

CB-109-22

**A COUNCIL BILL AMENDING THE CHOCTAW MARRIAGE ACT RELATING TO
CHILD SUPPORT**

IN THE TRIBAL COUNCIL OF THE CHOCTAW NATION

RONALD PERRY INTRODUCED THE FOLLOWING COUNCIL BILL

A COUNCIL BILL

TO AMEND the Choctaw Nation Marriage Act by amending Sections 118A, 118B, 118G, and 118I related to child support.

WHEREAS Article IX, Section 4 of the Constitution of the Choctaw Nation of Oklahoma (the "Nation") provides that the Tribal Council (the "Council") shall enact legislation, rules and regulations not inconsistent with the Constitution for the general good of the Choctaw Nation and for the administration and regulation of the affairs of the Choctaw Nation;

WHEREAS this bill amends Sections 118A, 118B, 118G, and 118I of the Choctaw Marriage Act;

WHEREAS the amendments to Section 118A, 118B, 118G, and 118I relate to definitions, computation of gross income, actual annualized child care expenses and modification;

WHEREAS the amendments modify definitions;

WHEREAS the amendments modify requirements for computation of gross income;

WHEREAS the amendments establish guidelines for computation of income for incarcerated parents;

WHEREAS the amendments clarify treatment of certain disability compensation;

WHEREAS the amendments require use of certain schedules for determination of childcare costs under certain circumstances;

WHEREAS the amendments add grounds for modification of child support orders;

WHEREAS the amendments modify effective dates for child support modification orders;

WHEREAS the amendments create certain rebuttable presumptions;

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WHEREAS the amendments require abatement of child support obligations under certain circumstances;

WHEREAS the amendments provide for reversion of certain obligations;

WHEREAS the amendments provide exceptions;

WHEREAS this Council Bill provides an effective date; and

WHEREAS the Tribal Council finds it is in the best interest of the Nation to amend the Choctaw Marriage Act as follows.

THEREFORE BE IT ENACTED by the Tribal Council of the Choctaw Nation of Oklahoma that the Choctaw Marriage Act is amended to read as follows:

118A. Definitions

As used in this act:

1. "Adjusted Gross Income" (AGI) means the net determination of the income of a parent, calculated by modifying the gross income of the parent as follows:

a. adding to the gross income of the parent any social security benefit paid to the child on the account of the parent,

b. deducting from gross income the amount of any support alimony arising in a prior case to the extent that payment is actually made,

c. deducting from gross income any deductions as set forth for other children for whom the parent is legally responsible and is actually supporting, pursuant to Section 118C of this act, and

d. deducting the amount of reasonable expenses of the parties attributable to debt service for preexisting, jointly acquired debt of the parents;

2. "Base child support obligation" means the amount of support displayed on the Schedule of Basic Child Support Obligations which corresponds to the combined AGI of both parents and the number of children for whom support is being determined. This amount is rebuttably presumed to be the appropriate amount of basic child support to be provided by both parents in the case immediately under consideration, prior to consideration of any adjustments for medical and child care costs, and any other additional expenses;

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3. "Current Monthly Child Support Obligation" means the base child support obligation and the proportional share of any ~~medical insurance~~ health care coverage, cash medical support, and annualized childcare costs;

4. "Custodial person" means a parent or third-party caretaker who has physical custody of a child more than one hundred eighty-two (182) days per year;

5. "Incarceration" means an obligor is in custody on a full-time basis in a local, state, or federal correctional facility. Incarceration shall not include probation, parole, work release, or any other detention alternative program that allows the obligor to be gainfully employed;

6. "Non-custodial parent" means a parent who has physical custody of a child one hundred eighty-two (182) days per year or less;

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

87. "Obligee" or "person entitled" means:

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

b. the Department of Children and Family Services or a public agency of any tribe or 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;

98. "Other contributions" means recurring monthly medical expenses and visitation transportation costs that are not included in the current monthly child support obligation;

109. "Overnight" means the child is in the physical custody and control of a parent for an overnight period of at least twelve (12) hours, and that parent has made a reasonable expenditure of resources for the care of the child;

~~111.~~ "Parent" means an individual who has a parent-child relationship under the Uniform Parentage Act;

~~112.~~ "Parenting time adjustment" means an adjustment to the base child support amount based upon parenting time; and

~~113.~~ "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.

