

1 **SENATE FLOOR VERSION**

2 February 22, 2021

3 SENATE BILL NO. 421

By: Rosino of the Senate

4 and

5 Echols of the House

6  
7  
8 An Act relating to child support; amending 43 O.S.  
9 2011, Sections 118A, as amended by Section 2, Chapter  
10 289, O.S.L. 2016, 118B, 118G and 118I, as amended by  
11 Section 4, Chapter 289, O.S.L. 2016 (43 O.S. Supp.  
12 2020, Sections 118A and 118I), which relate to  
13 definitions, computation of gross income, actual  
14 annualized child care expenses and modification;  
15 modifying definitions; modifying requirements for  
16 computation of gross income; establishing guidelines  
17 for computation of income for incarcerated parent;  
18 clarifying treatment of certain disability  
19 compensation; requiring use of certain schedule for  
20 determination of child care costs under certain  
21 circumstances; adding grounds for modification of  
22 child support orders; modifying effective dates for  
23 child support modification orders; creating certain  
24 rebuttable presumption; requiring abatement of child  
support obligation under certain circumstances;  
providing for reversion of certain obligation;  
providing exception; updating statutory references;  
and providing an effective date.

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

SECTION 1. AMENDATORY 43 O.S. 2011, Section 118A, as  
amended by Section 2, Chapter 289, O.S.L. 2016 (43 O.S. Supp. 2020,  
Section 118A), is amended to read as follows:

1 Section 118A. As used in ~~this act~~ Section 118 et seq. of this  
2 title:

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

6 a. adding to the gross income of the parent any Social  
7 Security benefit paid to the child on the account of  
8 the parent,

9 b. deducting from gross income the amount of any support  
10 alimony arising in a prior case to the extent that  
11 payment is actually made,

12 c. deducting from gross income any deductions as set  
13 forth for other prior-born or after-born children for  
14 whom the parent is legally responsible and is actually  
15 supporting, pursuant to Section 118C of this title,  
16 and

17 d. deducting the amount of reasonable expenses of the  
18 parties attributable to debt service for preexisting,  
19 jointly acquired debt of the parents;

20 2. "Base child support obligation" means the amount of support  
21 displayed on the Schedule of Basic Child Support Obligations which  
22 corresponds to the combined AGI of both parents and the number of  
23 children for whom support is being determined. This amount is  
24 rebuttably presumed to be the appropriate amount of basic child

1 support to be provided by both parents in the case immediately under  
2 consideration, prior to consideration of any adjustments for medical  
3 and child care costs, and any other additional expenses;

4 3. "Current monthly child support obligation" means the base  
5 child support obligation and the proportional share of any ~~medical~~  
6 insurancee health care coverage, cash medical support and annualized  
7 child care costs;

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

11 5. "Incarceration" means an obligor is in custody on a full-  
12 time basis in a local, state or federal correctional facility.  
13 Incarceration shall not include probation, parole, work release or  
14 any other detention alternative program that allows the obligor to  
15 be gainfully employed;

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

19 ~~6.~~ 7. "Obligor" means the person who is required to make  
20 payments under an order for support;

21 ~~7.~~ 8. "Obligee" or "person entitled" means:

22 a. a person to whom a support debt or support obligation  
23 is owed,  
24

1           b.    the Department of Human Services or a public agency of  
2                    another state that has the right to receive current or  
3                    accrued support payments or that is providing support  
4                    enforcement services, or

5           c.    a person designated in a support order or as otherwise  
6                    specified by the court;

7           ~~8.~~ 9.    "Other contributions" means recurring monthly medical  
8 expenses and visitation transportation costs that are not included  
9 in the current monthly child support obligation;

10          ~~9.~~ 10. "Overnight" means the child is in the physical custody  
11 and control of a parent for an overnight period of at least twelve  
12 (12) hours, and that parent has made a reasonable expenditure of  
13 resources for the care of the child;

14          ~~10.~~ 11. "Parent" means an individual who has a parent-child  
15 relationship under the Uniform Parentage Act;

16          ~~11.~~ 12. "Parenting time adjustment" means an adjustment to the  
17 base child support amount based upon parenting time; and

18          ~~12.~~ 13. "Payor" means any person or entity paying monies,  
19 income, or earnings to an obligor. In the case of a self-employed  
20 person, the "payor" and "obligor" may be the same person.

