

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 SENATE BILL 1951

By: Russell

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5
6 AS INTRODUCED

7 An Act relating to support payments; creating the
8 Wounded Warrior Protection Act; providing short
9 title; amending 43 O.S. 2011, Sections 118B and 134,
10 which relate to computation of income and alimony
11 payments; specifying certain property as separate
12 property; requiring certain proof; prohibiting
13 inclusion of certain benefits as income for specified
14 purpose; providing for noncodification; and providing
15 an effective date.

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

17 SECTION 1. NEW LAW A new section of law not to be
18 codified in the Oklahoma Statutes reads as follows:

19 This act shall be known and may be cited as the "Wounded Warrior
20 Protection Act".

21 SECTION 2. AMENDATORY 43 O.S. 2011, Section 118B, is
22 amended to read as follows:

23 Section 118B. A. As used in ~~this act~~ Section 118 et seq. of
24 this title:

1. "Gross income" includes earned and passive income from any
source, except as excluded in this section;

1 2. "Earned income" is defined as income received from labor or
2 the sale of goods or services and includes, but is not limited to,
3 income from:

- 4 a. salaries,
- 5 b. wages,
- 6 c. tips
- 7 d. commissions,
- 8 e. bonuses,
- 9 f. severance pay, and
- 10 g. military pay, including ~~hostile fire or imminent~~
11 ~~danger pay, combat pay,~~ family separation pay, or
12 hardship duty location pay; and

13 3. "Passive income" is defined as all other income and
14 includes, but is not limited to, income from:

- 15 a. dividends,
- 16 b. pensions,
- 17 c. rent,
- 18 d. interest income,
- 19 e. trust income,
- 20 f. support alimony being received from someone other than
21 the other parent in this case,
- 22 g. annuities,
- 23 h. social security benefits,
- 24 i. workers' compensation benefits,

- 1 j. unemployment insurance benefits,
- 2 k. disability insurance benefits,
- 3 l. gifts,
- 4 m. prizes,
- 5 n. gambling winnings,
- 6 o. lottery winnings, and
- 7 p. royalties.

8 B. Income specifically excluded is:

9 1. Actual child support received for children not before the
10 court;

11 2. Adoption Assistance subsidy paid by the Department of Human
12 Services;

13 3. Benefits received from means-tested public assistance
14 programs including, but not limited to:

15 a. Temporary Assistance for Needy Families (TANF),

16 b. Supplemental Security Income (SSI),

17 c. Food Stamps, and

18 d. General Assistance and State Supplemental Payments for
19 Aged, Blind and the Disabled;

20 4. The income of the child from any source, including, but not
21 limited to, trust income and social security benefits drawn on the
22 disability of the child; and

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

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

4 a. all actual monthly income described in this section,
5 plus such overtime and supplemental income as the
6 court deems equitable,

7 b. the average of the gross monthly income for the time
8 actually employed during the previous three (3) years,

9 c. the minimum wage paid for a forty-hour week, or

10 d. gross monthly income imputed as set forth in
11 subsection D of this section.

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

15 D. Imputed income.

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

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

22 a. whether a parent has been determined by the court to
23 be willfully or voluntarily underemployed or
24 unemployed, including whether unemployment or

1 underemployment for the purpose of pursuing additional
2 training or education is reasonable in light of the
3 obligation of the parent to support his or her
4 children and, to this end, whether the training or
5 education will ultimately benefit the child in the
6 case immediately under consideration by increasing the
7 parent's level of support for that child in the
8 future,

9 b. when there is no reliable evidence of income,

10 c. the past and present employment of the parent,

11 d. the education, training, and ability to work of the
12 parent,

13 e. the lifestyle of the parent, including ownership of
14 valuable assets and resources, whether in the name of
15 the parent or the current spouse of the parent, that
16 appears inappropriate or unreasonable for the income
17 claimed by the parent,

18 f. the role of the parent as caretaker of a handicapped
19 or seriously ill child of that parent, or any other
20 handicapped or seriously ill relative for whom that
21 parent has assumed the role of caretaker which
22 eliminates or substantially reduces the ability of the
23 parent to work outside the home, and the need of that
24 parent to continue in that role in the future, or

1 g. any additional factors deemed relevant to the
2 particular circumstances of the case.

3 E. Self-employment income.

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

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

14 3. The district or administrative court shall deduct from self-
15 employment gross income an amount equal to the employer contribution
16 for F.I.C.A. tax which an employer would withhold from an employee's
17 earnings on an equivalent gross income amount.

18 F. Fringe benefits.

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

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

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

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

9 G. Social Security Title II benefits.

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

17 2. Child support greater than social security benefit.

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

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

- 1 a. If the child support award due after calculating the
2 child support guidelines is less than or equal to the
3 social security benefit received on behalf of the
4 child, the child support obligation of that parent is
5 met and no additional child support amount must be
6 paid by that parent.
- 7 b. Any social security benefit amounts which are greater
8 than the support ordered by the court shall be
9 retained by the caretaker for the benefit of the child
10 and shall not be used as a reason for decreasing the
11 child support order or reducing arrearages.
- 12 c. The child support computation form shall include a
13 notation regarding the use of social security benefits
14 as offset.
- 15 4. a. Calculation of child support as provided in subsection
16 F of this section shall be effective no earlier than
17 the date on which the motion to modify was filed.
- 18 b. The court may determine if, under the circumstances of
19 the case, it is appropriate to credit social security
20 benefits paid to the custodial person prior to a
21 modification of child support against the past-due
22 child support obligation of the noncustodial parent.

