

Changes To Title 43 Oklahoma Statutes by the Spring 2002 Legislature

§102	§103	§104.1	§105	§106	§107	§107.1	§107.3
§110	§112	§112.2	§112.3	§113	§118	§120	§413

43 O.S. §102

A. Except as otherwise provided by subsection B of this section, the petitioner or the respondent in an action for divorce or annulment of a marriage must have been an actual resident, in good faith, of the state, for six (6) months immediately preceding the filing of the petition.

B. Any person who has been a resident of any United States army post or military reservation within the State of Oklahoma, for six (6) months immediately preceding the filing of the petition, may bring action for divorce or annulment of a marriage or may be sued for divorce or annulment of a marriage.

Historical Data: R.L. 1910, §4963; Laws 1939, p. 2 §1; Laws 1957, p. 82, §2; Laws 1961, p. 64, §1; Laws 1965, c. 284, §1, emerg. eff. June 24, 1965; renumbered from Title 12, §1272 by Laws 1989, c. 333. §1, eff. Nov. 1, 1989; Amended by Laws 2002, HB 2397, c. 400, §1, eff. Nov. 1, 2002.

43 O.S. §103

A. The venue of any action for divorce, annulment of a marriage or legal separation may be in the following counties:

1. An action for divorce or annulment of a marriage may be filed in the county in which the petitioner has been a resident for the thirty (30) days immediately preceding the filing of the petition or in the county in which the respondent is a resident; provided, the action may be assigned for trial in any county within the judicial district by the chief judge of the district; and

2. An action for legal separation may be brought in the county in which either party is a resident at the time of the filing of the petition.

B. The court may, upon application of a party, transfer an action for divorce, annulment of marriage or legal separation at any time after filing of the petition to any county where venue would be proper under subsection A of this section if the requirements of subsection C or D of this section are met.

C. The court shall grant a party's application for change of venue when the other party is not a resident of this state at the time the application for change of venue is filed, or the plaintiff has departed from this state and has been absent for more than six (6) months preceding the date the application for change of venue is filed, and transfer is requested to the county where the applying party resides in this state.

D. The court shall grant a party's application for change of venue when the court determines that it is an inconvenient forum under the circumstances and the court in another county is a more appropriate forum consistent with the factors in subsection B of Section 551-207 of the Uniform Child Custody Jurisdiction and Enforcement Act after substitution of the word "county" for the word "state" in such section of the act, and transfer is requested to the county where the applying party resides in the state.

Historical Data: Laws 1971, c. 23, §1, emerg. eff. March 22, 1971. Renumbered from Title 12, §1272.1 by Laws 1989, c. 333, §1, eff. Nov. 1, 1989; Amended by Laws 1998, c. 310, §7, eff. Nov. 1, 1998; Amended by Laws 2001, HB 1083, c. 308 §1, emerg. eff. June 1, 2001; Amended by Laws 2002, HB 2397, c. 400, §2, emerg. eff. July 1, 2002.

43 O.S. §104.1 [New]

A. If funding is available, presiding judges of the district court may appoint court referees in their judicial districts to hear designated cases as assigned by the presiding judge.

B. Reasonable compensation for the referees shall be fixed by that presiding judge.

C. A referee shall meet the requirements and perform their duties in the same manner and procedure as set forth in Sections 7003-8.6 and 7303-7.5 of Title 10 of the Oklahoma Statutes pertaining to referees appointed in juvenile proceedings.

Historical Data: Added by Laws 2002, HB 2397, c. 400, §9, eff. Nov. 1, 2002.

Changes To Title 43 Oklahoma Statutes by the Spring 2002 Legislature

43 O.S. §105

A. A proceeding for dissolution of marriage, annulment of a marriage, or legal separation shall be titled "In re the Marriage of _____ and _____".

B. The initial pleading in all proceedings under this title shall be denominated a petition. The person filing the petition shall be called the petitioner. A responsive pleading shall be denominated a response. The person filing the responsive pleading shall be called the respondent. Other pleadings shall be denominated as provided in the Rules of Civil Procedure, except as otherwise provided in this section.

C. The petition must be verified as true, by the affidavit of the petitioner.

D. A summons may issue thereon, and shall be served, or publication made, as in other civil cases.

Historical Data: R.L. 1910, §4964; Laws 1973, c. 262, §6, operative July 1, 1973; Renumbered from Title 12, §1273 by Laws 1989, c. 333, §1, eff. Nov. 1, 1989; Amended by Laws 2002, HB 2397, c. 400, §3, eff. Nov. 1, 2002.

43 O.S. §106

A. The respondent, in his or her answer, may allege a cause for a divorce, annulment of the marriage or legal separation against the petitioner, and may have the same relief thereupon as he or she would be entitled to for a like cause if he or she were the petitioner.

B. When new matter is set up in the answer, it shall be verified as to such new matter by the affidavit of the respondent.

Historical Data: R.L. 1910, §4965. Renumbered from Title 12, §1274 by Laws 1989, c. 333, §1, eff. Nov. 1, 1989; Amended by Laws 2002, HB 2397, c. 400, §4, emerg. eff. Nov. 1, 2002.

43 O.S. §107 Repealed by Laws 2002, HB 2397, c. 400, §10, eff. Nov. 1, 2002.

43 O.S. §107.1

A. 1. In an action for divorce where there are minor children involved, the court shall not issue a final order thereon for at least ninety (90) days from the date of filing the petition which ninety (90) days may be waived by the court for good cause shown and without objection by either party.

2. The court may require that within the ninety-day period specified by paragraph 1 of this subsection, the parties attend and complete an educational program specified by Section 107.2 of this title.

B. This section shall not apply to divorces filed for any of the following causes:

1. Abandonment for one (1) year;

2. Extreme cruelty;

3. Habitual drunkenness;

4. Imprisonment of the other party in a state or federal penal institution under sentence thereto for the commission of a felony at the time the petition is filed;

5. The procurement of a final divorce decree outside this state by a husband or wife which does not in this state release the other party from the obligations of the marriage; 6. Insanity for a period of five (5) years, the insane person having been an inmate of a state institution for the insane in the State of Oklahoma, or an inmate of a state institution for the insane in some other state for such period, or an inmate of a private sanitarium, and affected with a type of insanity with a poor prognosis for recovery;

7. Conviction of any crime defined by the Oklahoma Child Abuse Reporting and Prevention Act committed upon a child of either party to the divorce by either party to the divorce; or

8. A child of either party has been adjudicated deprived, pursuant to the Oklahoma Children's Code, as a result of the actions of either party to the divorce and the party has not successfully completed the service and treatment plan required by the court.

Changes To Title 43 Oklahoma Statutes by the Spring 2002 Legislature

C. After a petition has been filed in an action for divorce where there are minor children involved, the court may make any such order concerning property, children, support and expenses of the suit as provided for in Section 110 of this title, to be enforced during the pendency of the action, as may be right and proper.

D. The court may issue a final order in an action for divorce where minor children are involved before the ninety-day time period set forth in subsection A of this section has expired, if the parties voluntarily participate in marital or family counseling and the court finds reconciliation is unlikely.

Historical Data: Added by Laws 1992, c. 243, §1, eff. Sept. 1, 1992. Amended by Laws 1994, c. 124, §1, eff. Sept. 1, 1994; Laws 1996, c. 131, §7, eff. Jan. 1, 1997; Amended by Laws 2002, SB 1329, c. 445, §16, eff. Nov. 1, 2002.

43 O.S. §107.3

[Similar but not identical versions were approved during the 2002 Legislative Session. HB 2397 is:]

A. 1. In any proceeding when the custody or visitation of a minor child or children is contested by any party, the court may appoint an attorney at law as guardian ad litem on the court's motion or upon application of any party to appear for and represent the minor children.

