

# What's The Deal On Child Support Circa 2000?

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**Short Answer:** Who knows? (See the "Longest Answer", below.)

## **Political Answer:**

During the immediately past Legislative Session, several members of the Bar, notably including (but not limited to) the current and many past Chairs of the OBA Family Law Section, worked with Bill Sullivan, OBA Executive Director, in attempting to persuade the Legislature to adopt revisions to the Child Support Guidelines Statutes approved by the OBA's House of Delegates during its annual meeting in November 1999.

Two main bills were introduced in the Legislature: HB2190 (basically the "Bar's bill") and SB1200 (basically the "DHS Clean-Up bill"). HB2190 passed the House but was rejected (for all practical purposes) by the Senate. SB1200 passed the Senate but was rejected (for all practical purposes) by the House.

A Conference Committee considered the variances. Oklahoma Department of Human Services positions were represented by Ray Weaver and his assistant Sandy Emerson. Bar positions were represented by our Section Chair, several other OBA Family Law Section members, and by Bill Sullivan. A Conference Committee substitute rather like the House Bill was the result and Bar representatives were pleased.

But, to cut to the quick, the Bar representatives' joy was short lived. While House members approved the Conference Committee substitute, Senate members (mainly Republicans joined by a few Democrats) did not. Those Senate members wanted to retain "shared parenting." In the last hours, a compromise second Conference Committee version of HB2190 was reached which retained "shared parenting" and its computation formula but changed the qualifying threshold from 93 to 121 nights under the Court's visitation order. The House passed it. Two minutes before 5:00 p.m. on May 26, 2000 (at which time all carriage-mice and other party-goers would revert to whatever they were before the party began), the Senate passed the rushed-through second Conference Committee substitute of HB2190. It was signed by the Governor on June 6, 2000, and immediately became the law.

**Problem City: (1)** Before the "final" HB2190 was revised, it was not "passed through" OBA FLS or DHS representatives, all of whom were well aware of the egregious computation problem inherent in the last sentence of 1999's §118.C.10.d(2). Legislative staffers might not have been aware of the problem. The result: inadvertently or not, the same last sentence of §118.C.10.d.(2) (§118.E.10.d.(2) in HB2190) was included in the compromise version of HB2910 which passed both houses of the Legislature.

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**Problem City: (2)** HB2190 was signed by the Governor on June 6, 2000, and was then, and except as modified by the next paragraph, is now the law. So, the dreaded last sentence of §118.C.10.d.(2) (§118.E.10.d.(2) in the 2000 version) has now been passed by the Legislature, and approved by the Governor, *two times*. A reasonable person might conclude that the Legislature, and the Governor, *actually intended* that sentence to be the law. After all, if it was a mistake (as DHS maintains) in the first go-round in 1999, why would it be included a *second time* in 2000? While DHS and others ignored that sentence (e.g., the DHS computation form, judges who refused to apply it), that position now seems less tenable than it was before the new bill became law. That is so, unless the Legislature's actions are to be regarded as without any probative or otherwise substantial meaning whatsoever. Hmmm.

**Problem City: (3) Stop the presses!** The Governor called a Special Session of the Legislature and it convened June 28, 2000. While the "real" agenda included car tag and other higher profile issues, it also included the Child Support Guidelines bill signed by the Governor on June 6. On June 28, 2000, SB6X was passed by the Legislature and sent to the Governor. On June 30, 2000, the Governor signed it and the new law was effective that day. SB6X eliminated the last sentence of §118.E.10.d.(2).

Although it's great to see the "sentence" gone, now, we have three versions of 43 O.S. §118 to apply, depending on the date someone considers applicable. Here are the choices:

The 11/1/1999 Statute:	Lived from 11/1/99 through 6/6/2000
The 6/6/2000 Statute:	Lived from 6/6/2000 through 6/30/2000
The 6/30/2000 Statute:	Effective 6/30/2000 through current

None of the statutes give guidance as to which statute would apply. Would a case filed on 10/1/1999 but tried and decided on July 20, 2000, use the §118 and §119 in effect before 11/1/1999? That was the "policy" of some judges and the preference of many lawyers – some for "legal" reasons, some just to avoid the 1999 law when possible. But, if that policy be correct, would not a case filed on 11/15/1999 but decided 7/20/2000 be decided under the 11/1/1999 statute? What about a case filed 6/8/2000 but decided 7/20/2000? Well, at least, the problem will become history after a little time passes.

