

ENROLLED SENATE
BILL NO. 2194

By: Williamson of the Senate

and

Duncan, Kern, Peterson
(Pam) and Shumate of the
House

An Act relating to marriage and family; amending 43 O.S. 2001, Section 118, as last amended by Section 25, Chapter 1, O.S.L. 2007 (43 O.S. Supp. 2007, Section 118), which relates to the child support guidelines; modifying guidelines; modifying what constitutes gross income; excluding certain expenses from base child support obligation; specifying circumstances in which a court may deviate from the guidelines; requiring specific findings of fact upon deviation; providing considerations for extreme economic hardship; defining terms; specifying the inclusion of certain compensation as gross income; specifying considerations for imputed income, self-employment income, fringe benefits, and social security benefits; specifying adjustments to gross income; specifying formula for computing child support obligation; providing for extraordinary educational expenses; providing for special expenses; providing guidelines for the adjustment of child support based on certain parenting times; providing for medical support order; specifying content of final order; providing standards for a court to apply when entering a medical support order; providing exception in certain circumstances; specifying guidelines for health insurance coverage; providing for health expenses not covered by insurance; requiring certain review for adjustment; providing for actual child care costs; requiring DHS to

promulgate rules; requiring timely documentation of change in amount of costs; requiring certain standard of proof when requesting support in excess of the highest amount on the child support guidelines schedule; specifying procedures; providing for modification of child support orders; prohibiting retroactive modification; providing for informal review for adjustment; specifying certain procedures for adjustment; providing for exchange of certain information; amending 43 O.S. 2001, Section 134, which relates to alimony payments; providing for award of certain retirement or retainer pay; establishing statute of limitations; 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 contempt; deleting certain guidelines related to indirect contempt for failure to comply with child support order; requiring certain proof for specified orders; providing guidelines for indirect contempt of certain orders; allowing certain fine; providing for certain alternative programs; requiring Supreme Court to promulgate certain guidelines; 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 omission to provide for a child; authorizing DHS to refer certain cases to a district attorney; providing for payment of certain child support payments to DHS; authorizing court to order participation in certain programs; amending 56 O.S. 2001, Section 233, which relates to investigation of child support delinquencies; modifying procedures for referral of certain cases; amending 56 O.S. 2001, Section 240.10, which relates to employment of obligor; authorizing court to order obligor to participate in certain training; requiring certain notice; amending 30 O.S. 2001, Section 2-108, which relates to education and maintenance expenses for minors; modifying and adding requirements; repealing 56 O.S. 2001, Section 233.1, which relates to referrals for prosecution; providing for codification; and providing effective dates.

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

SECTION 1. AMENDATORY 43 O.S. 2001, Section 118, as last amended by Section 25, Chapter 1, O.S.L. 2007 (43 O.S. Supp. 2007, 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~~ 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 the child. 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~~ Schedule of Basic Child Support Obligations assumes that all families incur certain child-rearing expenses and includes in the basic child support obligation an average amount to cover these expenses for various levels of the parents' combined income and number of children, comprised of housing, food, transportation, basic public educational expenses, clothing, and entertainment.

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.~~

~~e. 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.~~

~~e. 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.~~
- ~~e. 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. a. 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.~~

~~b. In cases of joint custody, where the parents share physical and legal custody of at least one of their natural or legally adopted children, the child support obligation for each parent shall be calculated by applying the child support guidelines.~~

- ~~e. In all cases 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. When the obligee is participating in the Department of Human Services child care subsidy program as provided under Section 230.50 of Title 56 of the Oklahoma Statutes, the Child Care Eligibility/Rates Schedule established by the Department shall be used to determine the amount to be treated as actual child care costs incurred. When applying the schedule to determine the family share copayment amount, the obligor's share of the base monthly obligation for child support and the obligee's gross income shall be considered as the obligee's monthly income. The actual child care costs incurred shall be the family share copayment amount indicated on the schedule which shall be allocated and paid monthly in the same proportion as base child support. The Department of Human Services shall promulgate rules, as necessary, to implement the provisions of this subparagraph.~~
- ~~e. 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.~~
- ~~d. 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.~~

~~e. 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 which includes, but is not limited to, an increase or decrease in income, changes in actual child care expenses, changes in medical or dental insurance, or when one of the children in the child support order reaches the age of majority or otherwise ceases to be entitled to support pursuant to the support order.~~

~~(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.~~

~~e. 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 using standard modification forms and the child support computation form provided for in Section 120 of this title.~~
- ~~(2) The standard modification forms and the standard child support computation form shall be submitted to the district or administrative court. The court shall review the modification forms to confirm that the child support obligation complies with the child support guidelines and that all necessary parties pursuant to Section 112 of this title have been notified. If the court approves the modification forms, they shall be filed with the court.~~
- ~~f. If the district court refuses to consider the parents' agreed modification order or the parents do not agree to a modification of the child support order, a parent may request a modification through the Department of Human Services Child Support Enforcement Division, hereinafter referred to as the "Department", when the~~

