

**THE HOUSE OF REPRESENTATIVES**  
Thursday, February 28, 2008

**Committee Substitute for**  
**House Bill No. 2809**

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2809 - By: PETERSON (PAM), BIGHORSE, MCAFFREY, PITTMAN AND SHUMATE of the House and LAMB of the Senate.

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

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

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

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

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

- 15 a. ~~the proportion of the child support, child support arrearage payments,~~  
16 ~~or other support that was unpaid in relation to the amount of support~~  
17 ~~that was ordered paid,~~  
18 b. ~~the proportion of the child support, child support arrearage payments,~~  
19 ~~or other support that could have been paid by the party found in~~  
20 ~~contempt in relation to the amount of support that was ordered paid,~~  
21 e. ~~the present capacity of the party found in contempt to pay any~~  
22 ~~arrearsages,~~

- 1           d.     ~~any willful actions taken by the party found in contempt to reduce~~  
2                     ~~factor e,~~  
3           e.     ~~the past history of compliance or noncompliance with the support or~~  
4                     ~~visitation order, and~~  
5           f.     ~~willful acts to avoid the jurisdiction of the court.~~

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

- 9           a.     ~~proof that:~~  
10                     (1)   ~~the order was made, filed, and served on the parent, or~~  
11                     (2)   ~~the parent had actual knowledge of the existence of the order, or~~  
12                     (3)   ~~the order was granted by default after prior due process notice~~  
13                             ~~to the parent, or~~  
14                     (4)   ~~the parent was present in court at the time the order was~~  
15                             ~~pronounced, and~~  
16           b.     ~~proof of noncompliance with the order,~~

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

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

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

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

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

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

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

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

14           1. Proof that:

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

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

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

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

20               and

21           2. Proof of noncompliance with the order,

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

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

- 4 a. incarceration in the county jail not exceeding six (6) months,
- 5 b. incarceration in the county jail on weekends or at other times that  
6 allow the obligor to be employed, seek employment or engage in other  
7 activities ordered by the court, and
- 8 c. a house detention with electronic monitoring program in which the  
9 obligor is required to remain at obligor's residence unless the court  
10 authorizes the obligor to leave for the purpose of employment,  
11 counseling, treatment, educational training, social skills training or  
12 employment training. The obligor shall be required to wear a device  
13 which permits electronic monitoring. If the obligor fails to comply with  
14 the conditions of the electronic monitoring program, the court may  
15 impose punishment under subparagraph a or b of this paragraph.

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

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

1           2. An alternative program may include:

- 2           a.       a problem-solving court program for obligors when child support  
3                   services under the state child support plan as provided in Section 237  
4                   of Title 56 of the Oklahoma Statutes are being provided for the benefit  
5                   of the child. A problem-solving court program is an immediate and  
6                   highly structured judicial intervention process for the obligor and  
7                   requires completion of a participation agreement by the obligor and  
8                   monitoring by the court. A problem-solving court program differs in  
9                   practice and design from the traditional adversarial contempt  
10                  prosecution and trial systems. The problem-solving court program  
11                  uses a team approach administered by the judge in cooperation with a  
12                  child support state's attorney and a child support court liaison who  
13                  focuses on removing the obstacles causing the nonpayment of the  
14                  obligor. The obligors in this program shall be required to sign an  
15                  agreement to participate in this program as a condition of the  
16                  Department of Human Services agreement to stay contempt  
17                  proceedings or in lieu of incarceration after a finding of guilt. The  
18                  court liaisons assess the needs of the obligor, develop a community  
19                  referral network, make referrals, monitor the compliance of the obligor  
20                  in the program, and provide status reports to the court, and  
21           b.       participation in programs such as counseling, treatment, educational  
22                   training, social skills training or employment training to which the

1 obligor reports daily or on a regular basis at specified times for a  
2 specified length of time.

