

ENROLLED SENATE
BILL NO. 945

By: Williamson of the Senate

and

Sullivan and Luttrell of
the House

An Act relating to child support; amending 21 O.S. 2001, Section 566, as amended by Section 1, Chapter 461, O.S.L. 2002 (21 O.S. Supp. 2006, Section 566), which relates to punishment for contempt; modifying enforcement of certain orders; modifying venue in certain actions; amending 56 O.S. 2001, Sections 237, as amended by Section 2, Chapter 219, O.S.L. 2006, 237.10, 238.6B, as amended by Section 59, Chapter 116, O.S.L. 2006, 240.3, as amended by Section 4, Chapter 219, O.S.L. 2006 and 240.23, as amended by Section 6, Chapter 314, O.S.L. 2002 (56 O.S. Supp. 2006, Sections 237, 238.6B, 240.3 and 240.23), which relate to administrative orders and support determinations; adding requirement for assessment of a fee and costs; providing for enforcement of an administrative order by district court; modifying certain testing requirement; deleting certain procedure provisions on certain orders; allowing enforcement of certain orders by indirect contempt; repealing 10 O.S. 2001, Section 78, which relates to court order for maintenance of a child; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2001, Section 566, as amended by Section 1, Chapter 461, O.S.L. 2002 (21 O.S. Supp. 2006, 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 pronounced⁷, and

b. proof of noncompliance with the order,

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

~~C. Any court in this state of competent jurisdiction where venue is proper for collection of child support through income assignment as provided by subsection I of Section 1171.3 of Title 12 of the Oklahoma Statutes~~ 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 ~~of any other court in this state of competent jurisdiction~~ 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:

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

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

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

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

SECTION 2. AMENDATORY 56 O.S. 2001, Section 237, as amended by Section 2, Chapter 219, O.S.L. 2006 (56 O.S. Supp. 2006, Section 237), is amended to read as follows:

Section 237. A. The Oklahoma Department of Human Services, hereinafter referred to as "Department", as the single state agency designated to administer a statewide plan for child support, is authorized, in accordance with Title IV, Part D, of the Federal Social Security Act, as amended, 42 U.S.C., Section 651 et seq., to provide child support services, parent location services, and paternity determination services to enable participation in programs established by federal law.

B. The Department is authorized to:

1. Accept, transfer, and expend funds made available by the government of the United States, the State of Oklahoma, and public or private sources, for the purpose of carrying out the provisions of this section;

2. Adopt rules for child support services;

3. Initiate legal actions and appeal orders as necessary to implement the provisions of this section;

4. Enter into contracts or agreements necessary to administer this section; and

5. Require agencies and political subdivisions of this state, its counties and municipalities, persons, sole proprietorships, corporations, utilities, partnerships, associations, organizations, and other legal entities doing business in this state to provide information to the Child Support Enforcement Division to assist in locating individuals and in establishing and enforcing court orders.

C. 1. An applicant for or recipient of Temporary Assistance for Needy Families, hereinafter referred to as "recipient", shall be required to assign to the Department any rights to or support from any other person which the recipient may have or for a child for whom the recipient is applying or receiving assistance in accordance with federal regulations and state law.

2. When an order has been entered which provides for payment of child support and the obligee pursuant to the order relinquishes physical custody of the child to another custodian, without obtaining a modification of the order to change custody or to redirect the support to the new custodian, the relinquishment shall transfer the child support obligation pursuant to the order to the new custodian or the Department if services are being provided under the state child support plan as provided in this section. The transfer of the obligation shall terminate when the new custodian no longer has physical custody of the child, except for the amount of unpaid support still owing to the custodian or to the Department.

3. In all cases in which support services are being provided under the state child support plan as provided in this section, support payments shall be made by the obligor to the Department or its designee. If a court has ordered support payments to be made to the recipient or to the applicant, the Department may send a notice of the assignment or application to the obligor requiring that all support payments be made to the Division or its designee. The notice shall include:

- a. a statement that the assignment or application has been made,
- b. the style and number of the case in which support was ordered,
- c. a statement that all payments so ordered shall be made to the Department or its designee, and
- d. a statement that the ~~obligor's~~ earnings and income of the obligor are assigned for collection of support monies owed.

4. A notice to redirect the payments shall be sent to the obligor by regular mail with proof of mailing from the United States Postal Service. If, after notice of the redirection, the obligor does not make payments to the Department as provided in the notice, the payments shall not be credited to the amount owed. The obligor shall notify the Department of any change of address, the name and address of the current employer, and access to health insurance and other insurance policy information within thirty (30) days of any change.