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

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

6 a. salaries,

7 b. wages,

8 c. tips,

9 d. commissions,

10 e. bonuses,

11 f. severance pay, and

12 g. military pay, including hostile fire or imminent  
13 danger pay, combat pay, family separation pay, or  
14 hardship duty location pay; and

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

17 a. dividends,

18 b. pensions,

19 c. rent,

20 d. interest income,

21 e. trust income,

22 f. support alimony being received from someone other than  
23 the other parent in this case,

24 g. annuities,

- 1 h. social security benefits,
- 2 i. workers' compensation benefits,
- 3 j. unemployment insurance benefits,
- 4 k. disability insurance benefits,
- 5 l. gifts,
- 6 m. prizes,
- 7 n. gambling winnings,
- 8 o. lottery winnings, and
- 9 p. royalties.

10 B. Income specifically excluded is:

11 1. Actual child support received for children not before the  
12 court;

13 2. Adoption Assistance subsidy paid by the Department of Human  
14 Services;

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

- 17 a. Temporary Assistance for Needy Families (TANF),
- 18 b. Supplemental Security Income (SSI),
- 19 c. Food Stamps, and
- 20 d. General Assistance and State Supplemental Payments for  
21 Aged, Blind and the Disabled;

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

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

3 C. Determining gross income.

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

7 a. all ~~actual~~ current monthly gross income described in  
8 this section, plus such overtime and supplemental  
9 income as the court deems ~~equitable~~ appropriate,

10 b. the average of the gross monthly income for the time  
11 actually employed during the previous ~~three (3) years~~  
12 year, or

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

14 ~~d.~~ gross monthly income imputed as set forth in paragraph  
15 3 of this subsection ~~D of this section.~~

16 2. If a parent is permanently physically or mentally  
17 incapacitated or incarcerated for more than one hundred eighty (180)  
18 consecutive days, the child support obligation shall be computed on  
19 the basis of ~~actual~~ current monthly gross income. For purposes of  
20 computing gross income of the parents in such circumstances, gross  
21 income shall not be imputed as set forth in paragraph 3 of this  
22 subsection unless the obligor's incarceration is a result of  
23 indirect contempt of court for failure to pay child support, the  
24

1 crime of omission to provide child support or for any offense for  
2 which the obligee's dependent child or the obligee was a victim.

3 ~~§. 3.~~ 3. Imputed income.

4 ~~1. Instead of using the actual~~ If evidence of current or  
5 average income of a parent is not available or not the most  
6 equitable, the court may consider the following factors to impute  
7 the parent's monthly gross income to a parent under the provisions  
8 of this section if equitable.

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

12 a. the average wages and hours worked in the parent's  
13 particular industry and geographic area and the  
14 parent's education, training, work experience and  
15 ability to work,

16 b. wages the parent could earn consistent with the  
17 minimum wage rate of not less than twenty-five (25)  
18 hours per week,

19 c. whether a parent has been determined by the court to  
20 be willfully or voluntarily underemployed or  
21 unemployed, including whether unemployment or  
22 underemployment for the purpose of pursuing additional  
23 training or education is reasonable in light of the  
24 obligation of the parent to support his or her



1 children and, ~~to this end, whether the training or~~  
2 ~~education will ultimately benefit the child in the~~  
3 ~~case immediately under consideration by increasing the~~  
4 ~~parent's level of support for that child in the future~~  
5 ~~or other voluntary action to reduce a parent's income,~~

6 ~~b. when there is no reliable evidence of income,~~

7 ~~c. the past and present employment of the parent,~~

8 ~~d. the education, training, and ability to work of the~~  
9 ~~parent,~~

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

15 ~~f.~~

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

23 ~~g.~~

24



1           2. Such fringe benefits might include, but are not limited to,  
2 per diem or other allowance, company car, housing, or room and  
3 board.