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**Section 118B. Computation of gross income--Imputed income--Self-employment income--
Fringe benefits--Social Security Title II benefits**

A. As used in this act:

1. "Gross income" includes earned and passive income from any source, except as excluded in this section;

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

a. salaries,

b. wages,

c. tips,

d. commissions,

e. bonuses,

f. severance pay, and

g. military pay, including hostile fire or imminent danger pay, combat pay, family separation pay, or hardship duty location pay; and

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

a. dividends,

b. pensions,

c. rent,

d. interest income,

e. trust income,

f. support alimony being received from someone other than the other parent in this case,

g. annuities,

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- h. social security benefits,
 - i. workers' compensation benefits,
 - j. unemployment insurance benefits,
 - k. disability insurance benefits,
 - l. gifts,
 - m. prizes,
 - n. gambling winnings,
 - o. lottery winnings, and
 - p. royalties.
- B. Income specifically excluded is:
- 1. Actual child support received for children not before the court;
 - 2. Adoption Assistance subsidy paid by the Department of Children and Family Services;
 - 3. Benefits received from means-tested public assistance programs including, but not limited to:
 - a. Temporary Assistance for Needy Families (TANF),
 - b. Supplemental Security Income (SSI),
 - c. Food Stamps, and
 - d. General Assistance and State Supplemental Payments for Aged, Blind and the Disabled;
 - 4. The income of the child from any source, including, but not limited to, trust income and social security benefits drawn on the disability of the child; and
 - 5. Payments received by the parent for the care of foster children.
- C. Determining gross income.

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1. For purposes of computing gross income of the parents, gross income shall include for each parent whichever is the most equitable of:

a. all ~~actual~~ current monthly gross income described in this section, plus such overtime and supplemental income as the court deems equitable appropriate,

b. the average of the gross monthly income for the time actually employed during the previous ~~three~~ (3) years,

c. ~~the minimum wage paid for a forty hour week, or~~

d. gross monthly income imputed as set forth in paragraph 3 of this subsection ~~D of this section.~~

2. If a parent is permanently physically or mentally incapacitated or incarcerated for more than one hundred eighty (180) consecutive days, the child support obligation shall be computed on the basis of actual current monthly gross income. For the purposes of computing gross income of the parents in such circumstances, gross income shall be imputed as set forth in paragraph 3 of this subsection unless the obligor's incarceration is a result of indirect contempt of court for failure to pay child support, the crime of omission to provide child support or for any offense for which the obligee's dependent child or the obligee was the victim.

~~D~~3. Imputed income.

1. ~~Instead of using the actual~~ If evidence of current or average income of a parent is not available or not the most equitable, the court may consider the following factors to impute the parent's monthly gross income to a parent under the provisions of this section if equitable.

2. ~~The following factors may be considered by the court when making a determination of willful and voluntary underemployment or unemployment:~~

a. the average wages and hours worked in the parent's particular industry and geographic area and the parent's education, training, work experience, and ability to work.

b. wages the parent could earn consistent with the minimum wage rate of not less than twenty-five (25) hours per week,

c. whether a parent has been determined by the court to be willfully or voluntarily underemployed or unemployed, including whether unemployment or underemployment for the purpose of pursuing additional training or education is reasonable in light of the obligation of the parent to support his or her children and, to this end, whether the training or education will ultimately benefit the child in the case immediately under consideration by increasing the parent's level of support for that child in the future, or other voluntary action to reduce a parent's income,

b. ~~when there is no reliable evidence of income,~~

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~~e. the past and present employment of the parent,~~

~~d. the education, training, and ability to work of the parent,~~

e. the lifestyle of the parent, including ownership of valuable assets and resources, whether in the name of the parent or the current spouse of the parent, that appears inappropriate or unreasonable for the income claimed by the parent,

~~f. the role of the parent as caretaker of a handicapped or seriously ill child of that parent, or any other handicapped or seriously ill relative for whom that parent has assumed the role of caretaker which eliminates or substantially reduces the ability of the parent to work outside the home, and the need of that parent to continue in that role in the future, or~~

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

ED. Self-employment income.