D. When the right to receive support has been assigned to the Child Support Enforcement Division or upon proper application by an obligor or by an individual not receiving Temporary Assistance for Needy Families, the Division may petition the district court or the Office of Administrative Hearings: Child Support, an administrative court of the Oklahoma Department of Human Services, for an order:

1. Requiring the obligor to provide health insurance for the dependent children whenever it is available through employment or other group plan regardless of whether the obligor has insurance coverage available at that time or there has been a change of circumstances;

2. Establishing paternity;

3. Requiring medical support, child support, or other support;

4. Enforcing orders for paternity, medical support, child support, or other support;

5. Requiring that the obligor keep the Division informed of the name and address of the current employer of the obligor and of any health insurance or other insurance policy information of the obligor within thirty (30) days of any change;

6. Providing for collection and distribution of child support monies; and

7. Assisting in the location of absent parents and their assets, in cooperation with federal agencies, other agencies of this state and of other states, territories, and foreign nations

requesting assistance with the enforcement of support orders entered in the United States and elsewhere.

E. The Division may petition the district or administrative court to modify any order for support regardless of whether there has been a change of circumstances.

F. A reasonable fee and costs may be assessed for services to individuals not receiving Temporary Assistance for Needy Families nor receiving any other services or programs funded by Title IV, Part A of the Federal Social Security Act, as amended, 42 U.S.C., Sections 602 through 619 pursuant to rules adopted by the Department.

G. Child support payments made to the Division pursuant to this section shall be deposited in the Child Support Escrow Account for distribution as may be required by Section 235 of this title, or by 42 U.S.C., Section 651 et seq. Fees or reimbursements of costs collected by the Department shall be deposited in the Administration Fund of the Department and may be used and expended by the Department for the purposes of carrying out the provisions of this section.

H. Except as otherwise authorized by law, all files and records concerning the assistance and services provided under this section or concerning a putative father of a child born out of wedlock are confidential. Release of information from the files and records shall be consistent with federal law and shall be restricted to purposes directly connected with the administration of the child support collection, paternity determination, parent location, or other public assistance programs. Information may be released to public officials under rules adopted by the Department, consistent with federal rules or regulations.

SECTION 3. AMENDATORY 56 O.S. 2001, Section 237.10, is amended to read as follows:

Section 237.10 Administrative orders entered pursuant to ~~Title 56 of the Oklahoma Statutes, if docketed,~~ this title shall be docketed in the county of the underlying district court order, if any. If there is no underlying district court order filed in this state, the administrative order shall be filed in the county of

residence of the custodian of the child, or if the custodian resides out-of-state, in the county of residence of the obligor. The administrative order shall be enforced by the district court in the same manner as an order of the district court.

SECTION 4. AMENDATORY 56 O.S. 2001, Section 238.6B, as amended by Section 59, Chapter 116, O.S.L. 2006 (56 O.S. Supp. 2006, Section 238.6B), is amended to read as follows:

Section 238.6B A. The Department of Human Services may serve a notice of paternity and support obligations on an individual alleged to be the parent of a child for whom paternity has not been judicially or administratively established. Venue for such action shall be, at the option of the Department, in the county where the mother, father or child resides. Service of the notice shall be in the same manner as a summons in a civil action pursuant to Section 2004 of Title 12 of the Oklahoma Statutes.

B. The notice shall be verified and have attached to it a copy of any acknowledgment of paternity and shall state:

1. The name and date of birth of any minor children, along with the name of the natural mother and custodian, if different than the mother or putative father;

2. The amount of child support and other support, including the amounts ordered pursuant to paragraph 3 of this subsection, to be ordered in accordance with the Child Support Guidelines provided in Section 118 of Title 43 of the Oklahoma Statutes;

3. The amount of reimbursement for the costs of the birth and the reasonable expenses of providing for said child which has accrued or is accruing, provided that the liability for the above costs shall be imposed for five (5) years preceding the issuance of the notice;

4. That health insurance for the child whenever such insurance is available through employment or other group health insurance plan and that payment of proportionate share of any unreimbursed health costs shall be required;

5. The amount of reimbursement requested for the costs of the genetic test to determine paternity, if any;

6. That an immediate income assignment will be effectuated for payment of current support and any judgments entered;

7. That in the absence of an acknowledgment of paternity, a notice to appear and show cause shall be issued to the putative father which directs the putative father to appear and show cause why the administrative judge should not determine him to be the father of any such children, liable for the support requested in the notice, for the costs accrued and accruing or the amount to be paid thereon;

