

OKLAHOMA CHILD/SPOUSAL SUPPORT INCOME ASSIGNMENT STATUTES

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12 O.S. §1170 Terms Defined

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, current child care obligations, child care arrearages and any fixed 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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Historical Data: Added by Laws 1985, c. 297, §10, operative Oct. 1, 1985. Amended by Laws 1986, c. 176, §1, emerg. eff. May 15, 1986; Laws 1990, c. 309, §6, eff. Sept. 1, 1990; Laws 1995, c. 338, §1, eff. Nov. 1, 1995; Amended by Laws 1997, c. 272, §1, eff. November 1, 1997; Amended by Laws 1999, S.B. 689 c. 422. §1, eff. November 1, 1999; Amended by Laws 2000, HB 2190 c. 345. §1, eff. June 6, 2000.

Cases citing this section:

Morrison v. State ex rel. Oklahoma Employment Sec. Comm., 1987 OK 127, 747 P.2d 310

Founders Bank and Trust Co. v. Upsher, 1992 OK 35, 830 P.2d 1355

12 O.S. §1171.2 Child Support Payments - Garnishment

A. Any person awarded custody of and support for a minor child by the district court or awarded periodic child support

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payments by the Department of Human Services, or the Department of Human Services on behalf of a recipient of Temporary Assistance for Needy Families or on behalf of a person not receiving Temporary Assistance for Needy Families, upon proper application, shall be entitled to proceed to collect any current child support and child support due and owing through income assignment pursuant to the provisions of this section and **Sections 1171.3** and 1171.4 or **Sections 240** through **240.3** of Title 56 of the Oklahoma Statutes or by garnishment, if the minor child is in the custody and care of the person entitled to receive the child support or as is otherwise provided by the court or administrative order at the time of the income assignment or garnishment proceedings.

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

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

2. sixty percent (60%) of such person's disposable earnings for that week if such person is not supporting a spouse or dependent child. The fifty percent (50%) specified in paragraph 1 of this subsection shall be deemed to be fifty-five percent (55%) and the sixty percent (60%) specified in paragraph 2 of this subsection shall be deemed to be sixty-five percent (65%), if and to the extent that such earnings are subject to garnishment or income assignment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

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Historical Data: Amended by Laws 1985, c. 297, §11, operative Oct. 1, 1985; Amended by Laws 1997, c. 272, §2, eff. November 1, 1997; Amended by Laws 1997, c. 402, §6, eff. July 1, 1997. No link is present above to 12 O.S. §1171.4 since it was repealed by Laws 2000, SB 1520, c. 384, §22, eff. Nov. 1, 2000. The "Section 240" link is to §237.7, the successor to §240. The 1st portion of the §240.x series in this document is §240.1, §230.3 not being relevant to income assignments.

Cases citing this section:

Morrison v. State ex rel. Oklahoma Employment Sec. Com'n, 1987 OK 127, 747 P.2d 310

Malicoate v. Standard Life & Accident Ins. Co., 2000 OK CIV APP 37, 999 P.2d 1103

12 O.S. §1171.3 Initiation of Income Assignment Proceedings

A. In all child support cases arising out of an action for divorce, paternity or other proceedings, the court shall order the payment of child support as provided under **Section 115** of Title 43 of the Oklahoma Statutes.

B. 1. A notice of income assignment shall be sent by the applicant to the payor on a standardized form prescribed by the Secretary of the United States Department of Health and Human Services and available through the Administrative Office of the Courts. The notice shall be sent by certified mail, return receipt requested or served according to law. The payor shall be required to comply with the provisions of this subsection and the provisions stated in the notice.

2. The income assignment shall take effect on the next payment of earnings to the obligor after the payor receives notice. The amount withheld shall be sent to the Centralized Support Registry as provided for in **Section 413** of Title 43 of the Oklahoma Statutes within seven (7) days after the date upon which the obligor is paid. The payor shall include with each payment a statement reporting the date the obligor's support obligation was withheld.

3. Each pay period the payor shall withhold the amounts specified in the notice from the obligor's income and earnings. The amount withheld by the payor shall not exceed the limits on the percentage of an obligor's income which may be assigned for support pursuant to **Section 1171.2** of this title.

4. The income assignment is binding upon the payor until released or until further order of the court.

5. All payments shall be made through the Centralized Support Registry as provided in **Section 413** of Title 43 of the Oklahoma Statutes.

