

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

SENATE BILL 1853

By: Rosino

AS INTRODUCED

An Act relating to child support; amending 43 O.S. 2011, Sections 118A, as amended by Section 2, Chapter 289, O.S.L. 2016, 118B, 118G and 118I, as amended by Section 4, Chapter 289, O.S.L. 2016 (43 O.S. Supp. 2019, Sections 118A and 118I), which relate to definitions, computation of gross income, actual annualized child care expenses and modification; modifying definitions; modifying requirements for computation of gross income; establishing guidelines for computation of income for incarcerated parent; requiring use of certain schedule for determination of child care costs under certain circumstances; adding grounds for modification of child support orders; modifying effective dates for child support modification orders; requiring modification of certain child support orders by operation of law; 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. 2019, Section 118A), is amended to read as follows:

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

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

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

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

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

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

18 2. "Base child support obligation" means the amount of support
19 displayed on the Schedule of Basic Child Support Obligations which
20 corresponds to the combined AGI of both parents and the number of
21 children for whom support is being determined. This amount is
22 rebuttably presumed to be the appropriate amount of basic child
23 support to be provided by both parents in the case immediately under
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1 consideration, prior to consideration of any adjustments for medical
2 and child care costs, and any other additional expenses;

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

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

10 5. "Incarcerated" or "Incarceration" means confinement of an
11 obligor on a full-time basis in a local, state or federal
12 correctional facility in which the obligor is not permitted to earn
13 wages from employment outside the correctional facility and does not
14 include probation, parole, work release or any other detention
15 alternative program that allows the obligor to be gainfully
16 employed;

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

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

22 ~~7.~~ 8. "Obligee" or "person entitled" means:

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

- 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,

- h. social security benefits,
- i. workers' compensation benefits,
- j. unemployment insurance benefits,
- k. disability insurance benefits,
- l. gifts,
- m. prizes,
- n. gambling winnings,
- o. lottery winnings, and
- p. royalties.

B. Income specifically excluded is:

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

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

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

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

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

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

3 C. 1. For purposes of computing gross income of the parents,
4 gross income shall include for each parent all actual monthly income
5 described in this section, plus such overtime and supplemental
6 income as the court deems equitable. If the actual monthly income
7 is not available, the court shall use whichever is the most
8 equitable of:

9 a. ~~all actual monthly income described in this section,~~
10 ~~plus such overtime and supplemental income as the~~
11 ~~court deems equitable,~~

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

15 ~~c.~~

16 b. the minimum wage paid for a ~~forty-hour~~ work week
17 consistent with the hours typically worked in that
18 parent's industry, or

19 ~~d.~~

20 c. gross monthly income imputed as set forth in
21 subsection D of this section.

22 2. If a parent is permanently physically or mentally
23 incapacitated or incarcerated for more than one hundred eighty (180)
24 consecutive days, the child support obligation shall be computed on
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1 the basis of actual monthly gross income. For purposes of computing
2 gross income of the parents in such circumstances, gross income
3 shall not be imputed as set forth in subsection D of this section
4 unless any of the following conditions exist:

- 5 a. the obligor has the means to pay support while
6 permanently physically or mentally incapacitated, or
7 incarcerated,
- 8 b. the obligor is incarcerated for an offense against the
9 custodial person or the child subject to the support
10 order, or
- 11 c. the incarceration resulted from the obligor's failure
12 to comply with a court order to pay child support.

13 D. Imputed income.

14 1. ~~Instead of using the~~ If actual or average monthly income of
15 ~~a parent is not available,~~ the court may impute gross income to a
16 parent under the provisions of this section if equitable.

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

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

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

- 7 b. when there is no reliable evidence of income,
- 8 c. the past and present employment of the parent,
- 9 d. the education, training, and ability to work of the
10 parent,
- 11 e. the lifestyle of the parent, including ownership of
12 valuable assets and resources, whether in the name of
13 the parent or the current spouse of the parent, that
14 appears inappropriate or unreasonable for the income
15 claimed by the parent,
- 16 f. 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. any additional factors deemed relevant to the
24 particular circumstances of the case.

1 E. Self-employment income.

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

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

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

16 F. Fringe benefits.

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

21 2. Such fringe benefits might include, but are not limited to,
22 company car, housing, or room and board.
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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.
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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 SECTION 3. AMENDATORY 43 O.S. 2011, Section 118G, is
10 amended to read as follows:

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

- 14 1. Be employed;
- 15 2. Seek employment; or
- 16 3. Attend school or training to enhance employment income.

17 B. When a parent is participating in the Department of Human
18 Services child care subsidy program as provided under Section 230.50
19 of Title 56 of the Oklahoma Statutes, the Child Care
20 Eligibility/Rates Schedule established by the Department shall be
21 ~~used to determine the amount to be treated as actual child care~~
22 ~~costs incurred. When applying the schedule to determine the family~~
23 ~~share copayment amount, the share of the base monthly obligation for~~
24 ~~child support of the non-responsible parent and the gross income of~~

1 ~~the obligee shall be considered as the monthly income of the~~
2 ~~obligee.~~ The actual child care costs incurred shall be the family
3 share copayment amount indicated on the schedule which shall be
4 allocated and paid monthly in the same proportion as base child
5 support. The Department of Human Services shall promulgate rules,
6 as necessary, to implement the provisions of this section.

7 C. The actual annualized child care costs incurred for the
8 purposes authorized by this section shall be allocated and added to
9 the base child support order⁷ and shall be part of the final child
10 support order.

11 D. The district or administrative court shall require the
12 parent incurring child care expenses to notify the obligor within
13 forty-five (45) days of any change in the amount of the child care
14 costs that would affect the annualized child care amount as
15 determined in the order.

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

20 SECTION 4. AMENDATORY 43 O.S. 2011, Section 118I, as
21 amended by Section 4, Chapter 289, O.S.L. 2016 (43 O.S. Supp. 2019,
22 Section 118I), is amended to read as follows:

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

12 2. Modification of the Child Support Guideline Schedule shall
13 not alone be a material change in circumstances for child support
14 orders.

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

20 B. 1. A child support order shall not be modified
21 retroactively regardless of whether support was ordered in a
22 temporary order, a decree of divorce, an order establishing
23 paternity, modification of an order of support, or other action to
24 establish or to enforce support.

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

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

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

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

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

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

8 5. a. If the parents agree to a modification of a child
9 support order, their agreement shall be in writing
10 using standard modification forms and the child
11 support computation form provided for in Section 120
12 of Title 43 of the Oklahoma Statutes.

13 b. The standard modification forms and the standard child
14 support computation form shall be submitted to the
15 district or administrative court. Either court shall
16 review the modification forms to confirm that the
17 child support obligation complies with the child
18 support guidelines or, if agreed to by the parties,
19 the court may approve a deviation from the child
20 support guidelines as provided in subsection B of
21 Section 118H of this title. If the court approves the
22 modification forms, they shall be filed with the
23 court.

1 E. After November 1, 2020, a monthly child support order for an
2 incarcerated obligor shall be modified by operation of law to Zero
3 Dollars (\$0.00) effective the first day of the month following the
4 date of incarceration. A modification by operation of law under
5 this section may be rebutted only by a showing of means to pay as
6 provided in Section 118B of this title. Any past due child support
7 owed at the time of the modification by operation of law shall
8 remain due and owing.

9 SECTION 5. This act shall become effective November 1, 2020.

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