

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

SENATE BILL 421

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. 2020, 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; clarifying treatment of certain disability compensation; 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; creating certain 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 ~~insurance~~ 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,
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25

- 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. 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
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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 ~~D.~~ 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.~~

f. any additional factors deemed relevant to the particular circumstances of the case.

~~E.~~ D. Self-employment income.

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

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

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

~~F.~~ E. Fringe benefits.

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

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

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

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

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

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

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

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

B. When a parent is participating in the Department of Human Services child care subsidy program as provided under Section 230.50 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 order⁷ 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 search⁷ 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.

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