6. If the amount of support due under all income assignments against the obligor exceeds the maximum amount authorized by **Section 1171.2** of this title, the payor shall pay the amount due up to the statutory limit, and the payor shall send written notice to the person or agency designated to receive payments that the amount due exceeds the amount subject to withholding. If the payor wrongfully fails to pay or notify as required in this subsection, the payor may be liable for an amount up to the accumulated amount due upon receipt of the notice.

7. If the payor is the obligor's employer, the payor shall send written notice to the person or agency designated

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to receive payments within ten (10) days of the date the obligor terminates employment, and shall provide the obligor's last-known address and the name of the obligor's new employer, if known.

8. If the payor has no income due or to be due to the obligor in the payor's possession or control or if the obligor has terminated employment with the payor prior to the receipt of notice of income assignment required pursuant to this subsection, the payor shall send written notice to the person or agency designated to receive payments within ten (10) days. Failure to notify the person or agency entitled to support within the required time limit may subject the payor to liability for an amount up to the accumulated amount due upon receipt of the notice of income assignment.

9. The payor is liable for any amount up to the accumulated amount that should have been withheld and paid, and may be fined up to Two Hundred Dollars (\$200.00) for each failure to make the required deductions if the payor:

- a. fails to withhold or pay the support in accordance with the provisions of the income assignment notice,
- or
- b. fails to notify the person or agency designated to receive payments as required.

10. The payor may combine withheld amounts from earnings of two or more obligors subject to the same support order in a single payment and separately identify that portion of the single payment which is attributable to each individual obligor.

11. An income assignment for child support shall have priority over any prior or subsequent garnishments of the same wages.

12. The payor may deduct from any earnings of the obligor a sum not exceeding Five Dollars (\$5.00) per pay period but not to exceed Ten Dollars (\$10.00) per month as reimbursement for costs incurred by the payor for the income assignment.

13. The income assignment shall remain in effect regardless of a change of payor.

14. The income assignment shall remain in effect as long as current support is due or until all arrearages for support are paid, whichever is later. Payment of arrearages shall not prevent the income assignment from taking effect.

15. The payor may not discipline, suspend, discharge, or refuse to promote an obligor because of an income assignment executed pursuant to this section. Any payor who violates this section shall be liable to the obligor for all income, wages, and employment benefits lost by the obligor from the period of unlawful discipline, suspension, discharge, or refusal to promote until the time of reinstatement or promotion.

C. Income assignment shall be available to collect any amounts due for child support, child care and medical expenses, as well as current support alimony payments; provided, child support shall be paid prior to any alimony payments.

D. Any existing support order or income assignment which is brought before the court shall be modified by the court to conform to the provisions of this section.

E. Any person obligated to pay support, who has left or is beyond the jurisdiction of the court, may be prosecuted under any other proceedings available pursuant to the laws of this state for the enforcement of the duty of support and maintenance.

F. The income assignment proceedings specified in this section shall be available to other states for the enforcement of support and maintenance or to enforce out-of-state orders. Venue for these proceedings is, at the option of the obligee:

1. In the county in this state in which the support order was entered;
2. In the county in this state in which the obligee resides; or
3. In the county in this state in which the obligor resides or receives income.

G. 1. In all child support 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, all orders for support are subject to immediate income assignment without need for a hearing by the district or administrative court.

2. In all child support cases arising out of an action for divorce, paternity, or other proceeding in which services are not being provided under the state child support plan as provided under **Section 237** of Title 56 of the Oklahoma Statutes, the court shall order the income of any parent ordered to pay child support to be subject to immediate income assignment regardless of whether child support payments are in arrears at the time of the order, unless:

- a. one of the parties demonstrates and the court finds that there is good cause not to require immediate

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income withholding. Any finding that there is good cause not to require immediate income assignment must be based upon at least:

(1) a written determination and explanation by the court or administrative authority of why implementing immediate income assignment would not be in the best interests of the child, and

(2) proof of timely payment of previously ordered support in cases involving modification of support orders, or

b. a written agreement is reached between the parties which provides for an alternative arrangement. For purposes of this subparagraph, "written agreement" means a written alternative arrangement signed by both the custodial and noncustodial parents which has been reviewed by the court and entered into the record by the court or administrative authority.

