

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 HOUSE BILL 2809

By: Peterson (Pam)

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6 AS INTRODUCED

7 An Act relating to child support; amending 21 O.S.
8 2001, Section 566, as last amended by Section 1,
Chapter 140, O.S.L. 2007 (21 O.S. Supp. 2007, Section
9 566), which relates to punishment for contempt in
child support proceedings; relocating statutory
10 authority for the Supreme Court to promulgate
guidelines for sentence and purge fees for indirect
11 contempt; specifying criteria for indirect contempt
determinations; providing indirect contempt
12 punishment options; providing for alternative
programs for indirect contempt; amending 21 O.S.
13 2001, Section 852, as amended by Section 1, Chapter
219, O.S.L. 2006 (21 O.S. Supp. 2007, Section 852),
14 which relates to punishment for delinquent child
support; requiring the Department of Human Services
15 to assist district attorneys in prosecution; amending
56 O.S. 2001, Section 233, which relates to
16 Department of Human Services responsibilities for
monitoring and reporting delinquent child support;
17 making referral to district attorneys discretionary;
amending 56 O.S. 2001, Section 240.10, which relates
18 to employment requirements in child support
proceedings; providing alternative job programs;
19 repealing 56 O.S. 2001, Section 233.1, which relates
to nonpayment of child support; providing for
20 codification; and providing an effective date.

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23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:
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1 SECTION 1. AMENDATORY 21 O.S. 2001, Section 566, as last
2 amended by Section 1, Chapter 140, O.S.L. 2007 (21 O.S. Supp. 2007,
3 Section 566), is amended to read as follows:

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

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

18 a. ~~the proportion of the child support, child support~~
19 ~~arrearage payments, or other support that was unpaid~~
20 ~~in relation to the amount of support that was ordered~~
21 ~~paid,~~

22 b. ~~the proportion of the child support, child support~~
23 ~~arrearage payments, or other support that could have~~
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- 1 ~~been paid by the party found in contempt in relation~~
2 ~~to the amount of support that was ordered paid,~~
3 ~~e. the present capacity of the party found in contempt to~~
4 ~~pay any arrearages,~~
5 ~~d. any willful actions taken by the party found in~~
6 ~~contempt to reduce factor e,~~
7 ~~e. the past history of compliance or noncompliance with~~
8 ~~the support or visitation order, and~~
9 ~~f. willful acts to avoid the jurisdiction of the court.~~

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

14 ~~a. proof that:~~

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

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

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

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

23 ~~b. proof of noncompliance with the order,~~
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1 ~~shall be prima facie evidence of an indirect civil contempt of~~
2 ~~court.~~

3 ~~C.~~ Any court in this state has the power to enforce an order
4 for current child support, past due child support and child support
5 arrearage payments, other support, visitation, or other court orders
6 regarding minor children and to punish an individual for failure to
7 comply therewith, as set forth in subsection A of this section.

8 Venue for an action under this section is proper, at the option of
9 the obligee:

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

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

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

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

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

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

3 1. Proof that:

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

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

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

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

11 2. Proof of noncompliance with the order,

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

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

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

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

23 c. a house detention with electronic monitoring program
24 in which the obligor is required to remain at

1 obligor's residence unless the court authorizes the
2 obligor to leave for the purpose of employment,
3 counseling, treatment, educational training, social
4 skills training or employment training. The obligor
5 shall be required to wear a device which permits
6 electronic monitoring. If the obligor fails to comply
7 with the conditions of the electronic monitoring
8 program, the court may impose punishment under
9 subparagraph a or b of this paragraph.

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

12 C. 1. After the obligor is found guilty of contempt the court
13 may, prior to sentencing, order the obligor to complete an
14 alternative program and comply with a payment plan for child support
15 and arrears. If the obligor fails to complete the alternative
16 program and comply with the payment plan, the court shall proceed
17 with the indirect contempt and shall impose punishment pursuant to
18 subsection B of this section.

19 2. An alternative program may include:

20 a. a problem-solving court program for obligors when
21 child support services under the state child support
22 plan as provided in Section 237 of Title 56 of the
23 Oklahoma Statutes are being provided for the benefit
24 of the child. A problem-solving court program is an

1 immediate and highly structured judicial intervention
2 process for the obligor and requires completion of a
3 plea agreement in lieu of incarceration. A problem-
4 solving court program differs in practice and design
5 from the traditional adversarial contempt prosecution
6 and trial systems. The problem-solving court program
7 uses a team approach administered by the judge in
8 cooperation with a child support state's attorney and
9 a child support court liaison who focuses on removing
10 the obstacles causing the nonpayment of the obligor.
11 The obligors in this program shall be required to sign
12 an agreement to participate in this program as a
13 condition of their plea agreement in lieu of
14 incarceration. The court liaisons assess the needs of
15 the obligor, develop a community referral network,
16 make referrals, monitor the compliance of the obligor
17 in the program, and provide status reports to the
18 court, and

- 19 b. participation in programs such as counseling,
20 treatment, educational training, social skills
21 training or employment training to which the obligor
22 reports daily or on a regular basis at specified times
23 for a specified length of time.