Even with problems, the new law, effective June 6, 2000, makes substantial changes to the law which became effective November 1, 1999. Those changes are reviewed here, point by point, in the following annotated copy of HB2190. Only the portion of SB6X which changed HB2190 is interjected in §118.E.10.d.(2), because it made no other changes to the text of HB2190.

### **Longest Answer:** Annotated HB2190 & SB6X

The full text of HB2190 follows. The Computation Schedule in §119 is not included since the schedule amounts were not changed from 1999's revision. The only change to §119 was to add clarifying text about parental income amounts which exactly equal income table amounts. See page 11. Otherwise, the full text of the legislation follows:

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STATE OF OKLAHOMA  
2nd Session of the 47th Legislature (2000)

ENROLLED HOUSE

BILL NO. 2190

By: Benson, Pettigrew, Braddock and Askins of the House  
and  
Taylor of the Senate

An Act relating to child support; amending 12 O.S. 1991, Section 1170, as last amended by Section 1, Chapter 422, O.S.L. 1999 (12 O.S. Supp. 1999, Section 1170), which relates to definitions relating to child support obligations; conforming language; amending 43 O.S. 1991, Sections 118, as last amended by Section 2, Chapter 422, O.S.L. 1999, 119, as amended by Section 3, Chapter 422, O.S.L. 1999, and 120, as last amended by Section 4, Chapter 422, O.S.L. 1999 (43 O.S. Supp. 1999, Sections 118, 119 and 120), which relate to determination of child support and definitions and the child support guidelines; adding and clarifying definitions and guidelines; providing for passive income and earned income; modifying method for computing gross income; removing certain authority for self-support reserve; modifying definition of shared parenting; providing for calculations of reasonable child care expenses; providing for construction of section relating to certain payments; removing certain calculations and computations for child care expenses; authorizing certain orders for child care payments and expenses; removing certain monthly contributions for certain costs from addition to monthly child support obligation; removing certain itemization; clarifying language relating to the schedule of child support guidelines; clarifying entity which is required to prepare certain forms; amending 56 O.S. 1991, Section 240, as renumbered by Section 14, Chapter 365, O.S.L. 1994, and as last amended by Section 17, Chapter 323, O.S.L. 1998 (56 O.S. Supp. 1999, Section 237.7), which relates to the collection of child support by the Department of Human Services; modifying definition; and declaring an emergency.

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

SECTION 1. e. AMENDATORY 12 O.S. 1991, Section 1170, as last amended by Section 1, Chapter 422, O.S.L. 1999 (12 O.S. Supp. 1999, Section 1170), is amended to read as follows:

Section 1170.

A. For the purposes of this subsection and Sections 1171.2 through 1171.4 of this title:

1. "Arrearage" means the total amount of unpaid support obligations;

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

3. "Income" or "earnings" means any form of payment to an individual regardless of source including, but not limited to, wages, salary, commission, compensation as an independent contractor, workers' compensation, disability, annuity and retirement benefits, and any other payments made by any person, private entity, federal or state government, any unit of local

government, school district, or any entity created by law;

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

5. "Obligor" means the person who is required to make payments under an order for support;

6. "Person entitled" or "obligee" means the person to whom a duty of support is owed as designated in the support order or as otherwise specified by the court;

7. "Payor" means any person or entity paying monies, income, or earnings to an obligor.