~~child support services are being provided under the state child support plan as provided in Section 237 of Title 56 of the Oklahoma Statutes. If the parent does not have an open case with the Department, the parent shall make application for services and complete a request for review;~~

~~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;~~

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

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

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 118A of Title 43, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Adjusted Gross Income" (AGI) means the net determination of the income of a parent, calculated by modifying the gross income of the parent as follows:

- a. adding to the gross income of the parent any social security benefit paid to the child on the account of the parent,
- b. deducting from gross income the amount of any support alimony arising in a prior case to the extent that payment is actually made,
- c. deducting from gross income any deductions as set forth for other children for whom the parent is legally responsible and is actually supporting, pursuant to Section 4 of this act, and
- d. deducting the amount of reasonable expenses of the parties attributable to debt service for preexisting, jointly acquired debt of the parents;

2. "Base child support obligation" means the amount of support displayed on the Schedule of Basic Child Support Obligations which corresponds to the combined AGI of both parents and the number of children for whom support is being determined. This amount is rebuttably presumed to be the appropriate amount of basic child support to be provided by both parents in the case immediately under consideration, prior to consideration of any adjustments for medical and child care costs, and any other additional expenses;

3. "Current Monthly Child Support Obligation" means the base child support obligation and the proportional share of any medical insurance and annualized child care costs;

4. "Custodial person" means a parent or third-party caretaker who has physical custody of a child more than one hundred eighty-two (182) days per year;

5. "Noncustodial parent" means a parent who has physical custody of a child one hundred eighty-two (182) days per year or less;

6. "Obligor" means the person who is required to make payments under an order for support;

7. "Obligee" or "person entitled" means:

- a. a person to whom a support debt or support obligation is owed,
- b. the Department of Human Services or a public agency of another state that has the right to receive current or accrued support payments or that is providing support enforcement services, or
- c. a person designated in a support order or as otherwise specified by the court;

8. "Other contributions" means recurring monthly medical expenses and visitation transportation costs that are not included in the current monthly child support obligation;

9. "Overnight" means the child is in the physical custody and control of a parent for an overnight period of at least twelve (12) hours, and that parent has made a reasonable expenditure of resources for the care of the child;

10. "Parent" means an individual who has a parent-child relationship under the Uniform Parentage Act;

11. "Parenting time adjustment" means an adjustment to the base child support amount based upon parenting time; and

12. "Payor" means any person or entity paying monies, income, or earnings to an obligor. In the case of a self-employed person, the "payor" and "obligor" may be the same person.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 118B of Title 43, unless there is created a duplication in numbering, reads as follows:

A. As used in this act:

1. "Gross income" 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. tips
- d. commissions,
- e. bonuses,
- f. severance pay, and
- g. military pay, including hostile fire or imminent danger pay, combat pay, family separation pay, or hardship duty location pay; and

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. support alimony being received from someone other than the other parent in this case,
- g. annuities,
- h. social security benefits,

- i. workers' compensation benefits,
- j. unemployment insurance benefits,
- k. disability insurance benefits,
- l. gifts,
- m. prizes,
- n. gambling winnings,
- o. lottery winnings, and
- p. royalties.

B. Income specifically excluded is:

1. Actual child support received for children not before the court;
2. Adoption Assistance subsidy paid by the Department of Human Services;
3. 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;
4. The income of the child from any source, including, but not limited to, trust income and social security benefits drawn on the disability of the child; and

5. Payments received by the parent for the care of foster children.

C. 1. For purposes of computing gross income of the parents, gross income shall include for each parent whichever is the most equitable of:

- a. all actual monthly income described in this section, plus such overtime and supplemental income as the court deems equitable,
- b. the average of the gross monthly income for the time actually employed during the previous three (3) years,
- c. the minimum wage paid for a forty-hour week, or
- d. gross monthly income imputed as set forth in subsection D of this section.

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

D. Imputed income.

1. Instead of using the actual or average income of a parent, the court may impute gross income to a parent under the provisions of this section if equitable.

2. The following factors may be considered by the court when making a determination of willful and voluntary underemployment or unemployment:

- a. whether a parent has been determined by the court to be willfully or voluntarily underemployed or unemployed, including whether unemployment or underemployment for the purpose of pursuing additional training or education is reasonable in light of the obligation of the parent to support his or her children and, to this end, whether the training or education will ultimately benefit the child in the case immediately under consideration by increasing the

parent's level of support for that child in the future,

- b. when there is no reliable evidence of income,
- c. the past and present employment of the parent,
- d. the education, training, and ability to work of the parent,
- e. the lifestyle of the parent, including ownership of valuable assets and resources, whether in the name of the parent or the current spouse of the parent, that appears inappropriate or unreasonable for the income claimed by the parent,
- f. the role of the parent as caretaker of a handicapped or seriously ill child of that parent, or any other handicapped or seriously ill relative for whom that parent has assumed the role of caretaker which eliminates or substantially reduces the ability of the parent to work outside the home, and the need of that parent to continue in that role in the future, or
- g. any additional factors deemed relevant to the particular circumstances of the case.