2. The guardian ad litem may be appointed to objectively advocate on behalf of the child and act as an officer of the court to investigate all matters concerning the best interests of the child. In addition to other duties required by the court and as specified by the court, a guardian ad litem shall have the following responsibilities:

a. review documents, reports, records and other information relevant to the case, meet with and observe the child in appropriate settings, and interview parents, caregivers and health care providers and any other person with knowledge relevant to the case including, but not limited to, teachers, counselors and child care providers,

b. advocate for the child's best interests by participating in the case, attending any hearings in the matter and advocating for appropriate services for the child when necessary,

c. monitor the child's best interests throughout any judicial proceeding,

d. present written reports to the parties and court prior to trial or at any other time as specified by the court on the child's best interests that include conclusions and recommendations and the facts upon which they are based, and

e. the guardian ad litem shall, as much as possible, maintain confidentiality of information related to the case and is not subject to discovery pursuant to the Oklahoma Discovery Code.

3. Expenses, costs, and attorney's fees for the guardian ad litem may be allocated among the parties as determined by the court.

B. When property, separate maintenance, or custody is at issue, the court:

1. May refer the issue or issues to mediation if feasible unless a party asserts or it appears to the court that domestic violence or child abuse has occurred, in which event the court shall halt or suspend professional mediation unless the court specifically finds that:

a. the following three conditions are satisfied:

(1) the professional mediator has substantial training concerning the effects of domestic violence or child abuse on victims,

(2) a party who is or alleges to be the victim of domestic violence is capable of negotiating with the other party in mediation, either alone or with assistance, without suffering an imbalance of power as a result of the alleged domestic violence, and

(3) the mediation process contains appropriate provisions and conditions to protect against an imbalance of power between parties resulting from the alleged domestic violence or child abuse, or

b. in the case of domestic violence involving parents, the parent who is or alleges to be the victim

Changes To Title 43 Oklahoma Statutes by the Spring 2002 Legislature

requests mediation and the mediator is informed of the alleged domestic violence; and

2. When custody is at issue, the court may order, in addition to or in lieu of the provisions of paragraph 1 of this subsection, that each of the parties undergo individual counseling in a manner that the court deems appropriate, if the court finds that the parties can afford the counseling.

C. As used in this section:

1. "Child abuse" shall have the same meaning as such term is defined by the Oklahoma Child Abuse Reporting and Prevention Act or shall mean the child has been adjudicated deprived pursuant to the Oklahoma Children's Code; and

2. "Domestic violence" has the same meaning as such term is defined by the Protection from Domestic Abuse Act.

D. During any proceeding concerning child custody, should it be determined by the court that a party has intentionally made a false or frivolous accusation to the court of child abuse or neglect against the other party, the court shall proceed with any or all of the following:

1. Find the accusing party in contempt for perjury and refer for prosecution;

2. Consider the false allegations in determining custody; and

3. Award the obligation to pay all court costs and legal expenses encumbered by both parties arising from the allegations to the accusing party.

[Similar but not identical versions were approved during the 2002 Legislative Session. SB1329 is:]

A. In any proceeding for the disposition of children where custody of minor children is contested by any party, the court may appoint an attorney at law as guardian ad litem on the court's motion or upon application of any party to appear for and represent the minor children. Expenses, costs, and attorney's fees for the guardian ad litem may be allocated among the parties as determined by the court.

B. When property, separate maintenance, or custody is at issue, the court:

1. May refer the issue or issues to mediation if feasible unless a party asserts or it appears to the court that domestic violence or child abuse has occurred, in which event the court shall halt or suspend professional mediation unless the court specifically finds that:

a. the following three conditions are satisfied:

(1) the professional mediator has substantial training concerning the effects of domestic violence or child abuse on victims,

(2) a party who is or alleges to be the victim of domestic violence is capable of negotiating with the other party in mediation, either alone or with assistance, without suffering an imbalance of power as a result of the alleged domestic violence, and

(3) the mediation process contains appropriate provisions and conditions to protect against an imbalance of power between parties resulting from the alleged domestic violence or child abuse, or

b. in the case of domestic violence involving parents, the parent who is or alleges to be the victim requests mediation and the mediator is informed of the alleged domestic violence; and

2. When custody is at issue, the court may order, in addition to or in lieu of the provisions of paragraph 1 of this subsection, that each of the parties undergo individual counseling in a manner that the court deems appropriate, if the court finds that the parties can afford the counseling.

C. As used in this section:

1. "Child abuse or neglect" shall have the same meaning as such term is defined by the Oklahoma Child Abuse Reporting and Prevention Act or that the child has been adjudicated deprived as a result of the actions or omission of either parent pursuant to the Oklahoma Children's Code; and

Changes To Title 43 Oklahoma Statutes by the Spring 2002 Legislature

2. "Domestic violence" shall have the same meaning as such term is defined by the Protection from Domestic Abuse Act.

D. During any proceeding concerning child custody, should it be determined by the court that a party has intentionally made a false or frivolous accusation to the court of child abuse or neglect against the other party, the court shall proceed with any or all of the following:

1. Find the accusing party in contempt for perjury and refer for prosecution;
2. Consider the false allegations in determining custody; and
3. Award the obligation to pay all court costs and legal expenses encumbered by both parties arising from the allegations to the accusing party.

Historical Data: Laws 1997, c. 403, §7, effective Nov. 1, 1997; Amended by Laws 2002, HB 2397, c. 400, § 5, eff. Nov. 1, 2002 and by Laws 1329, c. 445, §17, eff. Nov. 1, 2002

43 O.S. §110

A. 1. Upon the filing of a petition for dissolution of marriage, annulment of a marriage, legal separation by the petitioner and upon personal service of the petition and summons on the respondent, or upon waiver and acceptance of service by the respondent, an automatic temporary injunction shall be in effect against both parties pursuant to the provisions of this section unless the automatic temporary injunction has been waived pursuant to this section:

a. restraining the parties from transferring, encumbering, concealing, or in any way disposing of, without the written consent of the other party or an order of the court, any marital property, except in the usual course of business, for the purpose of retaining an attorney for the case or for the necessities of life and requiring each party to notify the other party of any proposed extraordinary expenditures and to account to the court for all extraordinary expenditures made after the injunction is in effect,

b. restraining the parties from:

(1) intentionally or knowingly damaging or destroying the tangible property of the parties, or of either of them, including, but not limited to, any document that represents or embodies anything of value,

(2) making any withdrawal for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan or from any individual retirement account or Keogh account,

(3) withdrawing or borrowing in any manner all or any part of the cash surrender value of any life insurance policies on either party or their children,

(4) changing or in any manner altering the beneficiary designation on any life insurance policies on the life of either party or any of their children,

(5) canceling, altering, or in any manner affecting any casualty, automobile, or health insurance policies insuring the parties' property or persons,

(6) opening or diverting mail addressed to the other party, and

(7) signing or endorsing the other party's name on any negotiable instrument, check, or draft, such as tax refunds, insurance payments, and dividends, or attempting to negotiate any negotiable instruments payable to either party without the personal signature of the other party,

c. requiring the parties to maintain all presently existing health, property, life and other insurance which he or she is presently carrying on any member of this family unit, and to cooperate as necessary in the filing and processing of claims. Any employer-provided health insurance currently in existence shall remain in full force and effect for all family members,

d. enjoining both parties from molesting or disturbing the peace of the other party or of the children to the marriage,

Changes To Title 43 Oklahoma Statutes by the Spring 2002 Legislature

e. restraining both parties from disrupting or withdrawing their children from an educational facility and programs where the children historically have been enrolled, or day care,

f. restraining both parties from hiding or secreting their children from the other party, and

g. restraining both parties from removing the minor children of the parties, if any, beyond the jurisdiction of the State of Oklahoma, acting directly or in concert with others, except for vacations of two (2) weeks or less duration, without the prior written consent of the other party, which shall not be unreasonably withheld.