In the case of a self-employed person, the “payor” and “obligor” may be the same person;

8. “Support order” means an order for the payment of child support issued by a district court or the Department of Human Services;

9. “Income assignment” is a provision of a support order which directs the obligor to assign a portion of the monies, income, or periodic earnings due and owing to the obligor to the person entitled to the support or to another person designated by the support order or assignment for payment of support or arrearages or both. The assignment shall be in an amount which is sufficient to meet the periodic support arrearages or other maintenance payments or both imposed by the court order or administrative order. The income assignment shall be made a part of the support order;

10. “Child support” means and includes all payments or other obligations due and owing to the person entitled by the obligor pursuant to a child support order, including but not limited to medical insurance or health care premiums and

other medical expenses, ~~day~~ current child care obligations, child care arrearages and any fixed ~~day~~ child care obligations and such other expenses and requirements as specified in Section 118 of Title 43 of the Oklahoma Statutes; and

11. “Notice of income assignment” means the standardized form prescribed by the United States Secretary of Health and Human Services that is required to be used in all cases to notify a payor of an order to withhold for payment of child support and other maintenance payments.

B. For the purposes of prejudgment garnishments, “judgment creditor” includes prejudgment garnishors.

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**Comment**

*See changes to 43 O.S. §118.E.13 (formerly §118.C.13), page 8, below.*

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SECTION 1.1.1)e. AMENDATORY 43 O.S. 1991, Section 118, as last amended by Section 2, Chapter 422, O.S.L. 1999 (43 O.S. Supp. 1999, Section 118), is amended to read as follows:

Section 118.

A. ~~4.~~ 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 ~~level amount~~ amount of child support ~~suggested indicated by these the child support guidelines where if~~ the amount of support so indicated is unjust, inequitable, unreasonable, or inappropriate under the circumstances, or not in the best interests of any child involved. 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.

~~2.~~ 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.

~~3.~~ ~~If the district or administrative court deviates from the amount of support indicated by these guidelines, it shall make specific findings of fact supporting such action.~~

~~B.~~ 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.

~~C.~~ 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:

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

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

- (5) (a) dividends,
- (6) ~~severance pay,~~
- (7) (b) pensions,
- (8) (c) rent,
- (9) (d) interest income,
- (10) (e) trust income,
- (11) (f) annuities,
- (12) (g) social security benefits,
- (13) (h) workers' compensation benefits,
- (14) (i) unemployment insurance benefits,
- (15) (j) disability insurance benefits,
- (16) (k) gifts, and
- (17) (l) prizes, and  
(m) royalties.

#### **Comment**

*The foregoing changes to 43 O.S. §118 don't do anything new, e.g., who would have argued that "royalties" are not income, passive or not?*

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) the actual all earned and passive monthly income,~~

~~(2) if a parent has both principal and secondary employment, the greater of:~~

~~(a) the actual monthly income derived from the principal employment, or~~

~~(b) the combined actual monthly income derived from both the principal and the secondary employment, but not to exceed the parent's actual monthly income for more than forty-four hours per week all passive income, and earned income equivalent to a forty-hour work week plus such overtime and supplemental income as the court deems equitable,~~

**Comment**

*The former law's "44 hours per week" cap in the event a person had multiple jobs is gone. Now, regardless of the number of jobs, a 40 hour work week is used, plus whatever the court might think equitable above that.*

~~(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:

~~d. In order to provide a self-support reserve for an obligor and to offset the effect of the Internal Revenue Service Earned Income Tax Credit, when the gross monthly income of the obligor is below One Thousand Dollars (\$1,000.00) for one child, One Thousand One Hundred Dollars (\$1,100.00) for two children, One Thousand Two Hundred Dollars (\$1,200.00) for three children, or One Thousand Two Hundred Fifty Dollars (\$1,250.00) for four or more children, and the obligee is entitled to the Earned Income Tax Credit for the children due support, in calculating the monthly child support obligation,~~

~~the gross monthly income of the obligor shall be used as the combined gross monthly income of the parties. If the monthly child support obligation is higher than the amount calculated by using the combined monthly income of the two parents, the obligor shall pay the lessor of the two results:~~

~~e. After the monthly base child support obligation is determined from the Child Support Guideline Schedule, based solely on the income of the obligor, all other calculations shall be based on the proportionate share of both parents' actual monthly combined income;~~

**Comment**

*Earned income credit computations are totally removed in the new law.*

5. The amount of any preexisting district or administrative court order for current child support for 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

**Comment**

*We've still got "shared parenting" but the threshold number of nights is 121 instead of 93.*

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 and 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. For each parent, this amount is then subtracted from the respective share of the adjusted combined child support obligation.