E. Self-employment income.

1. Income from self-employment includes income from, but not limited to, business operations, work as an independent contractor or consultant, sales of goods or services, and rental properties, less ordinary and reasonable expenses necessary to produce such income.

2. A determination of business income for tax purposes shall not control for purposes of determining a child support obligation. Amounts allowed by the Internal Revenue Service for accelerated depreciation or investment tax credits shall not be considered reasonable expenses.

3. 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.

F. Fringe benefits.

1. Fringe benefits for inclusion as income or in-kind remuneration received by a parent in the course of employment, or operation of a trade or business, shall be counted as income if they significantly reduce personal living expenses.

2. Such fringe benefits might include, but are not limited to, company car, housing, or room and board.

3. Basic Allowance for Housing, Basic Allowance for Subsistence, and Variable Housing Allowances for service members are considered income for the purposes of determining child support.

4. Fringe benefits do not include employee benefits that are typically added to the salary, wage, or other compensation that a parent may receive as a standard added benefit, such as employer contributions to portions of health insurance premiums or employer contributions to a retirement or pension plan.

G. Social Security Title II benefits.

1. Social Security Title II benefits received by a child shall be included as income to the parent on whose account the benefit of the child is drawn and applied against the support obligation ordered to be paid by that parent. If the benefit of the child is drawn from the disability of the child, the benefit of the child is not added to the income of either parent and not deducted from the obligation of either parent.

2. Child support greater than social security benefit.

If the child support award due after calculating the child support guidelines is greater than the social security benefit received on behalf of the child, the obligor shall be required to pay the amount exceeding the social security benefit as part of the child support award in the case.

3. Child support equal to or less than social security benefits.

- a. If the child support award due after calculating the child support guidelines is less than or equal to the social security benefit received on behalf of the child, the child support obligation of that parent is met and no additional child support amount must be paid by that parent.
 - b. Any social security benefit amounts which are greater than the support ordered by the court shall be retained by the caretaker for the benefit of the child and shall not be used as a reason for decreasing the child support order or reducing arrearages.
 - c. The child support computation form shall include a notation regarding the use of social security benefits as offset.
- 4.
- a. Calculation of child support as provided in subsection F of this section shall be effective no earlier than the date on which the motion to modify was filed.
 - b. The court may determine if, under the circumstances of the case, it is appropriate to credit social security benefits paid to the custodial person prior to a modification of child support against the past-due child support obligation of the noncustodial parent.
 - c. The noncustodial parent shall not receive credit for any social security benefits paid directly to the child.
 - d. Any credit granted by the court pursuant to subparagraph b of this paragraph shall be limited to the time period during which the social security benefit was paid, or the time period covered by a lump sum for past social security benefits.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 118C of Title 43, unless there is created a duplication in numbering, reads as follows:

A. Deductions for other children of either parent who are qualified under this section may be considered by the court for the purpose of reducing the gross income of the parent. Adjustments are available for a child:

1. Who is the biological, legal, or adopted child of the parent;

2. Who was born prior to the child in the case under consideration;

3. Whom the parent is actually supporting; and

4. Who is not before the court to set, modify, or enforce support in the case immediately under consideration.

B. Children for whom support is being determined in the case under consideration, stepchildren, and other minors in the home that the parent has no legal obligation to support shall not be considered in the calculation of this deduction.

C. If the court finds a parent has a parent-child relationship with a child not before the court, the court may grant a deduction for that child as set forth in subsection D of this section.

D. Calculation of deduction for qualified other children.

1. Out-of-home children.

a. To receive a deduction against gross income for child support provided pursuant to a court order for qualified other children whose primary residence is not in the home of the parent seeking deduction, the parent shall establish the existence of a support order and provide documented proof of support paid for the other child consistently over a reasonable and extended period of time prior to the initiation of the proceeding that is immediately under consideration by

the tribunal, but in any event, such time period shall not be less than twelve (12) months.

b. Documented proof of support includes:

- (1) physical evidence of monetary payments to the caretaker of the child, such as canceled checks or money orders, and
- (2) evidence of payment of child support under another child support order, such as a payment history from a tribunal clerk or child support office or from the Internet child support payment history of the Department of Human Services.

c. The available deduction against gross income for either parent's qualified children not in the home of the parent is the actual documented court-ordered current monthly child support obligation of the qualified other children, averaged to a monthly amount of support paid over the most recent twelve-month period.

2. In-home children.

a. To receive a deduction against gross income for qualified prior-born other children whose primary residence is with the parent seeking deduction, but who are not part of the case being determined, the parent must establish a legal duty of support and that the child resides with the parent more than fifty percent (50%) of the time. Documents that may be used to establish that the parent and child share the same residence include the school or medical records showing the address of the child and the utility bills of the parents mailed to the same address, court orders reflecting the parent is the primary residential parent or that the parent shares the parenting time of the child fifty percent (50%) of the time.

- b. The deduction for other qualified children shall be computed as a hypothetical child support order calculated using the deduction worksheet, the gross income of the parents, the total number of qualified other children living in the home of the parent, and the Child Support Guideline Schedule. The deduction worksheet shall be prepared by the Department of Human Services and shall be published by the Administrative Office of the Courts.