2. a. The automatic temporary injunction may be waived by the parties if both parties have indicated on the automatic temporary injunction notice in the space provided that the parties have both agreed to waive the automatic temporary injunction. Each party must sign his or her own name on the notice in the space provided.

b. The automatic temporary injunction notice shall contain a provision which will allow the parties to waive the automatic temporary injunction. In addition, the provision must state that unless both parties have agreed and have signed their names in the space provided, that the automatic temporary injunction will be effective. Along with the waiver provision, the notice shall contain a check box and space available for the signatures of the parties.

3. The provisions of the automatic temporary injunction shall be printed as an attachment to the summons and the petition and entitled "Automatic Temporary Injunction Notice". The automatic temporary injunction shall become an order of the court upon fulfillment of the requirements of paragraph 1 of this subsection unless:

a. a party, within three (3) days of service on the party files an objection to the injunction and requests a hearing, or

b. the automatic temporary injunction is waived as provided in paragraph 2 of this subsection.

4. Nothing in this subsection shall preclude either party from applying to the court for further temporary orders, pursuant to this section, an expanded automatic temporary injunction, or modification or revocation thereto.

5. With regard to an automatic temporary injunction, when a petition for dissolution of marriage, annulment of a marriage, or a legal separation is filed and served:

a. a peace officer shall use every reasonable means to enforce the injunction which enjoins both parties from molesting or disturbing the peace of the other party or the children of the marriage against a petitioner or respondent, whenever there is exhibited by a respondent or by the petitioner to the peace officer a copy of the petition or summons, with an attached Temporary Injunction Notice, duly filed and issued pursuant to this section, together with a certified copy of the affidavit of service of process or a certified copy of the waiver and acceptance of service, and

b. the peace officer has cause to believe that a violation of the automatic temporary injunction has occurred. A peace officer shall not be held civilly or criminally liable for his or her action pursuant to this paragraph if his or her action is in good faith and without malice.

B. After a petition has been filed in an action for divorce or legal separation either party may request the court to issue:

1. A temporary order:

a. regarding child custody, support or visitation,

b. regarding spousal maintenance,

c. regarding payment of debt,

d. regarding possession of property,

e. regarding attorney fees, and

Changes To Title 43 Oklahoma Statutes by the Spring 2002 Legislature

- f. providing other injunctive relief proper in the circumstances.

All applications for temporary orders shall set forth the factual basis for the application and shall be verified by the party seeking relief. The application and a notice of hearing shall be served on the other party in any manner provided for in the Rules of Civil Procedure.

The court shall not issue a temporary order until at least five (5) days' notice of hearing is given to the other party.

After notice and hearing, a court may issue a temporary order granting the relief as provided by this paragraph; and/or

2. A temporary restraining order. If the court finds on the basis of a verified application and testimony of witnesses that irreparable harm will result to the moving party, or a child of a party if no order is issued before the adverse party or attorney for the adverse party can be heard in opposition, the court may issue a temporary restraining order which shall become immediately effective and enforceable without requiring notice and opportunity to be heard to the other party. If a temporary restraining order is issued pursuant to this paragraph, the motion for a temporary order shall be set within ten (10) days.

C. Any temporary orders and the automatic temporary injunction, or specific terms thereof, may be vacated or modified prior to or in conjunction with a final decree on a showing by either party of facts necessary for vacation or modification. Temporary orders and the automatic temporary injunction terminate when the final judgment on all issues, except attorney fees and costs, is rendered or when the action is dismissed. The court may reserve jurisdiction to rule on an application for a contempt citation for a violation of a temporary order or the automatic temporary injunction which is filed any time prior to the time the temporary order or injunction terminates.

D. Upon granting a decree of divorce, annulment of a marriage, or legal separation, the court may require either party to pay such reasonable expenses of the other as may be just and proper under the circumstances.

E. The court may in its discretion make additional orders relative to the expenses of any such subsequent actions, including but not limited to writs of habeas corpus, brought by the parties or their attorneys, for the enforcement or modification of any interlocutory or final orders in the divorce action made for the benefit of either party or their respective attorneys.

Historical Data: R.L. 1910, §4967; Laws 1965, c. 7, §1, emerg. eff. Feb. 9, 1965; Laws 1976, c. 256, §1. Renumbered from Title 12, §1276 by Laws 1989, c. 333, §1, eff. Nov. 1, 1989. Amended by Laws 1991, c. 113, §4, eff. Sept. 1, 1991; Laws 1992, c. 252, §1, eff. Sept. 1, 1992.; Amended by Laws 1997, c. 403, §9, eff. Nov. 1, 1997 ; Amended by Laws 2002, HB 2397, c. 400, §6, eff. Nov. 1, 2002.

43 O.S. §112

[Similar but not identical versions were approved during the 2002 Legislative Session. Version One (SB 1538)]

A. A petition or cross-petition for a divorce, legal separation, or annulment must state whether or not the parties have minor children of the marriage. If there are minor children of the marriage, the court:

1. Shall make provision for guardianship, custody, medical care, support and education of the children;
2. Unless not in the best interests of the children, may provide for the visitation of the noncustodial parent with any of the children of the noncustodial parent; and

3. May modify or change any order whenever circumstances render the change proper either before or after final judgment in the action; provided, that the amount of the periodic child support payment shall not be modified retroactively or payment of all or a portion of the past due amount waived, except by mutual agreement of the obligor and obligee, or if the obligee has assigned child support rights to the Department of Human Services or other entity, by agreement of the Department or other entity. Unless the parties agree to the contrary, a completed child support computation form provided for in Section 120 of this title shall be required to be filed with the child support order.

The social security numbers of both parents and the child shall be included on the child support order summary form provided for in Section 120 of this title, which shall be submitted to the Central Case Registry

Changes To Title 43 Oklahoma Statutes by the Spring 2002 Legislature

as provided for in Section 112A of this title with all child support or paternity orders.

B. In any action in which there are minor unmarried children in awarding or modifying the custody of the child or in appointing a general guardian for the child, the court shall be guided by the provisions of Section 21.1 of Title 10 of the Oklahoma Statutes and shall consider what appears to be in the best interests of the child.

C. 1. When it is in the best interests of a minor unmarried child, the court shall:

a. assure children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and

b. encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

2. There shall be neither a legal preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody.

3. When in the best interests of the child, custody shall be awarded in a way which assures the frequent and continuing contact of the child with both parents. When awarding custody to either parent, the court:

a. shall consider, among other facts, which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent, and

b. shall not prefer a parent as a custodian of the child because of the gender of that parent.

4. In any action, there shall be neither a legal preference or a presumption for or against private or public school or home-schooling in awarding the custody of a child, or in appointing a general guardian for the child.

5. In making an order for custody, the court may specify that:

a. unless there is a prior written agreement to change the permanent residence of the child either parent shall notify the other parent if the parent plans to change the permanent residence of the child, and

b. the noncustodial parent is to notify the custodial parent if the noncustodial parent plans to change permanent residence.

D. 1. Except for good cause shown, a pattern of failure to allow court-ordered visitation may be determined to be contrary to the best interests of the child and as such may be grounds for modification of the child custody order.

2. For any action brought pursuant to the provisions of this section which the court determines to be contrary to the best interests of the child, the prevailing party shall be entitled to recover court costs, attorney fees and any other reasonable costs and expenses incurred with the action.

E. Any child shall be entitled to support by the parents until the child reaches eighteen (18) years of age. If a dependent child is regularly and continuously attending high school, said child shall be entitled to support by the parents through the age of eighteen (18) years. No hearing shall be required to extend such support through the age of eighteen (18) if the child is regularly and continuously attending high school.

F. In any case in which provision is made for the custody or support of a minor child or enforcement of such order, the court shall inquire whether public assistance money or medical support has been provided by the Department of Human Services for the benefit of each child. If public assistance money or medical support has been provided for the benefit of the child, the Department of Human Services shall be a necessary party for the just adjudication and establishment of the debt due and owing the State of Oklahoma, as defined in Section 238 of Title 56 of the Oklahoma Statutes, for the just adjudication and establishment of paternity, current child support, and medical insurance coverage for the minor children in accordance with federal regulations.