1 c. The noncustodial parent shall not receive credit for
2 any social security benefits paid directly to the
3 child.

4 d. Any credit granted by the court pursuant to
5 subparagraph b of this paragraph shall be limited to
6 the time period during which the social security
7 benefit was paid, or the time period covered by a lump
8 sum for past social security benefits.

9 H. Notwithstanding any other provision of law, a portion of
10 Combat-Related Special Compensation (CRSC) shall be separate
11 property, not divisible as a marital asset nor as community
12 property, if a specific dollar amount of CRSC can be proven by the
13 service member as compensation paid for combat-related loss of limb
14 or loss of bodily function.

15 1. To qualify as separate property, the CRSC shall be defined
16 as separate compensation paid for the sole purpose of combat-related
17 loss of limb or loss of bodily function.

18 2. An injury shall be deemed combat-related if such injury was:

19 a. attributable to an injury for which the member was
20 awarded the Purple Heart,

21 b. incurred as a direct result of armed conflict, or

22 c. sustained through an instrumentality of war while
23 serving in a combat theater.

1 3. For purposes of identifying CRSC, it is the sole
2 responsibility of the service member to prove with competent
3 evidence what amount of his or her disability compensation is CRSC.

4 Competent evidence shall include, but is not limited to:

5 a. a DD-214 or NGB-22 or similar statement of service
6 which identifies the combat theater in which the
7 member served,

8 b. a Bureau of Veterans Administration ("BVA" or "VA")
9 Award letter which sets for the specific combat-
10 related loss of limb or loss of bodily function, and
11 the specific amount of CRSC paid for such injuries,
12 and

13 c. a 1099 from the BVA or VA which details the specific
14 amount of CRSC for combat-related loss of limb or loss
15 of bodily function.

16 SECTION 3. AMENDATORY 43 O.S. 2011, Section 134, is
17 amended to read as follows:

18 Section 134. A. In any divorce decree which provides for
19 periodic alimony payments, the court shall plainly state, at the
20 time of entering the original decree, the dollar amount of all or a
21 portion of each payment which is designated as support and the
22 dollar amount of all or a portion of the payment which is a payment
23 pertaining to a division of property. The court shall specify in
24 the decree that the payments pertaining to a division of property

1 shall continue until completed. Payments pertaining to a division
2 of property are irrevocable and not subject to subsequent
3 modification by the court making the award. An order for the
4 payment of money pursuant to a divorce decree, whether designated as
5 support or designated as pertaining to a division of property shall
6 not be a lien against the real property of the person ordered to
7 make such payments unless the court order specifically provides for
8 a lien on real property. An arrearage in payments of support
9 reduced to a judgment may be a lien against the real property of the
10 person ordered to make such payments. In no event shall an award of
11 alimony payments, whether designated for support or for property
12 division, be based on income received from any type of service-
13 related injury compensation or combat-related disability
14 compensation.

15 B. The court shall also provide in the divorce decree that upon
16 the death or remarriage of the recipient, the payments for support,
17 if not already accrued, shall terminate. The court shall order the
18 judgment for the payment of support to be terminated, and the lien
19 released upon the presentation of proper proof of death of the
20 recipient unless a proper claim is made for any amount of past-due
21 support payments by an executor, administrator, or heir within
22 ninety (90) days from the date of death of the recipient. Upon
23 proper application the court shall order payment of support
24 terminated and the lien discharged after remarriage of the

1 recipient, unless the recipient can make a proper showing that some
2 amount of support is still needed and that circumstances have not
3 rendered payment of the same inequitable, provided the recipient
4 commences an action for such determination, within ninety (90) days
5 of the date of such remarriage.

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

22 D. Except as otherwise provided in subsection C of this
23 section, the provisions of any divorce decree pertaining to the
24 payment of alimony as support may be modified upon proof of changed

1 circumstances relating to the need for support or ability to support
2 which are substantial and continuing so as to make the terms of the
3 decree unreasonable to either party. Modification by the court of
4 any divorce decree pertaining to the payment of alimony as support,
5 pursuant to the provisions of this subsection, may extend to the
6 terms of the payments and to the total amount awarded; provided
7 however, such modification shall only have prospective application.

8 E. Pursuant to the federal Uniformed Services Former Spouses'
9 Protection Act, 10 U.S.C., Section 1408, a court may treat
10 disposable retired or retainer pay payable to a military member
11 either as property solely of the member or as property of the member
12 and the spouse of the member. If a state court determines that the
13 disposable retired or retainer pay of a military member is marital
14 property, the court shall award an amount consistent with the rank,
15 pay grade, and time of service of the member at the time of
16 separation.

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

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

7 SECTION 4. This act shall become effective November 1, 2012.

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