- c. The available deduction against gross income for the qualified in-home children of either parent is seventy-five percent (75%) of a hypothetical support order calculated according to these Guidelines, using the Deduction Worksheet, the gross income of the parent less any self-employment taxes paid, the total number of qualified other children living in the home of the parents, and the Child Support Guideline Schedule.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 118D of Title 43, unless there is created a duplication in numbering, reads as follows:

A. 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 Title 43 of the Oklahoma Statutes shall be used for such computation. The child support obligation of each parent shall be computed. The share of the obligor shall be paid monthly to the obligee and shall be due on a specific date.

B. In cases in which one parent has sole physical 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.

C. 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.

D. 1. In cases of split physical custody, where each parent is awarded physical custody of at least one of the children for whom the parents are responsible, the child support obligation for each parent shall be calculated by application of the child support guidelines for each custodial arrangement.

2. 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.

E. Child support shall be computed as set forth in subsections A through D of this section in every case, regardless of whether the custodial arrangement is designated as sole custody or joint custody.

F. 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, extraordinary costs, and the satisfaction of jointly acquired debt of the parents used as a deduction from the gross income of a parent.

G. Transportation expenses of a child between the homes of the parents may be divided between the parents in proportion to their adjusted gross income, so long as the payment of such expenses does not significantly reduce the ability of the custodial parent to provide for the basic needs of the child.

H. The social security numbers of both parents and the children who are the subject of a paternity or child support order shall be included in the support order summary form provided for in Section 120 of Title 43 of the Oklahoma Statutes.

I. A completed support order summary form shall be presented to the judge with all paternity and child support orders where the Department of Human Services is not a necessary party pursuant to Section 112 of Title 43 of the Oklahoma Statutes. No such order shall be signed by the judge without presentation of the form.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 118E of Title 43, unless there is created a duplication in numbering, reads as follows:

A. Parenting time adjustment.

1. The adjustment may be granted based upon a court order or agreement that the noncustodial parent is granted at least one hundred twenty-one (121) overnights of parenting time per twelve-month period with the children in the case under consideration.

2. Average parenting time. If there are multiple children for whom support is being calculated, and the parent seeking the parenting time adjustment is spending a different amount of time with each child, then an annual average of parenting time with all of the children shall be calculated.

B. In cases of split physical custody, either parent may be eligible for a parenting time adjustment.

C. Parenting time adjustments are not mandatory, but presumptive. The presumption may be rebutted in a case where the circumstances indicate the adjustment is not in the best interest of the child or that the increased parenting time by the noncustodial parent does not result in greater expenditures which would justify a reduction in the support obligation.

D. Reduction in child support obligation for additional parenting time.

1. If the parent receiving the parenting time adjustment is granted one hundred twenty-one (121) or more overnights of parenting time per twelve-month period with a child, or an average of one hundred twenty-one (121) overnights with all applicable children, a reduction to the child support obligation of the parent may be made as set forth in this section.

2. A parenting time adjustment 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 a factor determined by the number of overnights granted to the

noncustodial parent. The result shall be designated the adjusted combined child support obligation. In a case where the noncustodial parent is granted:

- a. one hundred twenty-one (121) overnights to one hundred thirty-one (131) overnights, the factor shall be two (2),
- b. one hundred thirty-two (132) overnights to one hundred forty-three (143) overnights, the factor shall be one and three-quarters (1.75), or
- c. one hundred forty-four (144) or more overnights, the factor shall be one and one-half (1.5).

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

4. a. The percentage of time a child spends with each parent shall be calculated by determining the number of overnights for each parent and dividing that number by three hundred sixty-five (365).
- b. The share of the adjusted combined child support obligation for each parent 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.
- c. 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 (\$0.00).

5. 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 event shall the provisions of this paragraph be

construed to authorize or allow the payment of child support by a parent having more than two hundred five (205) overnights.

E. 1. Failure to exercise or exercising more than the number of overnights upon which the parenting time adjustment is based, is a material change of circumstances.

2. If the court finds that the obligor has failed to exercise a significant number of the overnights provided in the court order necessary to receive the parenting time adjustment, in a proceeding to modify the child support order, the court may establish the amount that the obligor has underpaid due to the application of the parenting time adjustment as a child support judgment that may be enforced in the same manner as any other child support judgment.

3. The court may rule that the obligor will not receive the parenting time adjustment for the next twelve-month period. After a twelve-month period during which the obligor did not receive the parenting time adjustment, the obligor may petition the court to modify the child support order. The obligor may be granted a prospective parenting time adjustment upon a showing that the obligor has actually exercised the threshold number of overnights in the preceding twelve months. No retroactive modification or credit from the child support guidelines amount shall be granted based on this section.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 118F of Title 43, unless there is created a duplication in numbering, reads as follows:

A. The court shall enter a medical support order in any case in which an ongoing child support order is entered or modified. Medical support, for the purpose of this section, is defined as health insurance, cash medical support, or a combination of both.