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Historical Data: Laws 1985, c. 297, §2, operative Oct. 1, 1985; Laws 1986, c. 176, §2, emerg. eff. May 15, 1986; Laws 1989, c. 362, §1, eff. Nov. 1, 1989; Laws 1990, c. 309, §7, eff. Sept. 1, 1990; Laws 1991, c. 278, §1, emerg. eff. May 28, 1991; Laws 1994, c. 356, §23, eff. Sept. 1, 1994; Amended by Laws 1997, c. 272, §3, eff. November 1, 1997; Amended by Laws 1997, c. 402, §7, eff. July 1, 1997; Amended by Laws 1998, c. 323, §5, eff. October 1, 1998; Amended by Laws 2000, SB 1520 c. 384. §3, eff. November 1, 2000; Amended by Laws 2004, HB 2527, c. 393, § 1, emerg. eff. June 3, 2004.

Cases citing this section:

Cornwell v. Cornwell, 1992 OK CIV APP 157, 848 P.2d 41

Nichols v. Nichols, 1993 OK CIV APP 31, 849 P.2d 440

State ex rel. Huffman v. Robertson, 1993 OK CIV APP 71, 853 P.2d 249

Department of Human Services v. Glasby, 1993 OK CIV APP 126, 858 P.2d 1291

Logan v. Logan, 1994 OK CIV APP 77, 877 P.2d 51

State Dept. of Human Services ex rel. Minyard v. Minyard, 1994 OK CIV APP 174, 889 P.2d 908

Malicoate v. Standard Life & Accident Ins. Co., 2000 OK CIV APP 37, 999 P.2d 1103

43 O.S. §115. Child Support Orders to Include Provision for Income Assignment-Voluntary Income Assignment

A. Every order providing for the support of a minor child or a modification of such order, whether issued by a district court or an administrative court, shall contain an immediate income assignment provision if child support services are being provided under the state child support plan as provided under **Section 237** of Title 56 of the Oklahoma Statutes, regardless of whether support payments by such parent are in arrears.

B. In all child support cases arising out of an action for divorce, paternity or other proceeding in which services are not being provided under the state child support plan, the district court shall order the wage of the obligor subject to immediate income assignment, regardless of whether support payments by such parent are in arrears, unless:

1. One of the parties demonstrates and the district court finds there is good cause not to require immediate income withholding; or

2. A written agreement is reached between the parties which provides for an alternative arrangement.

C. The obligated party may execute a voluntary income assignment at any time. The voluntary assignment shall be filed with the district or administrative court and shall take effect after service on the payor, as required by **Section 1171.3** of Title 12 of the Oklahoma Statutes.

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Legislative History: Added by Laws 1985, c. 297, §17, eff. Oct. 1, 1985. Renumbered from Title 12, §1277.4 by Laws 1989, c. 333, §1, eff. Nov. 1, 1989; Amended by Laws 1994, c. 365, §11, eff. Sept. 1, 1994; Amended by Laws 1997, c. 402, §12, eff. July 1, 1997.

Cases citing this section:

Malicoate v. Standard Life & Accident Ins. Co., 2000 OK CIV APP 37, 999 P.2d 1103

43 O.S. §117. Modification, Suspension or Termination of Income Assignment Order

A. Except as otherwise provided by subsection B of this section, the person obligated to pay support or the person entitled to the support may petition the district or administrative court to:

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1. Modify, suspend, or terminate the order for income assignment because of a modification, suspension, or termination of the underlying order for support; or
2. Modify the amount of income to be withheld to reflect payment in full of the delinquency by income assignment or otherwise; or
3. Suspend the order for income assignment because of inability to deliver income withheld to the person entitled to support payments due to the failure of the person entitled to support to provide a mailing address or other means of delivery.

B. If the income assignment has been initiated by the Department of Human Services, the district court shall notify the Department of Human Services prior to the termination, modification, or suspension of the income assignment order.

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Legislative History: Added by Laws 1985, c. 297, §19, eff. Oct. 1, 1985. Renumbered from Title 12, §1277.6 by Laws 1989, c. 333, §1, eff. Nov. 1, 1989. Amended by Laws 1994, c. 365, §13, eff. Sept. 1, 1994.