8. That if paternity is disputed and no acknowledgment of paternity has been executed under the Uniform Parentage Act, the Administrative Law Judge shall enter an order directing genetic tests to determine paternity and advise the putative father that if he fails to appear he will be in default and an order will be entered against him. If the putative father is not excluded, and the statistical probability of paternity according to scientifically reliable genetic tests including, but not limited to, blood tests is at least ninety-nine percent (99%) ~~or less~~ and he is contesting the issue of paternity, he may request the Department to remove the action to district court to determine paternity. If the statistical probability of paternity is ~~greater than~~ ninety-nine percent (99%), ~~or the statistical probability is ninety nine percent (99%) or less~~ and the father does not request the Department to remove to district court within fourteen (14) days of the Department mailing the genetic test or other test results, determination of paternity shall become final for all intents and purposes and may be overturned only by appeal to district court. Any such request shall be in writing and served on the Department personally or by registered or certified mail;

9. That if the putative father fails to appear at the genetic testing, show cause, or any subsequent hearing or if no notice to appear for genetic testing was served and no hearing is requested on or before twenty (20) days from the date of service, the finding of paternity shall become final and a support order entered. The order shall be docketed with the district court in the county of residence of the custodian or the child. If neither the custodian nor the

child reside in the state, the order shall be docketed in the county of residence of the noncustodial parent. The support order shall be enforced in the same manner as an order of the district court;

10. That at any time after paternity is determined, the Department may set a hearing to determine the child support obligation, if child support has not already been established. Failure to appear at ~~such~~ the hearing will result in a support order being entered against the noncustodial parent; and

11. That if the mother and father have voluntarily signed an acknowledgment of paternity pursuant to the Uniform Parentage Act, the duly executed acknowledgment of paternity is considered a legal finding of paternity, subject to the right of any signatory to rescind the acknowledgment within the earlier of:

- a. sixty (60) days, or
- b. the date of an administrative or judicial proceeding relating to the child, including but not limited to a proceeding to establish a support order, in which the signatory is a party.

After the sixty-day period referred to in subparagraph a of this paragraph, a duly executed acknowledgment of paternity may be challenged in court only in accordance with the Uniform Parentage Act. The legal responsibilities, including but not limited to child support obligations, of any signatory arising from the acknowledgment may not be suspended during the challenge, except for good cause shown.

This paragraph shall not be interpreted to authorize the rescission of an acknowledgement of paternity if such rescission would be prohibited under applicable federal law.

C. The Department may accept voluntary acknowledgments of support liability and support amounts.

D. If the ~~father's~~ name of the father has not been entered on the child's birth certificate, the Department of Human Services shall notify the State Department of Health, Division of Vital Records who shall enter the ~~father's~~ name of the father, and if

known, the ~~father's~~ date of birth and the ~~father's~~ place of birth of the father, on the birth certificate.

E. If child support services are being provided pursuant to Section 237 of this title, prior to the issuance of the notice of paternity and support obligation, a father who denies paternity and who has not signed an acknowledgment of paternity under the Uniform Parentage Act may request that a genetic test be administered. The request for testing shall be in writing and served on the Department personally or by registered or certified mail.

F. If a request for testing is made pursuant to subsection B or E of this section, the Department shall arrange for the test and, pursuant to rules promulgated by the Department, may advance the cost of ~~such the~~ testing. The Department shall mail a copy of the test results by a certificate of mailing to the ~~father's~~ last-known address of the father. If a request for genetic tests was made pursuant to subsection E of this section, the Department shall mail the notice of paternity and support obligations to the father by certificate of mailing to the ~~father's~~ last-known address of the father.

G. If genetic testing pursuant to subsection B or E of this section excludes a person from being a natural parent, the Department shall dismiss any pending court or administrative collection proceedings against the person. The State Department of Health, Division of Vital Records shall remove the name of the person listed as the father from the birth certificate, upon notice from the Department that ~~such the~~ person has been excluded by genetic testing. Once paternity is established, the State Department of Health, Division of Vital Records shall correct its records and amend the birth certificate to reflect the ~~father's~~ name of the father.

H. If both the custodian mother and the father agree to change the surname of the child to that of the father, the administrative law judge may order the name changed. Upon receipt of an order changing the child's surname, the State Department of Health, Division of Vital Records shall correct its records and amend the birth certificate to reflect the name change.

I. All docketed administrative orders shall be modified and enforced in the same manner as an order of the district court.

SECTION 5. AMENDATORY 56 O.S. 2001, Section 240.3, as amended by Section 4, Chapter 219, O.S.L. 2006 (56 O.S. Supp. 2006, Section 240.3), is amended to read as follows:

Section 240.3 A. 1. Final orders of the Office of Administrative Hearings may be appealed to the district court pursuant to this section and Sections 318 through 323 of Title 75 of the Oklahoma Statutes by any party directly affected and showing aggrievement by the order, or by the Oklahoma Department of Human Services.