1. "Health insurance" includes:

- a. fee for service,
- b. health maintenance organization,
- c. preferred provider organization, and

- d. other types of coverage, including, but not limited to, Indian Health Services or Defense Eligibility Enrollment Reporting System (DEERS), which is available to either parent under which medical services could be provided to the dependent children.

2. "Cash medical support" means:

- a. an amount ordered to be paid toward the cost of health coverage provided by a public entity or by a person other than the parents through employment or otherwise, or
- b. fixed periodic payments for ongoing medical costs.

B. In entering a temporary order, the court shall order that any health insurance coverage in effect for the child continue in effect pending the entering of a final order, unless the court finds that the existing health insurance coverage is not reasonable in cost or is not accessible as defined in subsection D of this section. If there is no health insurance coverage in effect for the child or if the insurance in effect is not available at a reasonable cost or is not accessible, the court shall order health care coverage for the child as provided in this subsection, unless the court makes a written finding that good cause exists not to enter a temporary medical support order.

C. On entering a final order, the court shall:

- 1. Make specific orders with respect to the manner in which health care coverage is to be provided for the child, in accordance with the priorities identified in subsection F of this section; and
- 2. Require the parent ordered to provide health care coverage for the child as provided under this section to produce evidence to the court's satisfaction that the parent has applied for or secured health insurance or has otherwise taken necessary action to provide for health care coverage for the child, as ordered by the court.

D. When the court enters a medical support order, the medical support order must be reasonable in cost and accessible.

1. "Reasonable in cost" means that the actual premium cost paid by the insured does not exceed five percent (5%) of the gross income of the responsible parent. To calculate the actual premium cost of the health insurance, the court shall:

- a. deduct from the total insurance premium the cost of coverage for the parent and any other adults in the household,
- b. divide the remainder by the number of dependent children being covered, and
- c. multiply the amount per child by the number of children in the child support case under consideration.

2. "Accessible health insurance" means that:

- a. there are available providers appropriate to meet the primary individual health care needs of the children no more than sixty (60) miles one way from the primary residence of the children.
- b. If a parent has available health coverage which includes an option that would be accessible to the child, but the parent has not currently enrolled in that option, the court may require the parent to change existing coverage to an option that is accessible to the child.

3. If the parties agree or the court finds good cause exists, the court may order medical coverage in excess of the five percent (5%) cost standard or the sixty-mile distance standard.

E. The court shall consider the cost and quality of health insurance coverage available to the parties and shall give priority to health insurance coverage available through the employment of one of the parties if the coverage meets the standards in subsection D of this section. If both parents have coverage available, the court shall give priority to the preference of the custodial person.

F. In determining the manner in which health care coverage for the child is to be ordered, the court shall enter an order in accordance with the following priorities and subsection D of this section, unless a party shows good cause why a particular order would not be in the best interest of the child:

1. If health insurance is available for the child through the employment of a parent or membership in a union, trade association, or other organization, the court shall order that parent to enroll the child in the health insurance of the parent;

2. If health insurance is not available for the child under paragraph 1 of this subsection but is available to a parent from another source, the court may order that parent to provide health insurance for the child;

3. If the court finds that neither parent has access to private health insurance at a reasonable cost, the court shall order the parent awarded the exclusive right to designate the child's primary residence or, to the extent permitted by law, the other parent to apply immediately on behalf of the child for participation in a government medical assistance program or health plan. If the child participates in a government medical assistance program or health plan, the court shall order cash medical support under paragraph 4 of this subsection, in accordance with rules promulgated by the Oklahoma Health Care Authority and the Oklahoma Department of Human Services;

4. Cash medical support.

a. If health insurance coverage is not available for the child under paragraph 1 or 2 of this subsection, the court shall determine the amount to be treated as the actual monthly medical costs for the child and order the obligor to pay, in addition to the obligor's current child support obligation, an amount as cash medical support for the child.

b. The cash medical support order shall not exceed the pro rata share of the actual monthly medical expenses paid for the child, or five percent (5%) of the gross monthly income of the obligor, whichever is less.

- c. (1) In determining the actual monthly medical costs for the child, the court shall determine:
 - (a) for children who are participating in a government medical assistance program or health plan, an amount consistent with rules promulgated by the Oklahoma Health Care Authority determining the rates established for the cost of providing medical care through a government medical assistance program or health plan, or
 - (b) for children who are not participating in a government medical assistance program or health plan, an amount consistent with rules promulgated by the Department of Human Services determining the average monthly cost of health care for uninsured children.
- (2) The court may also consider:
 - (a) proof of past medical expenses incurred by either parent for the child,
 - (b) the current state of the health of the child, and
 - (c) any medical conditions of the child that would result in an increased monthly medical cost.

G. An order requiring the payment of cash medical support under paragraph 4 of subsection F of this section must allow the obligor to discontinue payment of the cash medical support if:

1. Health insurance for the child becomes available to the obligor at a reasonable cost; and

2. The obligor:

- a. enrolls the child in the insurance plan, and

- b. provides the obligee and, in a Title IV-D case, the Title IV-D agency, the information required under paragraph 2 of subsection C of this section.