Cases citing this section: *D.H.S., ex Rel. Overstreet v. Overstreet*, 2003 OK 87, 78 P.3d 951

43 O.S. §118.4 Child Support Benefits - Assignment To Attorney For Legal Representation

- A. Child support or any claim thereto shall not be directly or indirectly assigned, except as provided in subsection B of this section and in subsection C of **Section 237** of Title 56 of the Oklahoma Statutes. Any assignment of child support to the Department of Human Services shall have first priority over any prior or subsequent assignment.
- B. Child support may be assigned to an attorney for the purpose of providing legal representation in child support proceedings. The assignment shall be consistent with the Oklahoma Rules of Professional Conduct and shall not exceed fifty percent (50%) of the net amount of the child support collected and remitted to the obligee.

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Historical Data:

Added by Laws 2003, HB 1358, c. 302, §4, emerg. eff. May 28, 2003; Amended by Laws 2004, SB 1210, c. 407, § 1, emerg. eff. June 3, 2004.

Cases citing this section: None Found.

43 O.S. §136. Payment of Support and Alimony by Mail-Report of Payments as Evidence-Application Fee for Income Assignment

- A. If a judicial order, judgment or decree directs that the payment of child support, alimony, temporary support or any similar type of payment be made through the office of the court clerk, then it shall be the duty of the court to transmit such payments to the payee by first class United States mail, if requested to do so by the payee. Such payments shall be mailed to the payee at the address specified in writing by the payee. In the event of a change in address of the payee it shall be the duty of the payee to furnish to the court clerk in writing the new address of the payee.
- B. A report of child support payments with a certificate of authenticity executed by the court clerk is admissible into evidence in court or in an administrative proceeding as self-authenticated.
- C. A fee not to exceed Twenty-five Dollars (\$25.00) shall be charged and collected for any post decree application to initiate an income assignment in addition to any other fees authorized by law. The fee shall not be charged or collected for income assignments requested at the time of the filing of the original petition or entered at the time of a divorce decree. The person entitled to support is entitled to collect said fees paid pursuant to this subsection from the person obligated to pay support through civil proceedings.

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Legislative History: Added by Laws 1970, c. 60, §1. Amended by Laws 1985, c. 297, §21, eff. Oct. 1, 1985. Renumbered from Title 12, §1290 by Laws 1989, c. 333, §1, eff. Nov. 1, 1989. Amended by Laws 1995, c. 219, §2, eff. Nov. 1, 1995.

Cases citing this section: None Found.

43 O.S. §413. Payments Made Through Registry-Procedure-Change of Address-Service of Process

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

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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;

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.

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Legislative History: 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.

Cases citing this section: None Found.

56 O.S. §237 Support Collection, Parent Location and Paternity Determination Services

A. The Department of Human Services, hereinafter referred to as "Department", as the single state agency designated to administer a statewide plan for child support, is authorized, in accordance with Title IV, Part D, of the Federal Social Security Act, as amended, 42 U.S.C., Section 651 et seq., to provide child support services, parent location services, and paternity determination services to enable participation in programs established by federal law.

B. The Department is authorized to:

1. Accept, transfer, and expend funds made available by the government of the United States, the State of Oklahoma, and public or private sources, for the purpose of carrying out the provisions of this section;

2. Adopt rules for child support services;

3. Initiate legal actions needed to implement the provisions of this section;

4. Enter into contracts or agreements necessary to administer this section; and

5. Require agencies and political subdivisions of this state, its counties and municipalities, persons, sole proprietorships, corporations, utilities, partnerships, associations, organizations, and other legal entities doing business in this state to provide information to the Child Support Enforcement Division to assist in locating individuals and in establishing and enforcing court orders.

C. 1. An applicant for or recipient of Temporary Assistance for Needy Families, hereinafter referred to as "recipient",

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shall be required to assign to the Department any rights to or support from any other person which the recipient may have or for a child for whom the recipient is applying or receiving assistance in accordance with federal regulations and state law.

2. When an order has been entered which provides for payment of child support and the obligee pursuant to the order relinquishes physical custody of the child to another custodian, without obtaining a modification of the order to change custody or to redirect the support to the new custodian, the relinquishment shall transfer the child support obligation pursuant to the order to the new custodian or the Department if services are being provided under the state child support plan as provided in this section. The transfer of the obligation shall terminate when the new custodian no longer has physical custody of the child, except for the amount of unpaid support still owing to the custodian or to the Department .