G. In any case in which a child support order or custody order or both is entered, enforced or modified, the court may make a determination of the arrearages of child support.

[Similar but not identical versions were approved during the 2002 Legislative Session. Version Two (HB 2397)]

A. A petition or cross-petition for a divorce, legal separation, or annulment must state whether or not the

Changes To Title 43 Oklahoma Statutes by the Spring 2002 Legislature

parties have minor children of the marriage. If there are minor children of the marriage, the court:

1. Shall make provision for guardianship, custody, medical care, support and education of the children;
2. Unless not in the best interests of the children, may provide for the visitation of the noncustodial parent with any of the children of the noncustodial parent; and
3. May modify or change any order whenever circumstances render the change proper either before or after final judgment in the action; provided, that the amount of the periodic child support payment shall not be modified retroactively or payment of all or a portion of the past due amount waived, except by mutual agreement of the obligor and obligee, or if the obligee has assigned child support rights to the Department of Human Services or other entity, by agreement of the Department or other entity. Unless the parties agree to the contrary, a completed child support computation form provided for in Section 120 of this title shall be required to be filed with the child support order.

The social security numbers of both parents and the child shall be included on the child support order summary form provided for in Section 120 of this title, which shall be filed with all child support orders.

B. In any action in which there are minor unmarried children in awarding or modifying the custody of the child or in appointing a general guardian for the child, the court shall be guided by the provisions of Section 21.1 of Title 10 of the Oklahoma Statutes and shall consider what appears to be in the best interests of the child.

C. 1. When it is in the best interests of a minor unmarried child, the court shall:

a. assure children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and

b. encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

2. There shall be neither a legal preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody.

3. When in the best interests of the child, custody shall be awarded in a way which assures the frequent and continuing contact of the child with both parents. When awarding custody to either parent, the court:

a. shall consider, among other facts, which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent, and

b. shall not prefer a parent as a custodian of the child because of the gender of that parent.

4. In any action, there shall be neither a legal preference or a presumption for or against private or public school or home-schooling in awarding the custody of a child, or in appointing a general guardian for the child.

5. In making an order for custody, the court shall require compliance with Section 8 of this act.

D. 1. Except for good cause shown, a pattern of failure to allow court-ordered visitation may be determined to be contrary to the best interests of the child and as such may be grounds for modification of the child custody order.

2. For any action brought pursuant to the provisions of this section which the court determines to be contrary to the best interests of the child, the prevailing party shall be entitled to recover court costs, attorney fees and any other reasonable costs and expenses incurred with the action.

E. Any child shall be entitled to support by the parents until the child reaches eighteen (18) years of age. If a dependent child is regularly and continuously attending high school, said child shall be entitled to support by the parents through the age of eighteen (18) years. No hearing shall be required to extend such support through the age of eighteen (18) if the child is regularly and continuously attending high school.

F. In any case in which provision is made for the custody or support of a minor child or enforcement of such order, the court shall inquire whether public assistance money or medical support has been provided by the Department of Human Services for the benefit of each child. If public assistance money or medical support has been provided for the benefit of the child, the Department of Human Services shall be a necessary party for the just adjudication and establishment of the debt due and owing the State of Oklahoma, as defined in

Changes To Title 43 Oklahoma Statutes by the Spring 2002 Legislature

Section 238 of Title 56 of the Oklahoma Statutes, for the just adjudication and establishment of paternity, current child support, and medical insurance coverage for the minor children in accordance with federal regulations.

G. In any case in which a child support order or custody order or both is entered, enforced or modified, the court may make a determination of the arrearages of child support.

[Similar but not identical versions were approved during the 2002 Legislative Session. Version Three (SB 1329)]

A. A petition or cross-petition for a divorce, legal separation, or annulment must state whether or not the parties have minor children of the marriage. If there are minor children of the marriage, the court:

1. Shall make provision for guardianship, custody, medical care, support and education of the children;
2. Unless not in the best interests of the children, may provide for the visitation of the noncustodial parent with any of the children of the noncustodial parent; and
3. May modify or change any order whenever circumstances render the change proper either before or after final judgment in the action; provided, that the amount of the periodic child support payment shall not be modified retroactively or payment of all or a portion of the past due amount waived, except by mutual agreement of the obligor and obligee, or if the obligee has assigned child support rights to the Department of Human Services or other entity, by agreement of the Department or other entity. Unless the parties agree to the contrary, a completed child support computation form provided for in Section 120 of this title shall be required to be filed with the child support order.

The social security numbers of both parents and the child shall be included on the child support order summary form provided for in Section 120 of this title, which shall be filed with all child support orders.

B. In any action in which there are minor unmarried children in awarding or modifying the custody of the child or in appointing a general guardian for the child, the court shall be guided by the provisions of Section 21.1 of Title 10 of the Oklahoma Statutes and shall consider what appears to be in the best interests of the child.

C. 1. When it is in the best interests of a minor unmarried child, the court shall:

- a. assure children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and
- b. encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

2. There shall be neither a legal preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody.

3. When in the best interests of the child, custody shall be awarded in a way which assures the frequent and continuing contact of the child with both parents. When awarding custody to either parent, the court:

- a. shall consider, among other facts, which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent, and
- b. shall not prefer a parent as a custodian of the child because of the gender of that parent.

4. In any action, there shall be neither a legal preference or a presumption for or against private or public school or home-schooling in awarding the custody of a child, or in appointing a general guardian for the child.

5. In making an order for custody, the court may specify that:

- a. unless there is a prior written agreement to change the permanent residence of the child either parent shall notify the other parent if the parent plans to change the permanent residence of the child, and
- b. the noncustodial parent is to notify the custodial parent if the noncustodial parent plans to change permanent residence.

D. 1. Except for good cause shown, a pattern of failure to allow court-ordered visitation may be determined to be contrary to the best interests of the child and as such may be grounds for modification of the child

Changes To Title 43 Oklahoma Statutes by the Spring 2002 Legislature

custody order.

2. For any action brought pursuant to the provisions of this section which the court determines to be contrary to the best interests of the child, the prevailing party shall be entitled to recover court costs, attorney fees and any other reasonable costs and expenses incurred with the action.

E. Except as otherwise provided by Section 112.1A of this title, any child shall be entitled to support by the parents until the child reaches eighteen (18) years of age. If a dependent child is regularly and continuously attending high school, said child shall be entitled to support by the parents through the age of eighteen (18) years. No hearing shall be required to extend such support through the age of eighteen (18) if the child is regularly and continuously attending high school.

F. In any case in which provision is made for the custody or support of a minor child or enforcement of such order, the court shall inquire whether public assistance money or medical support has been provided by the Department of Human Services for the benefit of each child. If public assistance money or medical support has been provided for the benefit of the child, the Department of Human Services shall be a necessary party for the just adjudication and establishment of the debt due and owing the State of Oklahoma, as defined in Section 238 of Title 56 of the Oklahoma Statutes, for the just adjudication and establishment of paternity, current child support, and medical insurance coverage for the minor children in accordance with federal regulations.

G. In any case in which a child support order or custody order or both is entered, enforced or modified, the court may make a determination of the arrearages of child support.

Historical Data: R.L. 1910, §4968. Amended by Laws 1955, p. 142, §1; Laws 1968, c. 226, §1; Laws 1969, c. 334, §1, emerg. eff. May 8, 1969; Laws 1973, c. 188, §1; Laws 1974, c. 101, §1, emerg. eff. April 30, 1974; Laws 1979, c. 93, §1; Laws 1985, c. 297, §16, operative Oct. 1, 1985; Laws 1987, c. 230, §14, eff. Oct. 1, 1987; Renumbered from Title 12, §1277 by Laws 1989, c. 333, §1, eff. Nov. 1, 1989; Amended by Laws 1990, c. 171, §2, operative July 1, 1990; Laws 1990, c. 309, §11, eff. Sept. 1, 1990; Laws 1993, c. 307, §1, emerg. eff. June 7, 1993; Laws 1994, c. 356, §12, eff. Sept. 1, 1994; Laws 1996, c. 131, §10, eff. Jan. 1, 1997.; Amended by Laws 1997, c. 402, §10, eff. July 1, 1997; Amended by Laws 1997, c. 403, §10, eff. Nov. 1, 1997; Amended by Laws 1998, c. 5, §13, eff. March 04, 1998; Amended by Laws 1998, c. 323, §7, eff. Nov. 1, 1998; Amended by Laws 1999, H.B. 1313 c. 301. §2, eff. Nov. 1, 1999; Amended by Laws 2000, SB 1520 c. 384. §5, eff. Nov. 1, 2000; Amended by Laws 2002, SB 1538, c. 314, §2, eff. Nov. 1, 2002 and HB 2397, c. 400, §7, eff. Nov. 1, 2002 and by Laws 2002 c. 445, §18, eff. Nov. 1, 2002.

