

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

4 ENGROSSED SENATE

5 BILL NO. 85

 By: Daniels of the Senate

 and

 Kannady of the House

8 An Act relating to child support; amending 12 O.S.
9 2021, Section 1171.2, which relates to income
10 assignment for child support; updating statutory
11 references; amending 56 O.S. 2021, Sections 237.7 and
12 238.5A, which relate to definitions and use of child
13 support guidelines; updating statutory language;
14 modifying definition; requiring Department of Human
15 Services to ensure review of certain orders;
16 authorizing issuance of notice to modify child
17 support order under certain circumstances; requiring
18 Department to provide certain notice; providing for
19 service of certain notice; requiring Department to
20 set hearing upon request; requiring notice of certain
21 hearing; requiring submission of certain orders to
22 the administrative court; requiring review of certain
23 order; requiring filing of certain administrative
24 order in district court; authorizing appeal of
 certain administrative orders; requiring Department
 to promulgate certain rules; updating statutory
 references; repealing 43 O.S. 2021, Section 118.1,
 which relates to Department review of child support
 orders; making language gender neutral; and providing
 an effective date.

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

22 SECTION 1. AMENDATORY 12 O.S. 2021, Section 1171.2, is
23 amended to read as follows:

1 Section 1171.2. A. Any person awarded custody of and support
2 for a minor child by the district court or awarded periodic child
3 support payments by the Department of Human Services, or the
4 Department of Human Services on behalf of a recipient of Temporary
5 Assistance for Needy Families or on behalf of a person not receiving
6 Temporary Assistance for Needy Families shall be entitled to proceed
7 to collect any current child support and child support due and owing
8 through income assignment pursuant to the provisions of this section
9 and Section 1171.3 of this title or Section 237.7 and Sections ~~240~~
10 240.1 through 240.3 of Title 56 of the Oklahoma Statutes or by
11 garnishment, if the minor child is in the custody and care of the
12 person entitled to receive the child support or as is otherwise
13 provided by the court or administrative order at the time of the
14 income assignment or garnishment proceedings.

15 B. The maximum part of the aggregate disposable earnings of any
16 person for any workweek which is subject to garnishment or income
17 assignment for the support of a minor child shall not exceed:

18 1. Fifty percent (50%) of such person's disposable earnings for
19 that week, if such person is supporting his or her spouse or a
20 dependent child other than the child with respect to whose support
21 such order is used; and

22 2. Sixty percent (60%) of such person's disposable earnings for
23 that week if such person is not supporting a spouse or dependent
24 child.

1 The fifty percent (50%) specified in paragraph 1 of this subsection
2 shall be deemed to be fifty-five percent (55%) and the sixty percent
3 (60%) specified in paragraph 2 of this subsection shall be deemed to
4 be sixty-five percent (65%), if and to the extent that such earnings
5 are subject to garnishment or income assignment to enforce a support
6 order with respect to a period which is prior to the twelve-week
7 period which ends with the beginning of such workweek.

8 C. When responding to a notice of income assignment pursuant to
9 Section 1171.3 of this title and a National Medical Support Notice
10 issued pursuant to Section ~~118.1~~ 118.2 of Title 43 and Section 6058A
11 of Title 36 of the Oklahoma Statutes, the payor shall allocate
12 available income in the following priority:

- 13 1. Current child and spousal support;
- 14 2. Health insurance premiums;
- 15 3. Arrearages; and
- 16 4. Other child support obligations.

17 If after payment of current child and spousal support there is
18 insufficient income to pay the premiums necessary to provide
19 dependent health insurance, the payor shall allocate the remaining
20 withholding to arrearages and then to other child support
21 obligations. An obligor may voluntarily elect to have the payor
22 withhold amounts in excess of the limits in subsection B of this
23 section to pay the obligor's portion of the health insurance premium
24 for a dependent child.

1 SECTION 2. AMENDATORY 56 O.S. 2021, Section 237.7, is
2 amended to read as follows:

3 Section 237.7. For the purposes of Sections 237 through 240.23
4 of this title:

5 1. The "Child Support Enforcement Division of the Department of
6 Human Services", hereinafter referred to as the "Division" or as the
7 "Department", is the state agency designated to administer the child
8 support enforcement program for ~~the State of Oklahoma~~ this state and
9 its ~~District Offices~~ district offices, which may be administered
10 through contract or cooperative agreements. The ~~District Offices~~
11 district offices provide enforcement services to individuals
12 receiving Temporary Assistance for Needy Families, hereinafter
13 referred to as "TANF", and to individuals not receiving TANF who
14 have made proper application for enforcement services to the
15 Division;

16 2. "Director" means the Director of the Department of Human
17 Services who shall have the authority to enter orders in appropriate
18 cases or as otherwise provided by law, without the necessity of an
19 additional signature of a district or administrative judge;

20 3. "Office of Administrative Hearings: Child Support (Legal
21 Division, Department of Human Services, State of Oklahoma)",
22 hereinafter referred to as "OAH", conducts child support enforcement
23 administrative hearings. All hearings are conducted by
24 administrative law judges assigned to OAH;