3. In all cases in which support services are being provided under the state child support plan as provided in this section, support payments shall be made by the obligor to the Department or its designee. If a court has ordered support payments to be made to the recipient or to the applicant, the Department may send a notice of the assignment or application to the obligor requiring that all support payments be made to the Division or its designee. The notice shall include:

- a. a statement that the assignment or application has been made,
- b. the style and number of the case in which support was ordered,
- c. a statement that all payments so ordered shall be made to the Department or its designee, and
- d. a statement that the obligor's earnings and income are assigned for collection of support monies owed.

4. A notice to redirect the payments shall be sent to the obligor by regular mail with proof of mailing from the United States Postal Service. If, after notice of the redirection, the obligor does not make payments to the Department as provided in the notice, the payments shall not be credited to the amount owed. The obligor shall notify the Department of any change of address, the name and address of the current employer, and access to health insurance and other insurance policy information within thirty (30) days of any change.

D. When the right to receive support has been assigned to the Child Support Enforcement Division or upon proper application by an obligor or by an individual not receiving Temporary Assistance for Needy Families, the Division may petition the district court or the Office of Administrative Hearings: Child Support, an administrative court of the Department of Human Services, for an order:

1. Requiring the obligor to provide health insurance for the dependent children whenever it is available through employment or other group plan regardless of whether the obligor has insurance coverage available at that time or there has been a change of circumstances;

2. Establishing paternity;

3. Requiring medical support, child support, or other support;

4. Enforcing orders for paternity, medical support, child support, or other support;

5. Requiring that the obligor keep the Division informed of the name and address of the current employer of the obligor and of any health insurance or other insurance policy information of the obligor within thirty (30) days of any change;

6. Providing for collection and distribution of child support monies; and

7. Assisting in the location of absent parents and their assets, in cooperation with federal agencies, other agencies of this state and of other states, territories, and foreign nations requesting assistance with the enforcement of support orders entered in the United States and elsewhere.

E. The Division may petition the district or administrative court to modify any order for support regardless of whether there has been a change of circumstances.

F. A reasonable fee and costs may be assessed for services to individuals not receiving Temporary Assistance for Needy Families pursuant to rules adopted by the Department.

G. Child support payments made to the Division pursuant to this section shall be deposited in the Child Support Escrow Account for distribution as may be required by Section 235 of this title, or by 42 U.S.C., Section 651 et seq. Fees or reimbursements of costs collected by the Department shall be deposited in the Administration Fund of the Department and may be used and expended by the Department for the purposes of carrying out the provisions of this section.

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H. Except as otherwise authorized by law, all files and records concerning the assistance and services provided under this section or concerning a putative father of a child born out of wedlock are confidential. Release of information from the files and records shall be restricted to purposes directly connected with the administration of the child support collection, paternity determination, parent location, or Temporary Assistance for Needy Families programs. Information may be released to public officials under rules adopted by the Department, consistent with federal rules or regulations.

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Historical Data: Added by Laws 1977, c. 170, §1, emerg. eff. June 3, 1977. Amended by Laws 1986, c. 176, §5, emerg. eff. May 15, 1986; Laws 1987, c. 230, §18, eff. Oct. 1, 1987; Laws 1990, c. 309, §13, eff. Sept. 1, 1990; Laws 1992, c. 153, §2, emerg. eff. April 30, 1992; Laws 1994, c. 356, §19, eff. Sept. 1, 1994; Amended by Laws 1997, c. 402, §19, eff. July 1, 1997; Amended by Laws 1998, c. 323, §15, eff. October 1, 1998; Amended by Laws 2000, SB 1520 c. 384. §9, eff. November 1, 2000.