H. 1. The actual health 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.

2. If the obligor pays the health insurance premium, the obligor shall receive credit against the base child support obligation for the allocated share of the health insurance premium for which the obligee is responsible.

3. If the obligee pays the health insurance premium, the obligor shall pay the allocated share of the health insurance premium to the obligee in addition to the base child support obligation.

4. The parent providing the health insurance coverage shall furnish to the other parent and to the Child Support Enforcement Division of the Department of Human Services, if services are being provided pursuant to Title IV, Part D of the Social Security Act, 42 U.S.C. Section 601 et seq., with timely written documentation of any change in the amount of the health insurance cost premium, carrier, or benefits within thirty (30) days of the date of the change. Upon receiving timely notification of the change of cost, the other parent is responsible for his or her percentage share of the changed cost of the health insurance.

5. If the court finds that the obligor has underpaid child support due to changes in the cost of health insurance, the amount of underpayment may established by the court and enforced in the same manner as any other delinquent child support judgment. If the court finds that the obligor has overpaid due to changes in health insurance coverage cost, the overpayment shall be satisfied:

- a. by offset against any past-due child support owed to the obligee, or

- b. by adjustment to the future child support amount over a thirty-six-month period.

I. 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 paid or reimbursed by insurance or included in a cash medical support order pursuant to paragraph 4 of subsection F of this section shall be allocated in the same proportion as the adjusted gross income of the parents as separate items that are not added to the base child support obligation. If reimbursement is required, the parent who incurs the expense shall provide the other parent with proof of the expense within forty-five (45) days of receiving the Explanation of Benefits from the insurance provider or other proof of the expense if the expense is not covered by insurance. The parent responsible for reimbursement shall pay his or her portion of the expense within forty-five (45) days of receipt of documentation of the expense.

J. In addition to any other sanctions ordered by the court, a parent incurring uninsured dependent health expenses or increased insurance premiums may be denied the right to receive credit or reimbursement for the expense or increased premium if that parent fails to comply with subsections H and I of this section.

K. The parent desiring an adjustment to the ongoing child support order due to a change in the amount of dependent health insurance premium shall initiate a review of the order in accordance with Section 10 of this act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 118G of Title 43, unless there is created a duplication in numbering, reads as follows:

A. The district or administrative court shall determine the actual annualized 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. When a parent is participating in the Department of Human Services child care subsidy program as provided under Section 230.50 of Title 56 of the Oklahoma Statutes, the Child Care Eligibility/Rates Schedule established by the Department shall be used to determine the amount to be treated as actual child care costs incurred. When applying the schedule to determine the family share copayment amount, the share of the base monthly obligation for child support of the non-responsible parent and the gross income of the obligee shall be considered as the monthly income of the obligee. The actual child care costs incurred shall be the family share copayment amount indicated on the schedule which shall be allocated and paid monthly in the same proportion as base child support. The Department of Human Services shall promulgate rules, as necessary, to implement the provisions of this section.

C. The actual annualized child care costs incurred for the purposes authorized by this section shall be allocated and added to the base child support order, and shall be part of the final child support order.

D. The district or administrative court shall require the parent incurring child care expenses to notify the obligor within forty-five (45) days of any change in the amount of the child care costs that would affect the annualized child care amount as determined in the order.

E. A parent may be allowed to provide child care incurred during employment, employment search, or while the other parent is attending school or training if the court determines it would lead to a significant reduction in the actual annualized child care cost.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 118H of Title 43, unless there is created a duplication in numbering, reads as follows:

A. No deviation in the amount of the child support obligation shall be made which seriously impairs the ability of the obligee in the case under consideration to maintain minimally adequate housing, food, and clothing for the children being supported by the order or to provide other basic necessities, as determined by the court.

B. 1. The district or administrative court may deviate from the amount of child support indicated by the child support guidelines if the deviation is in the best interests of the child, and:

2. a. the amount of support so indicated is unjust or inappropriate under the circumstances,
- b. the parties are represented by counsel and have agreed to a different disposition, or
- c. one party is represented by counsel and the deviation benefits the unrepresented party.

C. 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. The findings of fact shall include:

1. The reasons the court deviated from the presumptive amount of child support that would have been paid pursuant to the guidelines,

2. The amount of child support that would have been required under the guidelines if the presumptive amount had not been rebutted, and

3. A finding by the court that states how, in its determination:

- a. the best interests of the child who is subject to the support award determination are served by deviation from the presumptive guideline amount, and
- b. application of the guidelines would be unjust or inappropriate in the particular case before the tribunal.

D. In instances of extreme economic hardship, deviation from the guidelines may be considered when the court finds the deviation is supported by the evidence and is not detrimental to the best interests of the child before the court.

E. If a parent is residing with a child with extraordinary medical needs not covered by insurance or other special needs, the court must consider all resources available for meeting such needs, including those available from public agencies and other responsible adults.