1 4. "Support debt" means a debt owed to ~~the State of Oklahoma~~
2 this state by the natural, legal or adoptive parents who are
3 responsible for support of a child or children receiving public
4 assistance money from the Department or the reasonable expenses of
5 providing for a child or children. The amount of the debt shall be
6 determined in accordance with the provisions of Section 118 et seq.
7 of Title 43 of the Oklahoma Statutes;

8 5. "Arrearage" or "past due support" means the total amount of
9 unpaid support obligations;

10 6. "Delinquency" means any payment under an order for support
11 which becomes due and remains unpaid;

12 7. a. "Gross income" or "income" means income from any
13 source and includes, but is not limited to, income
14 from salaries, wages, commissions, bonuses, dividends,
15 severance pay, pensions, rent, interest income, trust
16 income, annuities, compensation as an independent
17 contractor, social security benefits, workers'
18 compensation benefits, unemployment insurance
19 benefits, disability insurance benefits, gifts,
20 prizes, any form of periodic payment to an individual
21 regardless of source, and any other payments made by
22 any person, private entity, federal or state
23 government, any unit of local government, school
24 district, or any entity created by law. Income

1 specifically excluded are actual child support
2 received for children not before the court and
3 benefits received from means-tested public assistance
4 programs, including but not limited to TANF,
5 Supplemental Security Income (SSI), Food Stamps,
6 General Assistance and State Supplemental Payments for
7 Aged, Blind, and the Disabled.

8 b. For purposes of computing gross income of the parents,
9 gross income shall include for each parent all actual
10 monthly income described in this paragraph, the
11 average of the gross monthly income for the time
12 actually employed during the previous three (3) years,
13 or the minimum wage paid for a forty-hour week,
14 whichever is the most equitable. If equitable, gross
15 monthly income for either parent may be imputed in an
16 amount that a person with comparable education,
17 training, and experience could reasonably expect to
18 earn. If a person is permanently physically or
19 mentally incapacitated, the child support obligation
20 shall be computed on the basis of actual monthly gross
21 income;

22 8. "Earnings" means amounts paid to a person as an employee,
23 including wages and salary;

1 9. "Disposable income" means income or earnings less any
2 amounts required by law to be withheld including, but not limited
3 to, federal, state, and local taxes, Social Security, and public
4 assistance payments;

5 10. "Obligor" means the person who is required to make payments
6 under an order for support or the natural, legal, or adoptive
7 parents who are responsible for the support of a child or children;

8 11. "Obligee" or "Person entitled" means:

9 a. a person to whom a support debt or support obligation
10 is owed,

11 b. the Department of Human Services or a public agency of
12 another state that has the right to receive current or
13 accrued support payments or that is providing support
14 enforcement services, or

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

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

20 13. "Support order" means an order for the payment of support
21 issued by a district or administrative court of this state or by any
22 court or agency of another state;

23 14. "Income assignment" means an assignment of a portion of the
24 monies, income, or periodic earnings due and owing to the obligor to

1 the person entitled to the support or to another person or entity
2 designated by the support order or assignment for payment of
3 support, the support debt, or arrearages. In all child support
4 cases wherein child support is being enforced pursuant to the state
5 plan, the income of any obligor required by court or administrative
6 order to pay support shall be subject by operation of law to
7 immediate income assignments regardless of whether support payments
8 by such obligor are in arrears. The assignment shall be in an
9 amount which is sufficient to meet the periodic child support
10 payments, other maintenance payments, payments on support debt and
11 collection of past due support monies that have accrued under a
12 district or administrative court order. An income assignment shall
13 be made a part of a support order or any order granting a judgment
14 for a support debt or confirming the amount of the past due support,
15 or a review or modification of a support order pursuant to Section
16 ~~118.1~~ 238.5A of ~~Title 43 of the Oklahoma Statutes~~ this title;

17 15. "Voluntary acknowledgment" means a written acknowledgment
18 executed by the obligor wherein the obligor acknowledges paternity,
19 support liability, a support debt, or arrearage amount, and agrees
20 to a judgment and an immediate income assignment to pay monthly
21 support and payments on the support debt or arrearage judgments;

22 16. "Notice" means a written announcement served upon an
23 obligor, a custodial person or any person or entity which might be
24 affected by the noticed proceeding;

1 17. "Licensing board" means any bureau, department, division,
2 board, agency, or commission of this state or of a municipality in
3 this state that issues a license;

4 18. "License" means a license, certificate, registration,
5 permit, approval, or other similar document issued by a licensing
6 board granting to an individual a right or privilege to engage in a
7 profession, occupation, business, or industry, or any recreational
8 license or permit including, but not limited to, a hunting and
9 fishing license or other authorization issued pursuant to the
10 Oklahoma Wildlife Conservation Code and certificates of Title for
11 vessels and motors and other licenses or registrations issued
12 pursuant to the Oklahoma Vessel and Motor Registration Act or a
13 driver license or other permit issued pursuant to Title 47 of the
14 Oklahoma Statutes;

15 19. "Commission" means the Commission for Human Services;

16 20. "Payment plan" includes, but is not limited to, a plan
17 approved by the support enforcement entity that provides sufficient
18 security to ensure compliance with a support order or that
19 incorporates voluntary or involuntary income assignment or a similar
20 plan for periodic payment of past-due support and, if applicable,
21 current and future support; and

22 21. "Support" means all payments or other obligations due and
23 owing to the obligee or person entitled by the obligor pursuant to a
24 support order, and may include, but is not limited to, support

1 alimony payments, child support, as defined by Section 1170 of Title
2 12 of the Oklahoma Statutes, and other expenses, requirements and
3 obligations as specified in Section 118 et seq. of Title 43 of the
4 Oklahoma Statutes.