43 O.S. §112.2

[Similar but not identical versions were approved during the 2002 Legislative Session. Version One (HB 2850)]

A. In every case involving the custody of, guardianship of or visitation with a child, the court shall consider for determining the custody of, guardianship of or the visitation with a child:

1. Evidence of ongoing domestic abuse which is properly brought before it. If the occurrence of ongoing domestic abuse is established by clear and convincing evidence, there shall be a rebuttable presumption that it is not in the best interests of the child to have custody, guardianship or unsupervised visitation granted to the abusive person; and

2. Whether any person seeking custody or who has custody of, guardianship of or visitation with a child:

a. is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state,

b. is residing with an individual who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state, or

c. is residing with a person who has been previously convicted of a crime listed in Section 582 of Title 57 of the Oklahoma Statutes.

B. There shall be a rebuttable presumption that it is not in the best interests of the child to have custody, guardianship or unsupervised visitation granted to a person who:

Changes To Title 43 Oklahoma Statutes by the Spring 2002 Legislature

1. Is subject to or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state;
2. Is residing with a person who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state; or
3. Is residing with a person who has been previously convicted of a crime listed in Section 582 of Title 57 of the Oklahoma Statutes.

[Similar but not identical versions were approved during the 2002 Legislative Session. Version Two (SB 1329)]

A. In every case involving the custody of, guardianship of or visitation with a child, the court shall consider for determining the custody of, guardianship of or the visitation with a child:

1. Evidence of ongoing domestic abuse which is properly brought before it. If the occurrence of ongoing domestic abuse is established by clear and convincing evidence, there shall be a rebuttable presumption that it is not in the best interests of the child to have custody, guardianship or unsupervised visitation granted to the abusive person;

2. Evidence of child abuse as such term is defined by the Oklahoma Child Abuse Reporting and Prevention Act pursuant to this paragraph. If the parent requesting custody of a child has been convicted of any crime defined by the Oklahoma Child Abuse Reporting and Prevention Act or the child has been adjudicated deprived pursuant to the provisions of the Oklahoma Children's Code as a result of the acts of the parent requesting custody and the requesting parent has not successfully completed the service and treatment plan required by the court, there shall be a rebuttable presumption that it is not in the best interests of the child for such parent to have sole custody, guardianship or unsupervised visitation; and

3. Whether any person seeking custody of, guardianship of or visitation with a child:

- a. is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state, or

- b. is residing with an individual who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state.

B. There shall be a rebuttable presumption that it is not in the best interests of the child to have custody, guardianship or unsupervised visitation granted to a person who is:

1. Subject to or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state; or

2. Residing with a person who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state.

Historical Data: Added by Laws 1991, c. 113, §2, eff. Sept. 1, 1991; Amended by Laws 2002, HB 2850, c. 413, §3, eff. Nov. 1, 2002 and by SB 1329, c. 445, §19, eff. Nov. 1, 2002.

43 O.S. §112.3 [new law]

A. As used in this section:

1. "Change of residence address" means a change in the primary residence of an adult;
2. "Child" means a child under the age of eighteen (18) who has not been judicially emancipated;
3. "Person entitled to custody of or visitation with a child" means a person so entitled by virtue of a court order or by an express agreement that is subject to court enforcement;
4. "Principal residence of a child" means:
 - a. the location designated by a court to be the primary residence of the child,
 - b. in the absence of a court order, the location at which the parties have expressly agreed that the child will primarily reside, or
 - c. in the absence of a court order or an express agreement, the location, if any, at which the child,

Changes To Title 43 Oklahoma Statutes by the Spring 2002 Legislature

preceding the time involved, lived with the child's parents, a parent, or a person acting as parent for at least six (6) consecutive months and, in the case of a child less than six (6) months old, the location at which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six-month or other period; and

5. "Relocation" means a change in the principal residence of a child over seventy-five (75) miles from the child's principal residence for a period of sixty (60) days or more, but does not include a temporary absence from the principal residence.

B. 1. Except as otherwise provided by this section, a person who has the right to establish the principal residence of the child shall notify every other person entitled to visitation with the child of a proposed relocation of the child's principal residence as required by this section.

2. Except as otherwise provided by this section, an adult entitled to visitation with a child shall notify every other person entitled to custody of or visitation with the child of an intended change in the primary residence address of the adult as required by this section.

C. 1. Except as provided by this section, notice of a proposed relocation of the principal residence of a child or notice of an intended change of the primary residence address of an adult must be given:

- a. by mail to the last-known address of the person to be notified, and
- b. no later than:

(1) the sixtieth day before the date of the intended move or proposed relocation, or

(2) the tenth day after the date that the person knows the information required to be furnished pursuant to this subsection, if the person did not know and could not reasonably have known the information in sufficient time to comply with the sixty-day notice, and it is not reasonably possible to extend the time for relocation of the child.

2. Except as provided by this section, the following information, if available, must be included with the notice of intended relocation of the child or change of primary residence of an adult:

- a. the intended new residence, including the specific address, if known,
- b. the mailing address, if not the same,
- c. the home telephone number, if known,
- d. the date of the intended move or proposed relocation,
- e. a brief statement of the specific reasons for the proposed relocation of a child, if applicable,
- f. a proposal for a revised schedule of visitation with the child, if any, and
- g. a warning to the nonrelocating parent that an objection to the relocation must be made within thirty (30) days or the relocation will be permitted.

3. A person required to give notice of a proposed relocation or change of residence address under this subsection has a continuing duty to provide a change in or addition to the information required by this subsection as that information becomes known.

D. After the effective date of this act, an order issued by a court directed to a person entitled to custody of or visitation with a child shall include the following or substantially similar terms:

"You, as a party in this action, are ordered to notify every other party to this action of a proposed relocation of the child, change of your primary residence address, and the following information:

1. The intended new residence, including the specific address, if known;
2. The mailing address, if not the same;
3. The home telephone number, if known;
4. The date of the intended move or proposed relocation;

Changes To Title 43 Oklahoma Statutes by the Spring 2002 Legislature

5. A brief statement of the specific reasons for the proposed relocation of a child, if applicable; and
6. A proposal for a revised schedule of visitation with the child, if any.

You are further ordered to give notice of the proposed relocation or change of residence address on or before the sixtieth day before a proposed change. If you do not know and could not have reasonably known of the change in sufficient time to provide a sixty-day notice, you are ordered to give notice of the change on or before the tenth day after the date that you know of the change.

Your obligation to furnish this information to every other party continues as long as you, or any other person, by virtue of this order, are entitled to custody of or visitation with a child covered by this order.

Your failure to obey the order of this court to provide every other party with notice of information regarding the proposed relocation or change of residence address may result in further litigation to enforce the order, including contempt of court.

In addition, your failure to notify of a relocation of the child may be taken into account in a modification of custody of, visitation with, possession of or access to the child. Reasonable costs and attorney fees also may be assessed against you if you fail to give the required notice.

If you, as the nonrelocating parent, do not file a proceeding seeking a temporary or permanent order to prevent the relocation within thirty (30) days after receipt of notice of the intent of the other party to relocate the residence of the child, relocation is authorized."