F. In cases where the child is in the legal custody of the Department of Human Services, the child protection or foster care agency of another state or territory, or any other child-caring entity, public or private, the court may consider a deviation from the presumptive child support order if the deviation will assist in accomplishing a permanency plan or foster care plan for the child that has a goal of returning the child to the parent, and the parents need to establish an adequate household or to otherwise adequately prepare herself or himself for the return of the child clearly justifies a deviation for this purpose.

G. Extraordinary educational expenses.

1. Extraordinary educational expenses may be added to the presumptive child support as a deviation. Extraordinary educational expenses include, but are not limited to, tuition, room and board, books, fees, and other reasonable and necessary expenses associated with special needs education for a child with a disability under the Individuals with Disabilities Educational Act that are appropriate to the financial abilities of the parent.

2. In determining the amount of deviation for extraordinary educational expenses, scholarships, grants, stipends, and other cost-reducing programs received by or on behalf of the child shall be considered.

H. Special expenses.

1. Special expenses incurred for child rearing which can be quantified may be added to the child support obligation as a deviation from the Current Monthly Child Support Obligation. Such expenses include, but are not limited to, private school tuition, camp, music or art lessons, travel, school-sponsored extra-curricular activities, such as band, clubs, and athletics, and other activities intended to enhance the athletic, social or cultural

development of a child, but that are not otherwise required to be used in calculating the child support order as are health insurance premiums and work-related child care costs.

2. Some factors the court may consider in determining whether to deviate for such extraordinary expenses include: a history of expenditure for such activities, the financial ability of the parents to provide such activities, and that the child has exhibited an extraordinary aptitude for the activity.

3. In determining the amount of deviation for extraordinary educational expenses, scholarships, grants, stipends, and other cost-reducing programs received by or on behalf of the child shall be considered.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 118I of Title 43, unless there is created a duplication in numbering, reads as follows:

A. 1. Child support orders may be modified upon a material change in circumstances which includes, but is not limited to, an increase or decrease in the needs of the child, an increase or decrease in the income of the parents, changes in actual annualized child care expenses, changes in the cost of medical or dental insurance, or when one of the children in the child support order reaches the age of majority or otherwise ceases to be entitled to support pursuant to the support order.

2. Modification of the Child Support Guideline Schedule shall not alone be a material change in circumstances for child support orders.

3. 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 have 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. When the last child of the parents ceases to be entitled to support, the child support obligation is automatically terminated as to prospective child support only.

D. 1. 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.

2. 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.

3. Requested information may include verification of income, proof and cost of medical insurance of the children, 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.

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

5. a. If the parents agree to a modification of a child support order, their agreement shall be in writing using standard modification forms and the child

support computation form provided for in Section 120 of Title 43 of the Oklahoma Statutes.

- b. The standard modification forms and the standard child support computation form shall be submitted to the district or administrative court. The court shall review the modification forms to confirm that the child support obligation complies with the child support guidelines and that all necessary parties pursuant to Section 112 of Title 43 of the Oklahoma Statutes have been notified. If the court approves the modification forms, they shall be filed with the court.

SECTION 11. AMENDATORY 43 O.S. 2001, Section 134, is amended to read as follows:

Section 134. A. In any divorce decree which provides for periodic alimony payments, the court shall plainly state, at the time of entering the original decree, the dollar amount of all or a portion of each payment which is designated as support and the dollar amount of all or a portion of the payment which is a payment pertaining to a division of property. The court shall specify in the decree that the payments pertaining to a division of property shall continue until completed. Payments pertaining to a division of property are irrevocable and not subject to subsequent modification by the court making the award. An order for the payment of money pursuant to a divorce decree, whether designated as support or designated as pertaining to a division of property shall not be a lien against the real property of the person ordered to make such payments unless the court order specifically provides for a lien on real property. An arrearage in payments of support reduced to a judgment may be a lien against the real property of the person ordered to make such payments.

B. The court shall also provide in the divorce decree that upon the death or remarriage of the recipient, the payments for support, if not already accrued, shall terminate. The court shall order the judgment for the payment of support to be terminated, and the lien released upon the presentation of proper proof of death of the recipient unless a proper claim is made for any amount of past-due support payments by an executor, administrator, or heir within

ninety (90) days from the date of death of the recipient. Upon proper application the court shall order payment of support terminated and the lien discharged after remarriage of the recipient, unless the recipient can make a proper showing that some amount of support is still needed and that circumstances have not rendered payment of the same inequitable, provided the recipient commences an action for such determination, within ninety (90) days of the date of such remarriage.

C. The voluntary cohabitation of a former spouse with a member of the opposite sex shall be a ground to modify provisions of a final judgment or order for alimony as support. If voluntary cohabitation is alleged in a motion to modify the payment of support, the court shall have jurisdiction to reduce or terminate future support payments upon proof of substantial change of circumstances of either party to the divorce relating to need for support or ability to support. As used in this subsection, the term cohabitation means the dwelling together continuously and habitually of a man and a woman who are in a private conjugal relationship not solemnized as a marriage according to law, or not necessarily meeting all the standards of a common-law marriage. The petitioner shall make application for modification and shall follow notification procedures used in other divorce decree modification actions. The court that entered the divorce decree shall have jurisdiction over the modification application.