5 SECTION 3. AMENDATORY 56 O.S. 2021, Section 238.5A, is
6 amended to read as follows:

7 Section 238.5A. ~~The~~ A. In all cases in which child support
8 services are being provided under the state child support plan as
9 provided in Section 237 of this title, the Department shall ensure
10 that the amount of child support and other support shall be is
11 ordered and reviewed in accordance with the child support guidelines
12 provided in Section 118 et seq. of Title 43 of the Oklahoma
13 Statutes.

14 B. Whenever the Department determines that an order for child
15 support may not be in accordance with the child support guidelines
16 set forth in Section 118 et seq. of Title 43 of the Oklahoma
17 Statutes, the Department may issue a notice to modify the order for
18 child support.

19 C. The Department shall serve notice on the obligor and the
20 custodial person informing them of the following:

21 1. The style and case number of the child support order or
22 orders being enforced by the Department;

23 2. The date the notice is issued;
24

- 1 3. The initials and dates of birth of the child or children who
2 are the subject or subjects of the order for child support;
- 3 4. The amount of the existing monthly child support obligations
4 as defined in Section 118 et seq. of Title 43 of the Oklahoma
5 Statutes;
- 6 5. That the monthly child support obligation may not be in
7 compliance with the child support guidelines;
- 8 6. That according to information in the records of the
9 Department, the order for child support and other support should be
10 modified;
- 11 7. The proposed modified amount of child support that should be
12 paid in accordance with the child support guidelines;
- 13 8. The proposed medical support order;
- 14 9. The proposed child care expenses;
- 15 10. The amount of past due support owed by the obligor and a
16 monthly judgment payment if the Department is requesting a judgment;
- 17 11. That unless either party requests a hearing, the proposed
18 modified monthly child support and other support obligations shall
19 become the monthly court-ordered child support amount;
- 20 12. That the modification of the child support obligation shall
21 be effective the first day of the month following the date the
22 notice is issued;
- 23 13. That an immediate income assignment shall be ordered
24 pursuant to Section 115 of Title 43 of Oklahoma Statutes;

1 14. That all payments for child support shall be made to the
2 Centralized Support Registry at the address specified in the notice
3 pursuant to Section 413 of Title 43 of Oklahoma Statutes, and any
4 payments made other than to the Centralized Support Registry may not
5 be credited to the amount owed;

6 15. The address of record for the obligor and custodial person
7 on file with the Central Case Registry, unless the Department has
8 determined to keep such information confidential due to reasonable
9 evidence of domestic violence or child abuse, pursuant to Section
10 112A of Title 43 of Oklahoma Statutes;

11 16. That either party may request an administrative hearing on
12 a form attached to the notice within twenty (20) days of the date
13 the notice is served; and

14 17. That the notice shall become the order of modification and
15 shall be filed with the clerk of the district court. Such order
16 shall have the same legal effect as an order of the court.

17 D. The notice provided for in this section shall be served by
18 the Department upon the obligor and custodial person as provided in
19 Section 2004 of Title 12 of the Oklahoma Statutes, or if there is an
20 address of record on file with the Central Case Registry pursuant to
21 Section 112A of Title 43 of the Oklahoma Statutes, the notice may be
22 served by regular mail at the address of record.

23 E. Upon receipt of a timely request for hearing, the Department
24 shall set the matter for a hearing. The obligor and custodial

1 person shall be given notice of the hearing as provided in
2 subsection B of Section 2005 of Title 12 of the Oklahoma Statutes.
3 The notice shall state that failure to appear at the scheduled
4 hearing may result in the notice becoming the order of the court.

5 F. When a timely hearing is not requested, the Department shall
6 submit to the administrative court an order confirming and
7 incorporating the notice by reference. The court shall review to
8 confirm jurisdiction, sufficiency of the notice to modify, and
9 service of process. The order shall be reviewed and signed by the
10 court or returned to the Department with explanation.

11 G. An administrative order shall be filed in the district court
12 pursuant to Section 237.10 of this title. A final administrative
13 order entered pursuant to this section may be appealed in accordance
14 with the requirements of Section 240.3 of this title.

15 H. The Department shall promulgate rules as necessary to
16 implement the provisions of this section.

17 SECTION 4. REPEALER 43 O.S. 2021, Section 118.1, is
18 hereby repealed.

19 SECTION 5. This act shall become effective November 1, 2023.

20
21 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL, dated
22 04/10/2023 - DO PASS.
23
24