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

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

12           ~~G.~~ F. Social Security Title II benefits.

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

20           2. Child support greater than social security benefit.

21           If the child support award due after calculating the child  
22 support guidelines is greater than the social security benefit  
23 received on behalf of the child, the obligor shall be required to  
24

1 pay the amount exceeding the social security benefit as part of the  
2 child support award in the case.

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

5 a. If the child support award due after calculating the  
6 child support guidelines is less than or equal to the  
7 social security benefit received on behalf of the  
8 child, the child support obligation of that parent is  
9 met and no additional child support amount must be  
10 paid by that parent.

11 b. Any social security benefit amounts which are greater  
12 than the support ordered by the court shall be  
13 retained by the caretaker for the benefit of the child  
14 and shall not be used as a reason for decreasing the  
15 child support order or reducing arrearages.

16 c. The child support computation form shall include a  
17 notation regarding the use of social security benefits  
18 as offset.

19 4. a. Calculation of child support as provided in subsection  
20 F of this section shall be effective no earlier than  
21 the date on which the motion to modify was filed.

22 b. The court may determine if, under the circumstances of  
23 the case, it is appropriate to credit social security  
24 benefits paid to the custodial person prior to a

1 modification of child support against the past-due  
2 child support obligation of the noncustodial parent.

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

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

11 G. Veterans disability compensation benefits received by a  
12 child shall be treated in the same manner as Social Security Title  
13 II benefits as provided in subsection F of this section.

14 SECTION 3. AMENDATORY 43 O.S. 2011, Section 118G, is  
15 amended to read as follows:

16 Section 118G. A. The district or administrative court shall  
17 determine the actual annualized child care expenses reasonably  
18 necessary to enable either or both parents to:

- 19 1. Be employed;
- 20 2. Seek employment; or
- 21 3. Attend school or training to enhance employment income.

22 B. When a parent is participating in the Department of Human  
23 Services child care subsidy program as provided under Section 230.50  
24 of Title 56 of the Oklahoma Statutes, the Child Care

1 Eligibility/Rates Schedule established by the Department shall be  
2 ~~used to determine the amount to be treated as actual child care~~  
3 ~~costs incurred. When applying the schedule to determine the family~~  
4 ~~share copayment amount, the share of the base monthly obligation for~~  
5 ~~child support of the non-responsible parent and the gross income of~~  
6 ~~the obligee shall be considered as the monthly income of the~~  
7 ~~obligee.~~ The actual child care costs incurred shall be the family  
8 share copayment amount indicated on the schedule which shall be  
9 allocated and paid monthly in the same proportion as base child  
10 support. The Department of Human Services shall promulgate rules,  
11 as necessary, to implement the provisions of this section.

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

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

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

1 SECTION 4. AMENDATORY 43 O.S. 2011, Section 118I, as  
2 amended by Section 4, Chapter 289, O.S.L. 2016 (43 O.S. Supp. 2020,  
3 Section 118I), is amended to read as follows:

4 Section 118I. A. 1. Child support orders may be modified upon  
5 a material change in circumstances which includes, but is not  
6 limited to, an increase or decrease in the needs of the child, an  
7 increase or decrease in the income of the parents, incarceration of  
8 a parent for a time period of more than one hundred eighty (180)  
9 consecutive days, changes in actual annualized child care expenses,  
10 changes in the cost of medical or dental insurance, or when one of  
11 the children in the child support order reaches the age of majority  
12 or otherwise ceases to be entitled to support pursuant to the  
13 support order. The court shall apply the principles of equity in  
14 modifying any child support order due to changes in the  
15 circumstances of either party as it relates to the best interests of  
16 the children.