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

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

3. The district 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.

FE. Fringe benefits.

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

2. Such fringe benefits might include, but are not limited to, per diem or other allowance, company car, housing, or room and board.

3. Basic Allowance for Housing, Basic Allowance for Subsistence, and Variable Housing Allowances for service members are considered income for the purposes of determining child support.

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4. Fringe benefits do not include employee benefits that are typically added to the salary, wage, or other compensation that a parent may receive as a standard added benefit, such as employer contributions to portions of health insurance premiums or employer contributions to a retirement or pension plan.

GF. Social Security Title II benefits.

1. Social Security Title II benefits received by a child shall be included as income to the parent on whose account the benefit of the child is drawn and applied against the support obligation ordered to be paid by that parent. If the benefit of the child is drawn from the disability of the child,

the benefit of the child is not added to the income of either parent and not deducted from the obligation of either parent.

2. Child support greater than social security benefit. If the child support award due after calculating the child support guidelines is greater than the social security benefit received on behalf of the child, the obligor shall be required to pay the amount exceeding the social security benefit as part of the child support award in the case.

3. Child support equal to or less than social security benefits.

a. If the child support award due after calculating the child support guidelines is less than or equal to the social security benefit received on behalf of the child, the child support obligation of that parent is met and no additional child support amount must be paid by that parent.

b. Any social security benefit amounts which are greater than the support ordered by the court shall be retained by the caretaker for the benefit of the child and shall not be used as a reason for decreasing the child support order or reducing arrearages.

c. The child support computation form shall include a notation regarding the use of social security benefits as offset.

4. a. Calculation of child support as provided in subsection F of this section shall be effective no earlier than the date on which the motion to modify was filed.

b. The court may determine if, under the circumstances of the case, it is appropriate to credit social security benefits paid to the custodial person prior to a modification of child support against the past-due child support obligation of the non-custodial parent.

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

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

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

Section 118G. Actual annualized childcare expenses

A. The district court shall determine the actual annualized childcare expenses reasonably necessary to enable either or both parents to:

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

B. When a parent is participating in a childcare subsidy program, the district court shall determine the amount to be treated as actual childcare costs incurred. The district court may use schedules prepared by the Department of Children and Family Services or consider other competent evidence as necessary to carry out this section. ~~When applying the schedule to determine the family share copayment amount, the share of the base monthly obligation for child support of the non-responsible parent and the gross income of the obligee shall be considered as the monthly income of the obligee.~~ The actual child care costs incurred shall be the family share copayment amount indicated on the schedule which shall be allocated and paid monthly in the same proportion as base child support. The Department of Children and Family Services shall promulgate rules, as necessary, to implement the provisions of this section.

C. The actual annualized child care costs incurred for the purposes authorized by this section shall be allocated and added to the base child support order, and shall be part of the final child support order.

D. The district court shall require the parent incurring childcare expenses to notify the obligor within forty-five (45) days of any change in the amount of the childcare costs that would affect the annualized childcare amount as determined in the order.

E. A parent may be allowed to provide childcare incurred during employment, employment search, or while the other parent is attending school or training if the court determines it would lead to a significant reduction in the actual annualized childcare cost.

Section 118I. Modification of eChild sSupport oOrders

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A. 1. Child support orders may be modified upon a material change in circumstances which includes, but is not limited to, an increase or decrease in the needs of the child, an increase or decrease in the income of the parents, incarceration of a parent for a time period of more than one hundred eighty (180) consecutive days, changes in actual annualized child care expenses, changes in the cost of medical or dental insurance, or when one of the children in the child support order reaches the age of majority or otherwise ceases to be entitled to support pursuant to the support order.

2. Modification of the Child Support Guideline Schedule shall not alone be a material change in circumstances for child support orders.