(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

time" means that each parent has physical custody of the child or children overnight for more than ~~ninety-two (92)~~ one hundred twenty (120) nights each year.

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;

**Comment**

*We've still got the same squirrely shared parenting computation formula, but at least the possibility that the custodial parent would be required to pay child support to the non-custodial parent is eliminated.*

**< THE FOLLOWING IS NOT PART OF HB2190 BUT ARE THE CHANGES MADE BY SB6X, INSERTED HERE FOR CONVENIENCE:>**

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 ~~and~~ 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. ~~For each parent, this amount is then subtracted from the respective share of the adjusted combined child support obligation.~~

**Comment**

*As of 6/30/2000, the last sentence of former §118.C.10.d.(2) and §118.E.10.d.(2) is gone.*

**< END OF SB6X INSERTION >**

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.

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. ~~Child~~ The district or administrative court shall determine the "actual" child care expenses shall be added to the base child support obligation. Child care expenses are actual costs incurred on behalf of a child to allow a custodial parent reasonably necessary to enable either or both parents to:

**Comment**

*The new law allows child care expenses of either or both parents to be figured in the mix.*

- (1) be employed,
- (2) seek employment, or
- (3) attend school or training to enhance employment income.

b. ~~In cases in which child care expenses will be incurred by agreement of the parties or by order of the district or administrative court, expenses shall be determined by calculating the amount paid annually for child care expenses, which shall be determined by the actual reasonable expenses, not to exceed the expense required to provide high quality care for~~

~~children from a licensed provider, projected over the next twelve (12) months, and modified and allocated as follows:~~

~~(1) the annual child support amount shall be converted to a monthly child care expense by dividing the amount by twelve (12);~~

~~(2) the monthly child care expense shall be reduced by subtracting one-twelfth (1/12) of the annual child care tax credit, if any. If the gross monthly income of the party claiming child care expenses falls below the applicable level, the monthly child care tax credit shall not apply and the monthly child care expenses shall not be reduced:~~

(a)	1 child	\$1,400.00
(b)	2 children	\$2,050.00
(c)	3 children	\$2,600.00
(d)	4 children	\$3,100.00
(e)	5 children	\$3,600.00
(f)	6 children	\$4,100.00

~~(3) if the gross monthly income of the party claiming child care expenses exceeds the level indicated in this subparagraph, the monthly child care expense shall be reduced by the following amounts to simulate the child care tax credit:~~

~~(a) one child in child care, the lesser of:~~

- i. 25% of the monthly child care expenses, or
- ii. \$50.00 per month;

~~(b) two or more children in child care, the lesser of:~~

- i. twenty-five percent (25%) of monthly child care expenses, or
- ii. Eighty Dollars (\$80.00) per month;

~~(4) the monthly child care expense, minus one-twelfth (1/12) of the annual child care tax credit, if any, shall be allocated between the obligor and the obligee in the same proportion as the base child support amount and added to the base monthly child support obligation;~~

**Comment**

*Not only is the purported reallocation of the child*

*care tax deduction gone, more importantly, so is the annualization of child care expense. DHS badly wanted to retain that feature in the computations. Everyone else badly wanted it gone since it could obviously produce major inequity to either the obligor (when child care dropped below the projected annual amount but with the legal obligation still remaining) or the obligee (if child care expense increased beyond the annual projection). The point produced high-volume heat between lawyers and DHS in the Conference Committee.*

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.