E. 1. On a finding by the court that the health, safety, or liberty of a person or a child would be unreasonably put at risk by the disclosure of the required identifying information in conjunction with a proposed relocation of the child or change of residence of an adult, the court may order that:

a. the specific residence address and telephone number of the child or of the adult and other identifying information shall not be disclosed in the pleadings, other documents filed in the proceeding, or the final order, except for an in camera disclosure,

b. the notice requirements provided by this article be waived to the extent necessary to protect confidentiality and the health, safety or liberty of a person or child, and

c. any other remedial action that the court considers necessary to facilitate the legitimate needs of the parties and the best interest of the child.

2. If appropriate, the court may conduct an ex parte hearing pursuant to this subsection.

F. 1. The court may consider a failure to provide notice of a proposed relocation of a child as provided by this section as:

a. a factor in making its determination regarding the relocation of a child,

b. a factor in determining whether custody or visitation should be modified,

c. a basis for ordering the return of the child if the relocation has taken place without notice, and

d. sufficient cause to order the person seeking to relocate the child to pay reasonable expenses and attorney fees incurred by the person objecting to the relocation.

2. In addition to the sanctions provided by this subsection, the court may make a finding of contempt if a party violates the notice requirement required by this section and may impose the sanctions authorized for contempt of a court order.

G. 1. The person entitled to custody of a child may relocate the principal residence of a child after providing notice as provided by this section unless a parent entitled to notice files a proceeding seeking a temporary or permanent order to prevent the relocation within thirty (30) days after receipt of the notice.

2. A parent entitled by court order or written agreement to visitation with a child may file a proceeding objecting to a proposed relocation of the principal residence of a child and seek a temporary or permanent order to prevent the relocation.

3. If relocation of the child is proposed, a nonparent entitled by court order or written agreement to

Changes To Title 43 Oklahoma Statutes by the Spring 2002 Legislature

visitation with a child may file a proceeding to obtain a revised schedule of visitation, but may not object to the proposed relocation or seek a temporary or permanent order to prevent the relocation.

4. A proceeding filed pursuant to this subsection must be filed within thirty (30) days of receipt of notice of a proposed relocation.

H. 1. The court may grant a temporary order restraining the relocation of a child, or ordering return of the child if a relocation has previously taken place, if the court finds:

a. the required notice of a proposed relocation of a child as provided by this section was not provided in a timely manner and the parties have not presented an agreed-upon revised schedule for visitation with the child for the court's approval,

b. the child already has been relocated without notice, agreement of the parties, or court approval,
or

c. from an examination of the evidence presented at the temporary hearing there is a likelihood that on final hearing the court will not approve the relocation of the primary residence of the child.

2. The court may grant a temporary order permitting the relocation of the child pending final hearing if the court:

a. finds that the required notice of a proposed relocation of a child as provided by this section was provided in a timely manner and issues an order for a revised schedule for temporary visitation with the child, and

b. finds from an examination of the evidence presented at the temporary hearing there is a likelihood that on final hearing the court will approve the relocation of the primary residence of the child.

I. A proposed relocation of a child may be a factor in considering a change of custody.

J. 1. In reaching its decision regarding a proposed relocation, the court shall consider the following factors:

a. the nature, quality, extent of involvement, and duration of the child's relationship with the person proposing to relocate and with the nonrelocating person, siblings, and other significant persons in the child's life,

b. the age, developmental stage, needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child,

c. the feasibility of preserving the relationship between the nonrelocating person and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties,

d. the child's preference, taking into consideration the age and maturity of the child,

e. whether there is an established pattern of conduct of the person seeking the relocation, either to promote or thwart the relationship of the child and the nonrelocating person,

f. whether the relocation of the child will enhance the general quality of life for both the custodial party seeking the relocation and the child, including but not limited to financial or emotional benefit or educational opportunity,

g. the reasons of each person for seeking or opposing the relocation, and

h. any other factor affecting the best interest of the child.

2. The court may not:

a. give undue weight to the temporary relocation as a factor in reaching its final decision, if the court has issued a temporary order authorizing a party seeking to relocate a child to move before final judgment is issued, or

b. consider whether the person seeking relocation of the child has declared that he or she will not relocate if relocation of the child is denied.

Changes To Title 43 Oklahoma Statutes by the Spring 2002 Legislature

K. The relocating person has the burden of proof that the proposed relocation is made in good faith. If that burden of proof is met, the burden shifts to the nonrelocating person to show that the proposed relocation is not in the best interest of the child.

L. 1. After notice and a reasonable opportunity to respond, the court may impose a sanction on a person proposing a relocation of the child or objecting to a proposed relocation of a child if it determines that the proposal was made or the objection was filed:

- a. to harass a person or to cause unnecessary delay or needless increase in the cost of litigation,
- b. without being warranted by existing law or was based on frivolous argument, or
- c. based on allegations and other factual contentions which had no evidentiary support or, if specifically so identified, could not have been reasonably believed to be likely to have evidentiary support after further investigation.

2. A sanction imposed under this subsection shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. The sanction may include directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the other party of some or all of the reasonable attorney fees and other expenses incurred as a direct result of the violation.

M. If the issue of relocation is presented at the initial hearing to determine custody of and visitation with a child, the court shall apply the factors set forth in this section in making its initial determination.

N. 1. The provisions of this section apply to an order regarding custody of or visitation with a child issued:

- a. after the effective date of this act, and
- b. before the effective date of this act, if the existing custody order or enforceable agreement does not expressly govern the relocation of the child or there is a change in the primary residence address of an adult affected by the order.

2. To the extent that a provision of this section conflicts with an existing custody order or enforceable agreement, this section does not apply to the terms of that order or agreement that govern relocation of the child or a change in the primary residence address of an adult.

Historical Data: Added by Laws 2002, HB 2397, c. 400, §8, eff. Nov. 1, 2002.

43 O.S. §113

A. In any action or proceeding in which a court must determine custody or limits of or period of visitation, the child may express a preference as to which of its parents the child wishes to have custody.

B. 1. The court shall determine whether the best interest of the child will be served by the child's expression of preference as to which parent should have custody or limits of or period of visitation rights of either parent. If the court so finds, the child may express such preference or give other testimony.

2. If the child is of a sufficient age to form an intelligent preference, the court shall consider the expression of preference or other testimony of the child in determining custody or limits of or period of visitation. The court shall not be bound by the child's choice and may take other facts into consideration in awarding custody or limits of or period of visitation. However, if the child is of a sufficient age to form an intelligent preference and the court does not follow the expression of preference of the child as to custody, or limits of visitation, the court shall make specific findings of fact supporting such action if requested by either party.

3. There shall be a rebuttable presumption that a child who is twelve (12) years of age or older is of a sufficient age to form an intelligent preference.

C. If the child expresses a preference or gives testimony, such preference or testimony may be taken by the court in chambers without the parents or other parties present. If attorneys are not allowed to be present, the court shall state, for the record, the reasons for their exclusion. At the request of either party, a record shall be made of any such proceeding in chambers.

Changes To Title 43 Oklahoma Statutes by the Spring 2002 Legislature

Historical Data: Laws 1975, c. 183, §1. Amended by Laws 1986, c. 196, §1, eff. Nov. 1, 1986. Renumbered from Title 12, §1277.1 [12-1277.1] by Laws 1989, c. 333, §1, eff. Nov. 1, 1989; Amended by Laws 2002, HB 2783, c. 373, §1, emerg. eff. June 4, 2002.

43 O.S. §118

A. Except in those cases where parties represented by counsel have agreed to a different disposition, there shall be a rebuttable presumption in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the following guidelines is the correct amount of child support to be awarded.

B. The district or administrative court may deviate from the amount of child support indicated by the child support guidelines if the amount of support so indicated is unjust, inequitable, unreasonable, or inappropriate under the circumstances, or not in the best interests of the child. If the district or administrative court deviates from the amount of child support indicated by the child support guidelines, the court shall make specific findings of fact supporting such action.