Cases citing this section:

Morrison v. State ex rel. Oklahoma Employment Sec. Com'n, 1987 OK 127, 747 P.2d 310

Coppola v. Fulton, 1991 OK 18, 809 P.2d 1291

Haney v. State, 1993 OK 41, 850 P.2d 1087

State Dept. of Human Services ex rel. K.A.G. v. T.D.G., 1993 OK 126, 861 P.2d 990

Department of Human Services ex rel. Pavlovich now Hagar v. Pavlovich, 1996 OK 71, 932 P.2d 1080

Birdtail v. Birdtail 1992 OK CIV APP 32, 838 P.2d 522

Lewandowski v. Lewandowski, 1993 OK CIV APP 155, 862 P.2d 86

56 O.S. §237.7 Terms Defined

For the purposes of **Sections 237** 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. a. "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.

b. 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

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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 a 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" means 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 cases 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 by operation of law 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 periodic child support payments, other maintenance payments, payments on support debt and collection of past due support monies that have accrued under a district or administrative court order. An income assignment shall be made a part of a support order or any order granting a judgment for a support debt or confirming the amount of the past due support, 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, 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, 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.

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Historical Data: Added by Laws 1985, c. 297, §22, operative Oct. 1, 1985. Amended by Laws 1986, c. 176, §9, emerg. eff. May 15, 1986; Laws 1990, c. 309, §17, eff. Sept. 1, 1990; Laws 1993, c. 307, §5, emerg. eff. June 7, 1993; Laws 1994, c. 365, §1, eff. Sept. 1, 1994. Renumbered from §240 of this title by Laws 1994, c. 365, §14, eff. Sept. 1, 1994. Amended by Laws 1995, c. 354, §3, eff. Nov. 1, 1995; Amended by Laws 1997, c. 402, §20, eff. July 1, 1997; Amended by Laws 1998, c. 323, §17, eff. October 1, 1998; Amended by Laws 2000, HB 2190 c. 345, §5, eff. June 6, 2000; Note: Multiple Sections amended by Section 5, Chapter 345, O.S.L. 2000 repealed by Laws 2001, HB 1965 c. 5 §32, emerg. eff. March 21, 2001; Amended by Laws 2000, SB1520 c. 384, §12, eff. November 1, 2000; Amended by Laws 2001, HB 1965 c. 5 §31, emerg. eff. March 21, 2001.

56 O.S. §240.1 Proceedings to Obtain Judgment for Child Support Arrearages - Enforcement Proceedings

A. 1. In cases in which child support services are being provided by the Child Support Enforcement Division of the Department of Human Services, the Division may:

a. initiate enforcement proceedings to:

- (1) obtain a judgment for arrearages,
- (2) effectuate an income assignment,
- (3) receive current support and judgment payments, and
- (4) review and modify support orders pursuant to child support guidelines in Section 118 of Title 43 of the Oklahoma Statutes, and

b. initiate any other legal proceeding to implement the establishment and collection of support and other court-ordered requirements of support from an obligor including, but not limited to, medical expenses, insurance premiums, and child care costs.

2. In any hearing on a notice of delinquency or other enforcement proceeding, the district or administrative court may include the amount of the child support services fee paid by the applicant in any judgment against the obligor.

B. The Division is authorized to initiate enforcement proceedings and receive payments pursuant to Section 237A and **240.2** of this title to effectuate an income assignment and payment plan for:

1. Spousal support or the support of a child or both for an applicant or any person who is the recipient of Temporary Assistance for Needy Families (TANF) program; and

2. Any debt due and owing to the person entitled to receive enforcement support services by the Department or to this state by a natural or adoptive parent or other person who is or was responsible for the support of a child pursuant to Section 238 of this title, or found to be responsible for the support of a child pursuant to Sections 238.1 through 238.6 of this title.

C. Upon application by an obligor who requests support enforcement services from the Department, the Division is authorized to initiate any proceedings necessary to provide support enforcement services to the obligor and to receive payments of the support obligation or any judgment.

D. The Director has the authority to enter orders in situations as defined in Section 240.23 of this title, without the necessity of obtaining an additional signature of a district or administrative judge.

E. The Division is authorized to refer any judgment for child support to the Secretary of Health and Human Services for passport denial, revocation, restriction, or limitation pursuant to federal law or regulation.

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Historical Data: Added by Laws 1985, c. 297, §23, operative Oct. 1, 1985. Amended by Laws 1994, c. 365, §6, eff. Sept. 1, 1994; Amended by Laws 1997, c. 272, §8, eff. November 1, 1997; Amended by Laws 1997, c. 402, §22, eff. July 1, 1997; Amended by Laws 1998, c. 5, §17, eff. March 4, 1998; Amended by Laws 1998, c. 323, §19, eff. October 1, 1998; Amended by Laws 2000, SB 1520 c. 384, §14, eff. November 1, 2000; Amended by Laws 2001, SB 675, c. 407 §17, emerg. eff. June 4, 2001.