3. An order of modification shall be effective ~~upon~~ on the first day of the month following the date the motion to modify was filed, unless the parties agree to ~~the contrary~~ another date 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 dissolution of marriage, 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 have 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. When the last child of the parents ceases to be entitled to support, the child support obligation is automatically terminated as to prospective child support only.

D. 1. When a child support order is entered or modified, the parents may agree, or the district court may require a periodic exchange of information for an informal review and adjustment process.

2. 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.

3. Requested information may include verification of income, proof and cost of medical insurance of the children, and current and projected childcare costs. If shared parenting time has

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been awarded by the court, documentation of past and prospective overnight visits shall be exchanged.

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

5. a. If the parents agree to a modification of a child support order, their agreement shall be in writing using standard modification forms and the child support computation form provided for in Section 120 of this Title.

b. The standard modification forms and the standard child support computation form shall be submitted to the district court. The court shall review the modification forms to confirm that the child support obligation complies with the child support guidelines and that all necessary parties pursuant to Section 112 of this Title have been notified. If the court approves the modification forms, they shall be filed with the court.

E. After November 1, 2021, there shall be a rebuttable presumption that an obligor who is incarcerated for a period of one hundred (180) or more consecutive days in unable to pay child support.

1. The obligor's child support obligation shall be abated without court action effective the first day of the month following the date of entry into the correction facility of jail and shall not accrue for the duration of the incarceration unless the presumption is rebutted by a showing of means to pay.

2. Upon release from incarceration, the monthly child support obligation shall revert to the pre-incarceration order amount beginning the first day of the month following a lapse of ninety (90) calendar days after release from incarceration.

3. The abatement of monthly support obligation under this section shall not affect any past-due support that has accrued prior to the abatement of the obligation.


4. If any of the crimes for which the obligor is incarcerated are a result of the indirect contempt of court for failure to pay child support, the crime of omission to provide child support, or for any offense for which the obligee's dependent child or the obligee was a victim, the abatement shall not be presumed and the child support obligation shall continue to accrue.

BE IT FURTHER ENACTED by the Tribal Council of the Choctaw Nation of Oklahoma, that this bill be cited as approval that these amendments to the Choctaw Marriage Act shall become effective immediately.

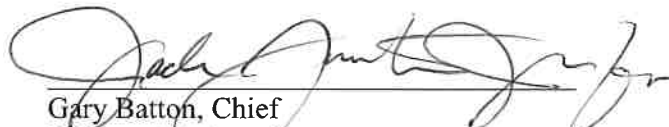
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CERTIFICATION

I, the undersigned, as speaker of the Tribal Council of the Choctaw Nation of Oklahoma, do hereby certify that the Tribal Council is composed of twelve (12) seats. Eight (8) members must be present to constitute a quorum. I further certify that twelve (12) members answered roll call and that a quorum was present at the Regular Session of the Tribal Council in Tuskahoma, Oklahoma on March 12, 2022. I further certify that the foregoing Council Bill CB- 109 -22 was adopted at such meeting by the affirmative vote of twelve (12) members, zero (0) negative votes, and zero (0) abstaining.


Thomas Williston, Speaker
Choctaw Nation Tribal Council


Ronald Perry, Secretary
Choctaw Nation Tribal Council


Gary Batton, Chief
Choctaw Nation of Oklahoma

Date 3-15-22

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Purpose/Need of Council Bill: This Council Bill amends Sections 118A, 118B, 118G, and 118I of the Choctaw Marriage Act. The amendments relate to child support. The amendments add language for the computation of gross income for those incarcerated for more than 180 days. The amendments also allow the court to consider other factors to reflect parent's gross income more accurately. The amendments set guidelines for child support obligations for those incarcerated. These amendments are consistent with the amendments made by the state of Oklahoma relating to child support.

Title of Council Bill: A COUNCIL BILL AMENDING THE CHOCTAW MARRIAGE ACT RELATING TO CHILD SUPPORT

Agency: Legal & Compliance

Budget: N/A

Match Required: N/A

Request by Project Director: Brian Danker, SEO-Legal & Compliance.