**Comment**

*The allocation and payment of child care expense is returned to its pre-November 1, 1999, state. Documentation requirements are implemented.*

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. By order of the court or by agreement of the parties monthly contributions for medical, transportation, or other costs may be added to the base monthly child support obligation:

a. Medical 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;

**Comment**

*Allocation of "reasonable and necessary" health care expenses – not without that qualification – is in. The nebulous "or other costs" is out.*

b.

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 as separate items that are not added to the base child support obligation;

**Comment**

*I'm not "real sure" about this one, any more than I was about the 1999 law. If transportation expenses are to be shared between parents, must they be shared "in proportion to their adjusted gross income" or might a court allocate the expense differently, such as 50/50? You tell me.*

45.

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 the effective date of this act November 1, 1999.

**Comment**

*The actual "Child Support Guideline Schedule" (§119) did not change in this bill. But, the CSGL statute (§118) did. Query: if a support order was "in existence" in 12/1999, given the major computation changes included in the new law (e.g., change in the "shared parenting" threshold), does a party have standing to request modification? You tell me!*

(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;

~~46.~~

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;

~~47.~~ 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;

~~48.~~ 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;

~~19: 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;

~~20: 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; and

~~21: 22.~~ The social security numbers of both parents and the children who are the subject of the order shall be included in all paternity or child support orders.

SECTION 1.1.2e. AMENDATORY 43 O.S. 1991, Section 119, as amended by Section 3, Chapter 422, O.S.L. 1999 (43 O.S. Supp. 1999, Section 119), is amended to read as follows:

Section 119.

A. Child support shall be computed in accordance with the following Child Support Guideline Schedule:

SCHEDULE OF BASIC  
CHILD SUPPORT OBLIGATIONS

If Combined

Gross

Monthly

Income \_\_\_\_\_ Total Support Amount \_\_\_\_\_

is ~~over~~

<u>equal to</u>	One	Two	Three	Four	Five	Six Children
<u>or above</u>	<u>Child</u>	<u>Children</u>	<u>Children</u>	<u>Children</u>	<u>Children</u>	<u>or More</u>

..... [the table of values did not change and is omitted in this edition] .....

B. If combined gross monthly income exceeds Fifteen Thousand Dollars (\$15,000.00), the child support shall be that amount computed for a monthly income of Fifteen Thousand Dollars (\$15,000.00) and an additional amount determined by the court.

C. If there are more than six children, the child support shall be that amount computed for six children and an additional amount determined by the court.

**Comment**

*The only change in 43 O.S. §119 is the clarification of what to do if combined parental income was exactly the amount in the table, e.g., \$5,000.00 per month, not a penny more. Some opined that under the 1988 and 1999 statutes if combined parental income was exactly the amount in the combined income column that the amount used in the immediately preceding value (e.g., \$4,950.00 instead of \$5,000.00) should be used. This language clarifies the point: \$5,000 = \$5,000. Duh.*

SECTION 1.1.3e. AMENDATORY 43 O.S. 1991, Section 120, as last amended by Section 4, Chapter 422, O.S.L. 1999 (43 O.S. Supp. 1999, Section 120), is amended to read as follows:

Section 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 and filed with all orders which establish paternity or establish or modify support orders. For orders established or modified in district court, the clerk of the court shall forward a copy of the support order summary form to the Central Case Registry.

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.

**Comment**

*Note that only the forms "specified by this subsection" (43 O.S. §120.B.) shall be prepared by DHS and published by the Court Administrator. The child support computation form is referenced in §120.A. DHS is no longer obligated nor authorized to prepare a state-wide obligatory basic computation form. Now, there will be no "official" Child Support Computation Form at all.*

SECTION 1.1.4e. AMENDATORY 56 O.S. 1991, Section 240, as renumbered by Section 14, Chapter 365, O.S.L. 1994, and as last amended by Section 17, Chapter 323, O.S.L. 1998 (56 O.S. Supp. 1999, Section 237.7), is amended to read as follows:

Section 237.7

For the purposes of Sections 238 through 240.23 of this title:

1. The "Child Support Enforcement Division of the Department of Human Services", hereinafter referred to as the "Division" or as the "Department", is the state agency designated to administer the child support enforcement program for the State of Oklahoma and its District Offices, which may be administered through contract or cooperative agreements. The District Offices provide enforcement services to individuals receiving Temporary Assistance for Needy Families, hereinafter referred to as "TANF", and to individuals not receiving TANF who have made proper application for enforcement services to the Division;

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

3. "Office of Administrative Hearings: Child Support (Legal Division, Department of Human Services, State of Oklahoma)", hereinafter

referred to as "OAH", conducts child support enforcement administrative hearings. All hearings are conducted by administrative law judges assigned to OAH;

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

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

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

7. "Gross income" or "income" means income from any source and includes but is not limited to income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, rent, interest income, trust income, annuities, compensation as an independent contractor, social security benefits, workers' compensation benefits, unemployment insurance benefits,

disability insurance benefits, gifts, prizes, any form of periodic payment to an individual regardless of source, and any other payments made by any person, private entity, federal or state government, any unit of local government, school district, or any entity created by law. Income specifically excluded are actual child support received for children not before the court and benefits received from means-tested public assistance programs, including but not limited to TANF, Supplemental Security Income (SSI), Food Stamps, General Assistance and State Supplemental Payments for Aged, Blind, and the Disabled.

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

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

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

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

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

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

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

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

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

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

14. "Income assignment" is an assignment of a portion of the monies, income, or periodic earnings due and owing to the obligor to the person entitled to the support or to another person or entity designated by the support order or assignment for payment of support, the support debt, or arrearages. In all child support orders wherein child support is being enforced pursuant to the state plan, the income of any obligor required by court or administrative order to pay support shall be subject to immediate income assignments regardless of whether support payments by such obligor are in arrears. The assignment shall be in an amount which is sufficient to meet the monthly child support payments, payments on support debt and arrearages, or other maintenance payments imposed by the district or administrative court order. The income assignment shall be made a part of a support order or any order granting a judgment for a support debt or arrearages, or a review or modification of a support order pursuant to Section 118.1 of Title 43 of the Oklahoma Statutes;

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

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

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

18. "License" means a license, certificate, registration, permit, approval, or other similar document issued by a licensing board granting to

an individual a right or privilege to engage in a profession, occupation, or business or industry, or any recreational license or permit including, but not limited to, a hunting and fishing license or other authorization issued pursuant to the Oklahoma Wildlife Conservation Code and certificates of Title for vessels and motors and other licenses or registrations issued pursuant to the Oklahoma Vessel and Motor Registration Act or a driver license or other permit issued pursuant to Title 47 of the Oklahoma Statutes;

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

20. "Payment plan" includes but is not limited to a plan approved by the support enforcement entity that provides sufficient security to ensure compliance with a support order or that incorporates voluntary or involuntary income assignment or a similar plan for periodic payment

of past-due support and, if applicable, current and future support; and

21. "Support" means all payments or other obligations due and owing to the obligee or person entitled by the obligor pursuant to a support order, and may include, but is not limited to, support alimony payments, child support, ~~medical insurance or other health care premiums, child care obligations, support alimony payments~~ as defined by Section 1170 of Title 12 of the Oklahoma Statutes, and other expenses, requirements and obligations as specified in Section 118 of Title 43 of the Oklahoma Statutes.

**Comment**

*56 O.S. §237.7 now includes alimony in the definition of "support" and links to 12 O.S. §1170's definition of "child support". See page 4.*

SECTION 1.1.4.1\e. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 26th day of May, 2000.

/S/ \_\_\_\_\_  
Speaker of the House of Representatives

Passed the Senate the 26th day of May, 2000.

/S/ \_\_\_\_\_  
President of the Senate

Signed by the Governor on the 6<sup>th</sup> day of June, 2000.