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

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

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

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

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

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

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

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

1 Section 852. A. Unless otherwise provided for by law, any parent, guardian, or  
2 person having custody or control of a child as defined in Section 7001-1.3 of Title 10 of  
3 the Oklahoma Statutes who willfully omits, without lawful excuse, to furnish necessary  
4 food, clothing, shelter, monetary child support, medical attendance, payment of court-  
5 ordered day care or payment of court-ordered medical insurance costs for such child  
6 which is imposed by law, upon conviction, is guilty of a misdemeanor; provided, any  
7 person obligated to make child support payments who willfully and without lawful  
8 excuse becomes delinquent in said child support payments after September 1, 1993, and  
9 such delinquent child support accrues without payment by the obligor for a period of one  
10 (1) year, or exceeds Five Thousand Dollars (\$5,000.00) shall, upon conviction thereof, be  
11 guilty of a felony which is punishable in the same manner as any subsequent conviction  
12 pursuant to the provisions of this section. Any subsequent conviction pursuant to this  
13 section shall be a felony, punishable by imprisonment for not more than four (4) years in  
14 the ~~State Penitentiary~~ custody of the Department of Corrections or by the imposition of a  
15 fine of not more than Five Thousand Dollars (\$5,000.00), or by both such fine and  
16 imprisonment. As used in this section, the duty to furnish medical attendance shall  
17 mean that the parent or person having custody or control of a child must furnish medical  
18 treatment in such manner and on such occasions as an ordinarily prudent person,  
19 solicitous for the welfare of a child, would provide; such parent or person having custody  
20 or control of a child is not criminally liable for failure to furnish medical attendance for  
21 every minor or trivial complaint with which the child may be afflicted.

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

7 C. Nothing in this section shall be construed to mean a child is endangered for the  
8 sole reason the parent, guardian or person having custody or control of a child, in good  
9 faith, selects and depends upon spiritual means alone through prayer, in accordance with  
10 the tenets and practice of a recognized church or religious denomination, for the  
11 treatment or cure of disease or remedial care of such child; provided, that medical care  
12 shall be provided where permanent physical damage could result to such child; and that  
13 the laws, rules, and regulations relating to communicable diseases and sanitary matters  
14 are not violated.

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

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

20 F. If any parent of a child in cases in which the Department of Human Services is  
21 providing services pursuant to Section 237 of Title 56 of the Oklahoma Statutes is  
22 determined by the Department to be willfully violating the provisions of this section, the

1 Department may refer the case to the proper district attorney for prosecution. The  
2 Department shall provide assistance to the district attorneys in such prosecutions. Any  
3 child support or arrears payments made pursuant to this section shall be made payable  
4 to the Department and paid through the centralized support registry pursuant to Section  
5 413 of Title 43 of the Oklahoma Statutes.

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

8 ~~G.~~ H. It is the duty of any parent having legal custody of a child who is an alcohol-  
9 dependent person or a drug-dependent person, as such terms are defined by Section 3-  
10 403 of Title 43A of the Oklahoma Statutes, to provide for the treatment, as such term is  
11 defined by Section 3-403 of Title 43A of the Oklahoma Statutes, of such child. Any  
12 parent having legal custody of a child who is an alcohol-dependent person or a drug-  
13 dependent person who without having made a reasonable effort fails or willfully omits to  
14 provide for the treatment of such child shall be guilty of a misdemeanor. For the purpose  
15 of this subsection, the duty to provide for such treatment shall mean that the parent  
16 having legal custody of a child must provide for the treatment in such manner and on  
17 such occasions as an ordinarily prudent person, solicitous for the welfare of a child,  
18 would provide.

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

- 20 1. Any county where the child resides;
- 21 2. The county in which the court-ordered support was entered or registered
- 22 pursuant to the provisions of the Uniform Interstate Family Support Act; or

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

1           3. The county in which the defendant resides.

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

5           A. In cases in which child support services under the state child support plan as  
6 provided in Section 237 of Title 56 of the Oklahoma Statutes are being provided for the  
7 benefit of the child, the administrative or district court may order the obligor to  
8 participate in the problem-solving court program of the Department of Human Services.  
9 The problem-solving court program is an immediate and highly structured judicial  
10 intervention process for the obligor and requires completion of a participation agreement  
11 by the obligor and monitoring by the court. A problem-solving court program differs in  
12 practice and design from the traditional adversarial prosecution and trial systems. The  
13 problem-solving court program uses a team approach administered by the judge in  
14 cooperation with a child support state's attorney and a child support court liaison who  
15 focuses on removing the obstacles causing the nonpayment of the obligor. The obligors in  
16 this program shall be required to sign an agreement to participate in this program. The  
17 court liaisons assess the needs of the obligor, develop a community referral network,  
18 make referrals, monitor the compliance of the obligor in the program, and provide status  
19 reports to the court.