1 D. In the case of indirect contempt for the failure to comply
2 with an order for child support, child support arrears, or other
3 support, the Supreme Court shall promulgate guidelines for
4 determination of the sentence and purge fee. If the court fails to
5 follow the guidelines, the court shall make a specific finding
6 stating the reasons why the imposition of the guidelines would
7 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
10 payments, or other support that was unpaid in relation to the amount
11 of support that was ordered paid;

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

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

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

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

22 6. Willful acts to avoid the jurisdiction of the court.
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1 SECTION 3. AMENDATORY 21 O.S. 2001, Section 852, as
2 amended by Section 1, Chapter 219, O.S.L. 2006 (21 O.S. Supp. 2007,
3 Section 852), is amended to read as follows:

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

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

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

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

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

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

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

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

20 ~~G.~~ H. It is the duty of any parent having legal custody of a
21 child who is an alcohol-dependent person or a drug-dependent person,
22 as such terms are defined by Section 3-403 of Title 43A of the
23 Oklahoma Statutes, to provide for the treatment, as such term is
24 defined by Section 3-403 of Title 43A of the Oklahoma Statutes, of

1 such child. Any parent having legal custody of a child who is an
2 alcohol-dependent person or a drug-dependent person who without
3 having made a reasonable effort fails or willfully omits to provide
4 for the treatment of such child shall be guilty of a misdemeanor.
5 For the purpose of this subsection, the duty to provide for such
6 treatment shall mean that the parent having legal custody of a child
7 must provide for the treatment in such manner and on such occasions
8 as an ordinarily prudent person, solicitous for the welfare of a
9 child, would provide.

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

- 12 1. Any county where the child resides;
- 13 2. The county in which the court-ordered support was entered or
14 registered pursuant to the provisions of the Uniform Interstate
15 Family Support Act; or
- 16 3. The county in which the defendant resides.

17 SECTION 4. AMENDATORY 56 O.S. 2001, Section 233, is
18 amended to read as follows:

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

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

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

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

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

3 ~~E. If a parent is convicted pursuant to subsection A of this~~
4 ~~section it shall be mandatory that the punishment of the parent~~
5 ~~shall include imprisonment in the county jail for not more than~~
6 ~~ninety (90) days; provided, that the parent may be released on~~
7 ~~probation, subject to supervision of the Department, on condition~~
8 ~~that the parent register with the Oklahoma Employment Security~~
9 ~~Commission and obtain or accept employment or training that will~~
10 ~~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~~
13 ~~for the child or children in the home, when day care services are~~
14 ~~not available or when it is unreasonable to place the child or~~
15 ~~children in day care services.~~

16 SECTION 5. AMENDATORY 56 O.S. 2001, Section 240.10, is
17 amended to read as follows:

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

22 B. The Department, when support rights have been assigned to it
23 or proper application made by an individual not receiving ~~Aid to~~
24 ~~Families with Dependent Children~~ Temporary Assistance for Needy

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

20 C. The notice shall state:

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

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

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

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

12 5. That if it is determined that the obligor is unemployed or
13 underemployed or if the obligor fails to appear, an order will be
14 entered which will require the obligor to participate in counseling,
15 treatment, educational training, social skills training, employment
16 training or job-finding and job training programs and to accept
17 available employment ~~and that such order may be docketed with the~~
18 ~~district court in the county of residence of the obligor and shall~~
19 ~~be enforced as any other order of the district court by indirect~~
20 ~~civil contempt proceedings.~~

21 C. D. 1. At the ~~conference~~ hearing, or if the obligor fails to
22 appear for the hearing, the ~~Department~~ court shall enter an order
23 ~~determine~~ determining if the obligor is unemployed, ~~or is~~

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1 underemployed or in need of services as described in paragraph C of
2 this section.

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

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

18 D. If the obligor fails to appear for the conference, the
19 Department shall enter an administrative order requiring that the
20 obligor report to the Department to participate in job finding or
21 job-training programs and accept available employment. The order
22 shall state when and where the obligor is to report to participate
23 in said programs. The order may be docketed with the district court
24 in the county of residence of the obligor and shall be enforced as

1 ~~any other order of the district court by indirect civil contempt~~
2 ~~proceedings. A copy of the order will be mailed by the Department~~
3 ~~to the obligor's last known address.~~

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

12 ~~F. If the obligor feels aggrieved by the findings and order of~~
13 ~~the Department, the obligor may appeal the decision of the~~
14 ~~Department by filing a petition in error in the district court of~~
15 ~~the county of residence of the obligor within thirty (30) days of~~
16 ~~the date the obligor is notified of the order, pursuant to the~~
17 ~~provisions of Sections 318 through 323 of Title 75 of the Oklahoma~~
18 ~~Statutes.~~

19 SECTION 6. REPEALER 56 O.S. 2001, Section 233.1, is
20 hereby repealed.

21 SECTION 7. This act shall become effective November 1, 2008.

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23 51-2-9752 SDR 01/16/08
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