Cases citing this section:

Morrison v. State ex rel. Oklahoma Employment Sec. Com'n., 1987 OK 127, 747 P.2d 310

State Dept. of Human Services ex rel. Minyard v. Minyard, 1994 OK CIV APP 174, 889 P.2d 908

56 O.S. §240.2 Initiation of Enforcement Proceedings - Income Assignments - Venue

A. After receiving a referral or application for services, the Division may initiate enforcement proceedings.

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1. The Division may notify the obligor of the intention to initiate enforcement proceedings by a notice. If an income assignment is not in place for collection of support monies, the Division shall immediately execute or issue a withholding order to any payor of income to the obligor. The notice of enforcement proceedings pursuant to this subsection shall be served upon the obligor in the same manner prescribed for the service of summons in a civil action. However, if a notice has been issued pursuant to Section 237A of this title, the notice of enforcement proceedings pursuant to this subsection may be served by regular mail with a certificate of mailing. The notice shall inform the obligor of the following:

- a. the amount of support monies owed, if any,
- b. an assignment for collection of support monies due and owing has commenced if a potential payor of income was known,
- c. other enforcement actions that the Division may take to collect support monies owed,
- d. the obligor may contest the allegations in the notice only with regard to mistakes of identity or the existence or the amount of support monies owed,
- e. the assignment shall remain as long as the order upon which it is based is in effect. Payment of any support monies will not prevent an income assignment from taking effect, and
- f. the obligor shall be required to keep the Division informed of the name and address of the current employer of the obligor and access to health insurance and other insurance policy information of the obligor.

2. a. An obligor may request a hearing pursuant to this section by delivering written notice to the District Office on a form provided which states the date and location of the hearing if requested on or before the fifteenth day from the date of service of the notice. On receipt of the hearing request, the Division shall promptly enter the appearance of the obligor on the administrative court hearing docket. The administrative court shall hear and determine the matter and, unless the obligor successfully shows there is a mistake of identity or a mistake in the existence of current or delinquent child support, the administrative court shall enter a judgment, determine the amount of judgment payments, if any, and order the assignment of nonexempt earnings of the obligor pay the judgment and future monthly support payments.

b. The administrative court may order an obligor to pay all costs involved in enforcement proceedings under this subsection and shall order interest as provided in Section 114 of Title 43 of the Oklahoma Statutes to be collected in the same manner as the payments upon which the interest accrued.

c. The order shall be a final judgment for purposes of appeal.

d. The Division shall send a notice of the income assignment to the payor to effectuate the assignment pursuant to subsection D of this section.

B. If within fifteen (15) days of date of service of the notice, the obligor fails to request a hearing, pursuant to subsection A of this section, or after having requested a hearing fails to appear at the hearing, the administrative court shall enter an order granting judgment for arrearage, if any, establishing a judgment payment plan and approving the income assignment. The administrative order shall thereafter be subject to collection action and shall be filed, at the option of the Division, in the office of the court clerk in the county of residence of the custodian of the child, in the county of residence of the obligor, in the county of the underlying support order, or any other county in which the obligor has real or personal property. The administrative order shall be enforced by the district court in the same manner as an order of the district court. A copy of the order shall be served upon the obligor by the District Office in accordance with subsection B of Section 2005 of Title 12 of the Oklahoma Statutes.

C. The Division shall send a notice of the income assignment to the payor pursuant to subsection D of this section to effectuate the assignment.

D. 1. The notice of the income assignment required pursuant to subsections A and B of this section shall be sent by the Division to the payor on a form prescribed by the Secretary of the United States Department of Health and Human Services. The notice shall be sent by certified mail, return receipt requested, or served in accordance with law. The payor shall be required to comply with the provisions of this subsection and the provisions stated in the notice.

2. The assignment shall take effect on the next payment of income to the obligor after the payor receives notice thereof and the amount withheld shall be sent to the Division within seven (7) days of the date upon which the obligor is paid. The payor shall attach to each payment a statement reporting the date on which the support obligation of the obligor was withheld.

3. The payor shall withhold each pay period the amounts specified in the notice from the obligor's income and

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earnings. The amount withheld by the payor from the obligor's earnings shall not exceed the limits on the percentage of an obligor's earnings which may be assigned for support pursuant to **Section 1171.2** of Title 12 of the Oklahoma Statutes.