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

20 3. An order of modification shall be effective ~~upon~~ on the  
21 first day of the month following the date the motion to modify was  
22 filed, unless the parties agree to ~~the contrary~~ another date or the  
23 court makes a specific finding of fact that the material change of  
24 circumstance did not occur until a later date.

1 B. 1. A child support order shall not be modified  
2 retroactively regardless of whether support was ordered in a  
3 temporary order, a decree of divorce, an order establishing  
4 paternity, modification of an order of support, or other action to  
5 establish or to enforce support.

6 2. All final orders shall state whether past-due support and  
7 interest have accrued pursuant to any temporary order and the amount  
8 due, if any; however, failure to state a past-due amount shall not  
9 bar collection of that amount after entry of the final support  
10 order.

11 C. The amount of a child support order shall not be construed  
12 to be an amount per child unless specified by the district or  
13 administrative court in the order. A child reaching the age of  
14 majority or otherwise ceasing to be entitled to support pursuant to  
15 the support order shall constitute a material change in  
16 circumstances, but shall not automatically serve to modify the  
17 order. When the last child of the parents ceases to be entitled to  
18 support, the child support obligation is automatically terminated as  
19 to prospective child support only.

20 D. 1. When a child support order is entered or modified, the  
21 parents may agree, or the district or administrative court may  
22 require a periodic exchange of information for an informal review  
23 and adjustment process.

24



1           2. When an existing child support order does not contain a  
2 provision which requires an informal review and adjustment process,  
3 either parent may request the other parent to provide the  
4 information necessary for the informal review and adjustment  
5 process. Information shall be provided to the requesting parent  
6 within forty-five (45) days of the request.

7           3. Requested information may include verification of income,  
8 proof and cost of medical insurance of the children, and current and  
9 projected child care costs. If shared parenting time has been  
10 awarded by the court, documentation of past and prospective  
11 overnight visits shall be exchanged.

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

14           5. a. If the parents agree to a modification of a child  
15 support order, their agreement shall be in writing  
16 using standard modification forms and the child  
17 support computation form provided for in Section 120  
18 of Title 43 of the Oklahoma Statutes.

19           b. The standard modification forms and the standard child  
20 support computation form shall be submitted to the  
21 district or administrative court. Either court shall  
22 review the modification forms to confirm that the  
23 child support obligation complies with the child  
24 support guidelines or, if agreed to by the parties,

1 the court may approve a deviation from the child  
2 support guidelines as provided in subsection B of  
3 Section 118H of this title. If the court approves the  
4 modification forms, they shall be filed with the  
5 court.

6 E. After November 1, 2021, there shall be a rebuttable  
7 presumption that an obligor who is incarcerated for a period of one  
8 hundred eighty (180) or more consecutive days is unable to pay child  
9 support.

10 1. The obligor's child support obligation shall be abated  
11 without court action effective the first day of the month following  
12 the date of entry into the correctional facility or jail and shall  
13 not accrue for the duration of the incarceration unless the  
14 presumption is rebutted by a showing of means to pay as provided in  
15 Section 118B of this title.

16 2. Upon release from incarceration, the monthly child support  
17 obligation shall revert to the pre-incarceration order amount  
18 beginning the first day of the month following a lapse of ninety  
19 (90) calendar days after release from incarceration.

20 3. The abatement of a monthly support obligation under this  
21 subsection shall not affect any past-due support that has accrued  
22 prior to the abatement of the obligation.

23 4. If any of the crimes for which the obligor is incarcerated  
24 are a result of indirect contempt of court for failure to pay child

1 support, the crime of omission to provide child support or for any  
2 offense for which the obligee's dependent child or the obligee was a  
3 victim, the abatement shall not be presumed and the child support  
4 obligation shall continue to accrue.

5 SECTION 5. This act shall become effective November 1, 2021.

6 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES  
7 February 22, 2021 - DO PASS  
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