C. The court shall not take into account any stepchildren of such parent in making the determination, but in making such determination, the court may take into account the reasonable support obligations of either parent as to only natural, legal, or legally adopted minor children in the custody of the parent.

D. For purposes of this section and in determining child support, the noncustodial parent shall be designated the obligor and the custodial parent shall be designated the obligee.

E. The child support guidelines are as follows:

1. All child support shall be computed as a percentage of the combined gross income of both parents. The Child Support Guideline Schedule as provided in Section 119 of this title shall be used for such computation. The child support obligations of each parent shall be computed. The obligor's share shall be paid monthly to the obligee and shall be due on a specific date;

2. a. (1) "Gross income", subject to paragraph 3 of this subsection, includes earned and passive income from any source, except as excluded in this section.

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

- (a) salaries,
- (b) wages,
- (c) commissions,
- (d) bonuses, and
- (e) severance pay.

(3) "Passive income" is defined as all other income and includes, but is not limited to, income from:

- (a) dividends,
- (b) pensions,
- (c) rent,
- (d) interest income,
- (e) trust income,
- (f) annuities,
- (g) social security benefits,
- (h) workers' compensation benefits,
- (i) unemployment insurance benefits,

Changes To Title 43 Oklahoma Statutes by the Spring 2002 Legislature

- (j) disability insurance benefits,
 - (k) gifts,
 - (l) prizes, and
 - (m) royalties.
- b. Specifically excluded from gross income are:
- (1) actual child support received for children not before the court, and
 - (2) 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;
3. a. For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, "gross income" is defined as gross receipts minus ordinary and necessary expenses required for self-employment or business operations.
- b. Specifically excluded from ordinary and necessary expenses for purposes of this paragraph are amounts determined by the district or administrative court to be inappropriate for determining gross income for purposes of calculating child support.
- c. The district or administrative court shall carefully review income and expenses from self-employment or operation of a business to determine an appropriate level of gross income available to the parent to satisfy a child support obligation.
- d. 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. A determination of business income for tax purposes shall not control for purposes of determining a child support obligation.
- e. Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business shall be counted as income if they are significant and reduce personal living expenses. Such payments may include but are not limited to a company car, free housing, or reimbursed meals;
4. a. For purposes of computing gross income of the parents, the district or administrative court shall include for each parent, whichever is most equitable, either:
- (1) all earned and passive monthly income,
 - (2) all passive income, and earned income equivalent to a forty-hour work week plus such overtime and supplemental income as the court deems equitable,
 - (3) the average of the gross monthly income for the time actually employed during the previous three (3) years, or
 - (4) the minimum wage paid for a forty-hour work week.
- b. If equitable, the district or administrative court may instead impute as gross monthly income for either parent the amount a person with comparable education, training and experience could reasonably expect to earn.
- c. If a parent is permanently physically or mentally incapacitated, the child support obligation shall be computed on the basis of actual monthly gross income;
5. The amount of any preexisting district or administrative court order for current child support for

Changes To Title 43 Oklahoma Statutes by the Spring 2002 Legislature

children not before the court or for support alimony arising in a prior case shall be deducted from gross income to the extent payment is actually made under the order;

6. The amount of reasonable expenses of the parties attributable to debt service for preexisting, jointly acquired debt of the parents may be deducted from gross income to the extent payment of the debt is actually made. In any case where deduction for debt service is made, the district or administrative court may provide for prospective upward adjustments of support made possible by the reasonably anticipated reduction or elimination of any debt service;

7. The results of paragraphs 2, 3, 4, 5, and 6 of this subsection shall be denominated "adjusted gross income";

8. In cases in which one parent has sole custody, the adjusted monthly gross income of both parents shall be added together and the Child Support Guideline Schedule consulted for the total combined base monthly obligation for child support;

9. After the total combined child support is determined, the percentage share of each parent shall be allocated by computing the percentage contribution of each parent to the combined adjusted gross income and allocating that same percentage to the child support obligation to determine the base child support obligation of each parent;

10. a. In cases where shared parenting time has been ordered by a district court or agreed to by the parents, the base monthly obligation shall be adjusted. "Shared parenting time" means that each parent has physical custody of the child or children overnight for more than one hundred twenty (120) nights each year.

b. An adjustment for shared parenting time shall be made to the base monthly child support obligation by the following formula: The total combined base monthly child support obligation shall be multiplied by one and one-half (1 1/2). The result shall be designated the adjusted combined child support obligation.

c. To determine each parent's adjusted child support obligation, the adjusted combined child support obligation shall be divided between the parents in proportion to their respective adjusted gross incomes.

d. (1) The percentage of time a child spends with each parent shall be calculated by determining the number of nights the child is in the physical custody of each parent and dividing that number by three hundred sixty-five (365).

(2) Each parent's share of the adjusted combined child support obligation shall then be multiplied by the percentage of time the child spends with the other parent to determine the base child support obligation owed to the other parent.

(3) The respective adjusted base child support obligations for each parent are then offset, with the parent owing more base child support paying the difference between the two amounts to the other parent. The base child support obligation of the parent owing the lesser amount is then set at zero dollars.

e. The parent owing the greater amount of base child support shall pay the difference between the two amounts as a child support order. In no case shall the amount of child support ordered to be paid exceed the amount of child support which would otherwise be ordered to be paid if the parents did not participate in shared parenting time.

f. In no event shall the provisions of this paragraph be construed to authorize or allow the payment of child support by the custodial parent to the noncustodial parent;

11. a. The actual medical and dental insurance premium for the child shall be allocated between the parents in the same proportion as their adjusted gross income and shall be added to the base child support obligation. If the insurance policy covers a person other than the child before the court, only that portion of the premium attributed to the child before the court shall be allocated and added to the base child support obligation.

b. If the obligor pays the medical insurance premium, the obligor shall receive credit against the base child support obligation for the obligee's allocated share of the medical insurance premium.

Changes To Title 43 Oklahoma Statutes by the Spring 2002 Legislature

c. If the obligee pays the medical insurance premium, the obligor shall pay the obligor's allocated share of the medical insurance premium to the obligee as part of the base child support obligation;

12. In cases of split custody, where each parent is awarded custody of at least one of their natural or legally adopted children, the child support obligation for each parent shall be calculated by application of the child support guidelines for each custodial arrangement. The parent with the larger child support obligation shall pay the difference between the two amounts to the parent with the smaller child support obligation;

13. a. The district or administrative court shall determine the "actual" 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. The actual child care costs incurred for the purposes authorized by this paragraph shall be allocated and paid monthly in the same proportion as base child support.

c. The district or administrative court shall require the obligee to provide the obligor with timely documentation of any change in the amount of the child care costs. Upon request by the obligor, whose requests shall not exceed one each month, or upon order of the court, the obligee shall provide the documentation of the amount of incurred child care costs which are related to employment, employment search or education or training as authorized by this paragraph.

d. If the court determines that it will not cause detriment to the child or will not cause undue hardship to either parent, in lieu of payment of child care expenses incurred during employment, employment search, or while the obligee is attending school or training, the obligor may provide care for the child during that time;

14. Reasonable and necessary medical, dental, orthodontic, optometric, psychological, or any other physical or mental health expenses of the child incurred by either parent and not reimbursed by insurance may be allocated in the same proportion as the parents' adjusted gross income as separate items that are not added to the base child support obligation. If reimbursement is required, the parent who incurs the expense shall be reimbursed by the other parent within thirty (30) days of receipt of documentation of the expense;

15. Transportation expenses of a child between the homes of the parents may be divided between the parents in proportion to their adjusted gross income;

16. a. (1) Child support orders may be modified upon a material change in circumstances.

(2) Modification of the Child Support Guideline Schedule shall not alone be a material change in circumstances for child support orders in existence on Nov. 1, 1999.

(3) Providing support for children born to or adopted by either parent after the entry of a child support order shall not alone be considered a material change in circumstances.