D. Except as otherwise provided in subsection C of this section, the provisions of any divorce decree pertaining to the payment of alimony as support may be modified upon proof of changed circumstances relating to the need for support or ability to support which are substantial and continuing so as to make the terms of the decree unreasonable to either party. Modification by the court of any divorce decree pertaining to the payment of alimony as support, pursuant to the provisions of this subsection, may extend to the terms of the payments and to the total amount awarded; provided however, such modification shall only have prospective application.

E. Pursuant to the federal Uniformed Services Former ~~Spouse's~~ Spouses' Protection Act (PL 97-252), the, 10 U.S.C., Section 1408, a court may treat disposable retired or retainer pay payable to a military member either as property solely of the member or as property of the member and the spouse of the member. If a state

court determines that the disposable retired or retainer pay of a military member is marital property, the court shall award an amount consistent with the rank, pay grade, and time of service of the member at the time of separation.

F. The provisions of subsection D of this section shall have retrospective and prospective application with regards to modifications for the purpose of obtaining support or payments pertaining to a division of property on divorce decrees which become final after June 26, 1981. There shall be a two-year statute of limitations, beginning on the date of the final divorce decree, for a party to apply for division of disposable retired or retainer pay.

~~F. G.~~ The provisions of subsections C and D of this section shall have retrospective and prospective application with regards to modifications of the provisions of a final judgment or order for alimony as support, or of a divorce decree pertaining to the payment of alimony as support, regardless of the date that the order, judgment, or decree was entered.

SECTION 12. 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.~~

~~€.~~ 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 13. 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, or
- 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.

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 14. 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 15. 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 16. 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 17. 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 14 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 whom 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.

B. 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~~ the obligor cannot meet ~~his~~ the 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. 1. At the conference hearing, or if the obligor fails to appear for the hearing, the Department court shall determine enter an order 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 this subsection, 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 18. AMENDATORY 30 O.S. 2001, Section 2-108, is amended to read as follows:

Section 2-108. A. If any minor, having a parent or parents living, has property, the income of which is sufficient for his or her maintenance and education in a manner more expensive than such parent or parents can reasonably afford, regard being had to all of the circumstances of the case, the expenses of the education and maintenance of such minor may be defrayed out of the income of the property of the minor in whole or in part, as judged reasonable and as directed by the court. The charges ~~therefore~~ therefor may be allowed accordingly in the settlement of the accounts of the guardian of the minor.

B. Except as provided in subsection A of this section:

1. Any order appointing a guardian of the minor who has a living parent ~~living~~ or other person legally responsible for the support of the child shall:

- a. provide for the payment of child support by the each parent or other responsible party pursuant to the Oklahoma child support guidelines as set forth in Sections 118 and 119 of Title 43 of the Oklahoma Statutes. Each parent, including parents who reside together, shall be individually ordered to pay the percentage of the total monthly child support obligation attributable to that parent, and
- b. contain an immediate income assignment provision pursuant to Section 115 of Title 43 of the Oklahoma Statutes-;

2. ~~The provisions of this subsection shall not apply to parents whose rights and responsibilities have been terminated to the child unless the termination order requires payment of child support.~~ court may defer the issue of establishment or enforcement of child support to the appropriate administrative or district court when child support services are being provided pursuant to the state child support plan as provided in Section 237 of Title 56 of the Oklahoma Statutes; and

3. Any guardianship or conservatorship for a minor created on or after December 1, 2000, shall comply with the provisions of this subsection. Guardianships or conservatorships for a minor in existence prior to December 1, 2000, shall comply with the provisions of this subsection as ordered by the court.

C. In any guardianship in which provision is made for the custody or support of a minor child or enforcement of an existing custody or support order or before hearing the matter or signing any orders, the court shall inquire whether public assistance money or medical support has been provided through the Department of Human Services, hereafter referred to as the Department, for the benefit of each child, or whether the Department is providing child support services pursuant to the state child support plan as provided in Section 237 of Title 56 of the Oklahoma Statutes. If public assistance money, medical support, or child support services have been provided for the benefit of the child, the Department shall be a necessary party for the adjudication of the debt due to the state, as defined in Section 238 of Title 56 of the Oklahoma Statutes, and for the adjudication of paternity, child support, and medical

insurance coverage for the minor children in accordance with federal regulations. When a guardianship action is filed, the petitioner shall give the Department notice of the action according to Section 2004 of Title 12 of the Oklahoma Statutes. The Department shall not be required to intervene in the action to have standing to appear and participate in the action. When the Department is a necessary party to the action, any orders concerning paternity, child support, medical support, or the debt due to the state shall be approved and signed by the Department.

SECTION 19. REPEALER 56 O.S. 2001, Section 233.1, is hereby repealed.

SECTION 20. Sections 1 through 11 of this act shall become effective July 1, 2009.

SECTION 21. Sections 12 through 19 of this act shall become effective November 1, 2008.

Passed the Senate the 21st day of May, 2008.

Presiding Officer of the Senate

Passed the House of Representatives the 23rd day of May, 2008.

Presiding Officer of the House
of Representatives