the ~~conference~~ hearing, or if the obligor fails to appear for the hearing, the ~~Department~~ court shall enter an order ~~determine~~ determining if the obligor is unemployed ~~or is~~, underemployed or in need of services as described in subsection C of this section.

2. If ~~it is determined that the obligor is unemployed or underemployed, the Department shall enter an order setting~~ the court finds the obligor is in need of services as described in subsection C of this section, the order shall set forth the ~~Department's~~ findings of the court and ~~requiring~~ require that the obligor ~~shall~~ participate in counseling, treatment, educational training, social skills training, employment training or job-finding ~~or job training~~ programs or the problem-solving court program, and accept available employment. The order shall state when the obligor shall report and to what location. ~~The~~

3. An administrative order may be docketed with the district court ~~in the obligor's county of residence~~ and shall be enforced in the same manner as any other order of the district court ~~by~~, including indirect civil contempt proceedings. A copy of the order will be mailed by the Department to the ~~obligor's~~ last-known address of the obligor.

~~D. If the obligor fails to appear for the conference, the Department shall enter an administrative order requiring that the obligor report to the Department to participate in job-finding or job training programs and accept available employment. The order shall state when and where the obligor is to report to participate in said programs. The order may be docketed with the district court in the county of residence of the obligor and shall be enforced as any other order of the district court by indirect civil contempt proceedings. A copy of the order will be mailed by the Department to the obligor's last known address.~~

E. The obligor may show good cause why an ~~administrative~~ order should not be entered requiring ~~him~~ the obligor to participate in counseling, treatment, educational training, social skills training, employment training or job-finding ~~or job training~~ programs or the problem-solving court program and accept available employment. "Good cause" is defined as establishing by expert medical opinion that the person is mentally or physically unable to work or such other grounds as the Department determines by regulation constitutes good cause.

~~F. If the obligor feels aggrieved by the findings and order of the Department, the obligor may appeal the decision of the Department by filing a petition in error in the district court of the county of residence of the obligor within thirty (30) days of the date the obligor is notified of the order, pursuant to the~~

~~provisions of Sections 318 through 323 of Title 75 of the Oklahoma Statutes.~~

SECTION 7. REPEALER 56 O.S. 2001, Section 233.1, is hereby repealed.

SECTION 8. This act shall become effective November 1, 2008.

Passed the House of Representatives the 6th day of March, 2008.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2008.

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Presiding Officer of the Senate