2. An appeal shall be commenced by filing a petition in error with the clerk of the district court in the county of the underlying district court order, if any, or if there is no underlying district court order filed in this state, the petition in error shall be filed in the county of residence of the custodian of the child, or if the custodian resides out-of-state, in the county of residence of the obligor within thirty (30) days from the date the order is either provided in person or mailed by OAH to all parties. The time limit prescribed in this paragraph for filing the petition in error shall not be extended. The petition in error shall be served by certified mail on the district child support office. Further, a copy of the petition in error shall be mailed by regular mail to the Office of Administrative Hearings: Child Support.

3. The manner of perfection of the record of the proceedings to be reviewed and the time for its completion shall be in accordance with rules prescribed by the district court.

4. The appeal shall not stay the execution of any order of the OAH unless the district court, for cause shown, shall order the administrative order be stayed pending such appeal pursuant to Section 319 of Title 75 of the Oklahoma Statutes.

5. The district court may affirm the decision or remand the case for further proceedings. Additionally, the district court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the findings, inferences, or conclusions are not supported by substantial evidence in the record.

~~B. If an appeal pursuant to subsection A of this section is not made by the person to whom such an order is directed within thirty (30) days from the date the order is either provided in person or mailed by OAH to all parties, the order of the administrative court shall become final and binding on all parties. The order shall be filed in the office of the court clerk in the county of the residence of the custodian of the child or, if the custodian resides out of state, in the county of the residence of the obligor, or elsewhere as provided in this act. The administrative order shall be enforced by the district court in the same manner as an order of the district court.~~

~~C.~~ The certified transcript, exhibits, pleadings, recordings of the hearing and any written orders may constitute the record on appeal to the district court. OAH shall prepare or direct the preparation of the official transcript by a licensed court reporter, if a transcript is requested. The party seeking a copy of the transcript of the hearing shall prepay all costs of transcription and pay a reasonable deposit or provide adequate indemnity prior to preparation of the transcript. If a party is financially unable to pay the transcription costs, the party shall provide OAH and the district office with an in forma pauperis affidavit which verifies the inability to pay. If OAH determines the party is financially unable to pay transcription costs, a transcript will be provided by OAH. The transcript shall not be provided prior to full payment, payment of a deposit, provision of adequate indemnity for all transcription costs, or an order finding OAH will bear the costs of transcription.

SECTION 6. AMENDATORY 56 O.S. 2001, Section 240.23, as amended by Section 6, Chapter 314, O.S.L. 2002 (56 O.S. Supp. 2006, Section 240.23), is amended to read as follows:

Section 240.23 A. The Division has the authority to enter orders in the following actions over the signature of the Director and without the necessity of obtaining an additional signature of a district or administrative court judge:

1. To subpoena any financial or other information needed to establish, modify, or enforce a support order and to impose penalties for failure to respond to a subpoena; provided, that the

subpoena shall comply with the provisions of Section 2204 of Title 6 of the Oklahoma Statutes;

2. In cases in which there is a support arrearage, to secure assets by:

- a. intercepting or seizing periodic or lump-sum payments from:
 - (1) a state or local agency, including unemployment compensation, workers' compensation, and other benefits, and
 - (2) judgments, settlements, and lotteries,
- b. attaching and seizing assets of the obligor held in financial institutions,
- c. attaching public and private retirement funds, and
- d. imposing liens in accordance with Section 135 of Title 43 of the Oklahoma Statutes;

3. To increase the monthly payment of child support, for purposes of securing overdue support, in an amount not to exceed five percent (5%) of the total child support order. This increase may not be made more than once every twelve (12) months. This remedy is in addition to and not in lieu of any other remedy provided by law or by court order;

4. If an income assignment is not ordered or in place by operation of law for collection of support monies, the Division is authorized to implement income withholding by sending a notice of income assignment for support to any payor of income to the obligor; and

5. To require both parents to appear for genetic testing in cases where paternity has not been established or admitted. The Division shall send notice to the putative father containing information on how to appear and admit paternity or object to the order for genetic testing. An objection to genetic testing shall require the putative father to complete an affidavit contesting

paternity on a form prescribed by the Division. An order for genetic testing under this subsection may be docketed and enforced in the district court by indirect contempt.

B. With respect to paragraphs 2 and 3 of subsection A of this section, at the time of the action, the Division shall send a notice to the obligor explaining the obligor's rights to object to the action and the procedure to have it modified or reversed.

SECTION 7. REPEALER 10 O.S. 2001, Section 78, is hereby repealed.

SECTION 8. This act shall become effective November 1, 2007.

Passed the Senate the 7th day of May, 2007.

Presiding Officer of the Senate

Passed the House of Representatives the 17th day of April, 2007.

Presiding Officer of the House
of Representatives