/S/ \_\_\_\_\_  
Governor of the State of Oklahoma

**Comment:**

*HB 2190 contains the above emergency clause, meaning that the law became effective June 6, 2000. SB 6X also contains an emergency and became effective 6/30/2000.*

**Computation of Base Child Support**

With 1999's possible Earned Income Credit adjustment to low-income obligors, computation of base child support is (but for shared parenting, following) simple once again: (1) Add each parent's gross monthly incomes (after any applicable statutory deductions, e.g., child

or spousal support actually paid in another case, deduction allowed by the court for debt payment in an original divorce) to arrive at a combined parental monthly gross income; (2) determine the percentage of parent's income to the combined amount; (3) Find the matching number in 43 O.S. §119's Schedule amount for that income; (4) Multiply the non-custodial parent's percentage times the number in the Schedule amount. That's base child support.

*Unless you are DHS.* Notwithstanding the 2000 legislation's changes to 43 O.S. §118.E.13. (formerly §118.C.13.), discussed at pages 8-9 above, DHS continues to assert that "child care" should be a part of "base child support". While this seems a strain, if not a rip, of the statutory text, if you are dealing with DHS (or ARE DHS), be aware of this difference. To this writer, the DHS position is untenable. But, practical reality is, after all, practical reality.

## Computation of Child Care Shares

The 2000 legislation eliminated 1999's possible adjustment to child care based upon the obligee's entitlement to the IRS child care tax deduction. As or more importantly, the child care expense of both parents (and not only the obligee's) is included in the computation. And, even if you are DHS, the child care is no longer "annualized" (estimate the annual child care expense and divide by 12 to reach an average), at least, if the statute is followed. This, coupled with the re-emergence of child care documentation requirements if child care expense changes, should avoid the horrible consequence of unjustified annualized child care expense becoming a judgment by operation of law by reason of 43 O.S. §137, the applicable portion of which reads:

### **§137. Past Due Support Payments as Judgment-Arrearage Payment Schedule**

A. Any payment or installment of child support ordered pursuant to any order, judgment, or decree of the district court or administrative order of the Department of Human Services is, on and after the date it becomes past due, a judgment by operation of law. Judgments for past due support shall:

1. Have the full force and effect of any other judgment of this state, including the ability to be enforced by any method available under the laws of this state to enforce and collect money judgments; and
2. Be entitled to full faith and credit as a judgment in this state and any other state.

So, if an obligor's child care expense share is included as a component of "base child support", an obligor's child care expense share may become a "judgment by operation of law", possibly leaving the obligor powerless to do anything about an arrearage which has unjustifiably accumulated prior to modification litigation being commenced. See the discussion, above, concerning base child support computation, and, unless you are a DHS lawyer, ***don't let this happen to your clients!***

## Computation of Shared Parenting

Shared parenting remains with us. So, you need to know how it's done. With both of the 2000 pieces of law

- (1) The obligee (custodial parent) may never be required to pay the obligor (non-custodial parent) base child support, even if the math produces a negative number for obligor's shared parenting base support (still mathematically possible

under the new laws);

- (2) The onerous last sentence of 1999's 43 O.S. §118.C.10.d.(2), now 43 O.S. §118.E.10.d.(2), was eliminated in the 2<sup>nd</sup> piece of legislation, so we don't have to worry about that. If you are a DHS lawyer, you ignored that sentence, anyway. So, unless you are dealing with a child support computation issue which might use law in effect between November 1, 1999, and June 30, 2000, you don't have to worry about a "literal statute" vs. "DHS" computation issue.
- (3) The threshold nights to qualify as "shared parenting" increased from 1999's 93 visitation nights a year to 2000's 121 visitation nights a year.

If, under the visitation order, both parents have 121 or more nights with the children a year (that's the definition of "shared parenting" under 43 O.S. §118.E.10.a. – "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" – then the statute mandates (the same section says "the base monthly obligation *shall* be adjusted."