4. The income assignment is binding upon the payor until released or until further order of the Division or the district or administrative court.

5. The payor is liable for any amount up to the accumulated amount that should have been withheld if the payor fails to withhold in accordance with the provisions of the assignment notice.

6. Two or more income assignments may be levied concurrently. Any current support due shall be paid before the payment of any arrearages or support debt judgment.

7. If the amount of support due under the assignments exceeds the maximum amount authorized to be withheld from earnings by **Section 1171.2** of Title 12 of the Oklahoma Statutes, the payor shall pay the amount due up to the statutory limit and shall send written notice to the Division or the person or agency designated to receive payments that the amount due exceeds the amount subject to withholding. If the payor fails to pay or notify as required herein, the payor may be liable for an amount up to the accumulated amount that is due and owing upon receipt of the notice.

8. The payor shall notify the Division within ten (10) days of the date when the obligor is no longer employed by, being paid by, or providing services to the payor, and shall provide the Division with the obligor's last-known address and the name of the obligor's new employer or payor of income, if known.

9. If the payor has no current or future income due to the obligor in his or her possession or control, or if the obligor is no longer employed by, being paid by, or providing services to the payor prior to the receipt of the notice required pursuant to subsection C of this section, the payor shall send written notice to the Division within ten (10) days of receipt of said notice. Failure to notify the Division within the required time limit may subject the payor to liability for an amount up to the accumulated amount that is due and owing upon receipt of the notice.

10. The payor is liable for any amount up to the accumulated amount that should have been withheld and paid, and may also be fined not more than Two Hundred Dollars (\$200.00) for each failure to make the required deductions if the payor:

- a. fails to withhold or pay the support in accordance with the provisions of the assignment notice, or
- b. fails to notify the person or agency entitled to support and the Division as required.

11. The Division or the obligor may bring an action against the payor to enforce the provisions of the notice and this subsection in the underlying district court case or by separate proceeding in district court.

12. The payor may combine withheld amounts from income of two or more obligors in a single payment and separately identify that portion of the single payment which is attributable to each individual obligor.

13. An income assignment issued pursuant to the provisions of this section shall have priority over any prior or subsequent garnishments of the same income.

14. The payor may deduct from any income of the obligor a sum not exceeding Five Dollars (\$5.00) per pay period but not to exceed Ten Dollars (\$10.00) per month as reimbursement for costs incurred by the payor in complying with the income assignment.

15. The income assignment shall remain effective regardless of any change of a payor.

16. The income assignment issued pursuant to this section shall remain in effect as long as any support monies are owed. Payment of any support monies shall not prevent the income assignment from taking effect.

17. The payor shall verify the obligor's address, employment, earnings, income, benefits, and dependent health insurance information upon the request of the Division.

18. The payor may not discipline, suspend, discharge, or refuse to promote an obligor because of an income assignment executed pursuant to this section. Any payor who violates this section shall be liable to such obligor for all income, wages, and employment benefits lost by the obligor from the period of unlawful discipline, suspension, discharge, or refusal to promote to the reinstatement or promotion.

E. Nothing in this section shall limit the authority of the Department to use its administrative powers conferred by law or rules to collect delinquent support without the necessity of a court order.

F. Any person obligated to pay support, who has left or is beyond the jurisdiction of the court, may be subjected to or prosecuted under any other proceedings available pursuant to the laws of this state for the enforcement of the duty of support and maintenance.

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G. The income assignment proceedings specified in this section shall be available to other states for the enforcement of child support and maintenance or to enforce out-of-state orders. Venue for such proceedings is, at the option of the obligee:

1. In the county in this state in which the support order was entered;
2. In the county in this state in which the obligee resides; or
3. In the county in this state in which the obligor resides or receives income.

H. Any payment made pursuant to the provisions of this section by the payor shall be made payable to the Department or its designee, and shall be in such form of payment as provided by the order or the notice.

I. The obligated party may execute a voluntary income assignment and acknowledgment at any time and submit it to the District Office.

J. The Division shall distribute the monies due a person entitled to support who is not receiving Temporary Assistance for Needy Families within the time limit required by federal regulation.

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Cases citing this section: None found.

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