(4) An order of modification shall be effective upon the date the motion to modify was filed, unless the parties agree to the contrary or the court makes a specific finding of fact that the material change of circumstance did not occur until a later date.

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

(2) All final orders shall state whether past due support and interest has accrued pursuant to any temporary order and the amount due, if any; however, failure to state a past due amount shall not bar collection of that amount after entry of the final support order.

c. The amount of a child support order shall not be construed to be an amount per child unless specified by the district or administrative court in the order. A child reaching the age of majority or otherwise ceasing to be entitled to support pursuant to the support order shall constitute a material change in circumstances, but shall not automatically serve to modify the order;

Changes To Title 43 Oklahoma Statutes by the Spring 2002 Legislature

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

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

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

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

e. (1) If the parents agree to a modification of a child support order, their agreement shall be in writing on a standard agreed order form provided for in Section 120 of this title and shall comply with the child support guidelines.

(2) The standard agreed order form, the standard child support guideline calculation form, and the standard financial affidavit form shall be submitted to the district or administrative court.

(3) The standard agreed order form and supporting documents submitted shall be reviewed by the district or administrative court for approval to confirm that the standard agreed order form and documents comply with the child support guidelines and that all necessary parties have been notified. The approved standard agreed order form shall be filed with the court.

(4) If the standard agreed order form does not comply with the child support guidelines, or all necessary parties have not been notified, the matter shall be set for hearing.

f. (1) If the parents fail to cooperate in the exchange of information, either parent may move for a modification hearing or for mediation. The district or administrative court on its own motion may refer the parents to a mediator.

(2) If referred to mediation, and modification is subsequently found to be appropriate, the modification shall be effective on the date the motion was filed.

(3) Costs for mediation, if any, shall be paid by the parent who failed to cooperate in the exchange of information. Otherwise, the court may assess costs equally between the parents, or as determined by the court;

18. Child support orders may include such provisions as the district or administrative court deems appropriate to assure that the child support payments to the custodial parent are used for the support of the child;

19. The district or administrative court shall require and enforce a complete disclosure of assets by both parents on a financial affidavit form prescribed by the Administrative Office of the Courts;

20. Child support orders issued for prior-born children of the payor may not be modified for the purpose of providing support for later-born children;

21. The court, to the extent reasonably possible, shall make provision in an order for prospective adjustment of support to address any foreseen changes including, but not limited to, changes in medical insurance, child care expenses, medical expenses, and extraordinary costs;

22. The social security numbers of both parents and the children who are the subject of a paternity or child support order shall be included in the support order summary form provided for in Section 120 of this title; and

23. A completed support order summary form shall be presented to the judge with all paternity and child support orders, and no such order shall be signed by the judge without presentation of the form.

Historical Data: Added by Laws 1988, c. 224, §1, emerg. eff. June 20, 1988. Renumbered from Title 12,

Changes To Title 43 Oklahoma Statutes by the Spring 2002 Legislature

§1277.7 by Laws 1989, c. 333, §1, eff. Nov. 1, 1989. Amended by Laws 1989, c. 362, §2, eff. Nov. 1, 1989; Laws 1992, c. 251, §1, eff. Sept. 1, 1992; Laws 1993, c. 307, §2, emerg. eff. June 7, 1993; Laws 1994, c. 356, §14, eff. Sept. 1, 1994; Laws 1995, c. 1, §13, emerg. eff. Mar. 2, 1995; Laws 1994, c. 185, §1 repealed by Laws 1995, c. 1, §40, emerg. eff. Mar. 2, 1995.; Amended by Laws 1997, c. 402, §13, eff. July 01,1997 .; Amended by Laws 1997, c. 403, §11, eff. Nov. 01,1997 ; Amended by Laws 1998, c. 323, §8, eff. October 01,1998 ; Amended by Laws 1999, S.B. 689 c. 422. §2, eff. Nov. 01,1999 ; Amended by Laws 2000, HB 2190 c. 345. §2, eff. June 6, 2000, Amended by Laws 2000, 1st Ex.Sess., c. 9, §1, emerg. eff. June 30, 2000.; Amended by Laws 2002, SB 1538, c. 314, §3, eff. Nov. 1, 2002.

43 O.S. §120

A. A child support computation form shall be signed by the judge and incorporated as a part of all orders which establish or modify a child support obligation.

B. 1. When services are not being provided under the Department of Human Services State IV-D plan pursuant to Section 237 of Title 56 of the Oklahoma Statutes, a support order summary form shall be prepared by the attorney of record or the pro se litigant and presented to the judge with all orders which establish paternity or establish, modify or enforce a child support obligation. No paternity or child support order shall be signed by the judge without presentation of the support order summary form. After the order is signed by the judge, the summary of support order form shall be submitted to the Central Case Registry provided for in Section 112A of this title.

2. A standard agreed order form shall be used by all parents for any agreements submitted to the court for approval as a part of the informal review and adjustment process provided in Section 118 of this title.

3. The forms specified by this subsection shall be prepared by the Department of Human Services and shall be published by the Administrative Office of the Courts.

Historical Data: Added by Laws 1988, c. 224, §3, emerg. eff. June 20, 1988. Renumbered from Title 12, §1277.9 by Laws 1989, c. 333, §1, eff. Nov. 1, 1989. Amended by Laws 1993, c. 307, §3, emerg. eff. June 7, 1993; Amended by Laws 1998, c. 323, §10, eff. October 01,1998 ; Amended by Laws 1999, S.B. 689 c. 422. §4, eff. Nov. 1,1999 ; Amended by Laws 2000, HB 2190 c. 345. §4, eff. June 6, 2000; Amended by Laws 2001, SB 675, c. 407 §7, emerg. eff. June 4, 2001; Amended by Laws 2002, SB 1538, c. 314, §4, eff. Nov. 1, 2002.

43 O.S. §413

A. The Department of Human Services shall maintain a Centralized Support Registry to receive, allocate and distribute support payments. All child support, spousal support, and related support payments shall be paid through the Registry as follows:

1. In all cases in which child support services are being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes; and

2. In all other cases in which support is being paid by income withholding.

B. When child support enforcement services are being provided under Section 237 of Title 56 of the Oklahoma Statutes, all monies owed for child support shall continue to be paid through the Registry until child support is no longer owed.

C. Any party desiring child support, spousal support, or related support payments to be paid through the Registry may request the court to order the payments to be made through the Registry. Upon such request the court shall order payments to be made through the Registry.

D. The Registry shall maintain the following information on all cases in which support is paid through the Registry. This information shall include, but not be limited to:

1. Names, social security numbers and dates of birth for both parents and the children for whom support is ordered;

2. The amount of periodic support owed under the order;

Changes To Title 43 Oklahoma Statutes by the Spring 2002 Legislature

3. Case identification numbers; and
4. Payment address.

E. In all cases, except those being enforced under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes, employers shall provide the Registry with a copy of the notice of income assignment specified in Section 1171.3 of Title 12 and Section 240.2 of Title 56 of the Oklahoma Statutes. Employers, parties, and obligees to an order, upon request, shall provide additional information necessary for the Registry to identify and properly allocate and distribute payments.

F. An obligee, pursuant to a judgment, decree, or order in which payment of support is required by this section to be paid through the Registry or whose support is being paid through the Registry, shall provide information as directed by the Department of Human Services necessary to properly allocate and distribute the payments.

G. All payments made through the Registry shall be allocated and distributed in accordance with Department of Human Services' policy and federal regulations.

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

Historical Data: Added by Laws 1992, c. 279, §4, emerg. eff. May 25, 1992.; Amended by Laws 1997, c. 402, §18, eff. July 01, 1997; Amended by Laws 1998, c. 323, §13, eff. October 1, 1998; Amended by Laws 2000, SB 1520 c. 384. §8, eff. Nov. 1, 2000; Amended by Laws 2001, SB 675, c. 407 §15, emerg. eff. June 4, 2001; Amended by Laws 2002, SB 1538, c. 314, §5, eff. Nov. 1, 2002.

[Top](#)