The "shall be adjusted" part means that you are obliged to compute base child support in the non-standard method provided in §118.E.10.b. and following. The forms attached to this paper explain how to do that computation and the explanation won't be repeated here. But, while it is mathematically possible under the §118.E.10. formula that the custodial parent (the "obligee") could wind up owing the non-custodial parent (the "obligor") base child support, §118E.10.f. eliminates that possibility.

None of the various county "Standard Visitation Orders" of which I'm aware produce 121 or more nights of visitation a year after adjustment for overlap. But, throw in a mid-week overnight visitation night and the nights could easily be over the 121 night threshold.

In your computation of visitation "nights", be sure to adjust the annual total for "regular" and "holiday" and "summer" visitation nights' overlap with each other. For example, since most (if not all) so-called "standard visitation orders" (so-called because I've yet to see a "standard visitation schedule adopted by formal court rule) provide that holiday visitation supercedes the regular weekend visitation schedule, visitation "nights" would be duplicated if both "regular weekend" visitation were not adjusted for holidays in which "holiday" visitation overlapped the regular weekend visitation schedule. The computation of visitation "nights" is a tricky and is litigation-prone business. A form is attached which may be useful in that regard.

## PostScript

Whether you like "Shared Parenting" or not, DHS should not be seen as either "goat" or "hero" on the point. It was willing to accept the Bar's bill in that respect. Republican Senators and a few Democrat Senators are responsible for retention of "Shared Parenting". Those Senators either deserve the praise or the blame. Either way, it's what we've got.

## Forms

Under the 1999 statute, DHS was the promulgator of all child support forms, required to be published by the Court Administrator's Office. DHS was not a faithful steward of its mandated duty since it molded its forms to suit what it thought the legislation *should have been*, not what the legislation actually was. Now, no standard "child support computation

form” exists. A set of “Forms” which you may or may not use is available for download elsewhere in <http://www.dougloudenback.com>. In the drafting of these forms, I was considerably influenced by Hon. Gary J. Dean (Special Judge, Mayes County, and author of the DOS-based Child Support Software of earlier vintage) and Rees T. Evans, a superb divorce lawyer and friend of mine from Oklahoma City.

In drafting the forms, two primary purposes were pursued:

- (1) Prepare forms which conform to the law, whether I prefer the policy or disdain it; and
- (2) Add text, even orders, at the end of the forms which give additional instructions about what to do in various contexts – stuff that lawyers ought to include in the real “Order” but sometimes don’t – such as a statutory definition of shared health care expenses to be paid by parents, and the statutory requirement of providing child care documentation.

DHS will continue to produce Child Support Computation Forms – but (and although some DHS forms were mailed to Court Clerks shortly after passage of HB 2190 – I’m told that the form has been “recalled”), no “official” Computation Form is now mandated by statute.

As noted above, HB 2190 changed 43 O.S. §120. Compare the new and old §120:

#### OLD §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. 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 and filed with all orders which establish paternity or establish or modify support orders. For orders established or modified in district court, the clerk of the court shall forward a copy of the support order summary form to the Central Case Registry.
- C. 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.
- D. The forms shall be prepared by the Department of Human Services and shall be published by the Administrative Office of the Courts.

#### NEW §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 and filed with all orders which establish paternity or establish or modify support orders. For orders established or modified in district court, the clerk of the court shall forward a copy of the support order summary form to the Central Case Registry.
  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. [Emphasis supplied]

In the new §120, the only forms “specified by this subsection” are (1) the “support order summary form” in the types of cases mentioned, and (2) the “standard agreed order form” involved with the “informal review and adjustment process” (see §118.E.17.). The “child support computation form” is referenced in §120.A., not §120.B.

And, be aware that in its own computation form, DHS is continuing to place Child Care expense allocation “above the line” as part of base child support. See the changes to §118.E.13. (formerly §118.C.13.), beginning at page 8 of these materials. The statute does not read ambiguously – “base child support” is one thing, and “child care expense” is another. DHS continues to write forms which give its own unique interpretation of child support law. See the discussion at page 15 for the significance.