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

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

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

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

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

17 ~~C. A parent of a child for whom the Department is making payments in its program~~  
18 ~~for Aid to Families with Dependent Children who willfully fails or refuses to accept~~  
19 ~~employment when employment is available shall be deemed to have failed to provide for~~  
20 ~~the child and upon conviction thereof shall be punished as provided by subsection E of~~  
21 ~~this section or pursuant to Section 852 of Title 21 of the Oklahoma Statutes.~~

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

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

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

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

17       Section 240.10 A. Anyone who is ordered to pay support for a child in an  
18 administrative or court action, hereinafter referred to as "obligor", is required by law to  
19 obtain and maintain gainful employment sufficient to meet the support obligation.

20       B. ~~The Department, when support rights have been assigned to it or proper~~  
21 ~~application made by an individual not receiving Aid to Families with Dependent~~  
22 ~~Children, When child support services are being provided for the benefit of the child~~

1 under the state child support plan as provided in Section 237 of this title, the  
2 Department may initiate an administrative or district court action to obtain an order to  
3 require an unemployed or underemployed obligor to participate in counseling, treatment,  
4 educational training, social skills training, employment training or job-finding or  
5 job-training programs, or the problem-solving court program under Section 4 of this act.  
6 "Underemployed" is defined as being employed less than full-time or in an occupation  
7 which pays less than employment which someone ~~of obligor's~~ with the skills and  
8 education of the obligor could be reasonably expected to earn, so that the obligor cannot  
9 meet his support obligation. The Department shall give notice of this requirement to the  
10 obligor who is not complying with a district or administrative court or administrative  
11 order for support and who the Department has reason to believe is unemployed or  
12 underemployed. ~~Said~~ The notice shall be served by the Department upon the obligor ~~in~~  
13 ~~the same manner prescribed for service of summons in a civil action~~ as provided in  
14 Section 2005 of Title 12 of the Oklahoma Statutes, or if there is an address of record on  
15 file with the central case registry pursuant to Section 112A of Title 43 of the Oklahoma  
16 Statutes, the notice may be served by regular mail at the address of record.

17 C. The notice shall state:

- 18 1. The name of the child for whom support is ordered and the custodian of the child;
- 19 2. That the obligor is not complying with the district or administrative court or  
20 ~~administrative~~ order for support and is delinquent in a certain amount;
- 21 3. That it appears that the obligor is unemployed or underemployed so that he  
22 cannot meet his support obligation;

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

6 5. That if it is determined that the obligor is unemployed or underemployed or if  
7 the obligor fails to appear, an order will be entered which will require the obligor to  
8 participate in counseling, treatment, educational training, social skills training,  
9 employment training or job-finding ~~and job-training~~ programs or the problem-solving  
10 court program and to accept available employment ~~and that such order may be docketed~~  
11 ~~with the district court in the county of residence of the obligor and shall be enforced as~~  
12 ~~any other order of the district court by indirect civil contempt proceedings.~~

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

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

1 available employment. The order shall state when the obligor shall report and to what  
2 location. ~~The~~

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

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

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

21 ~~F. If the obligor feels aggrieved by the findings and order of the Department, the~~  
22 ~~obligor may appeal the decision of the Department by filing a petition in error in the~~

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

1 ~~district court of the county of residence of the obligor within thirty (30) days of the date~~  
2 ~~the obligor is notified of the order, pursuant to the provisions of Sections 318 through 323~~  
3 ~~of Title 75 of the Oklahoma Statutes.~~

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

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

6 COMMITTEE REPORT BY: COMMITTEE ON HUMAN SERVICES, dated 02-27-08 -  
7 DO PASS, As Amended and Coauthored.