

An Act

Legislative Act 12-12

A LEGISLATIVE ACT AMENDING TITLE 43 OF THE CHEROKEE NATION CODE ANNOTATED – CHILD SUPPORT; AMENDING CHAPTER 5 OFFICE OF CHILD SUPPORT ENFORCEMENT AND CHAPTER 6 CHILD SUPPORT GUIDELINES

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act shall be codified as Title 43, Chapter 5, Office of Child Support Services, and Chapter 6, Child Support Guidelines of the Cherokee Nation Code Annotated.

Section 2. Purpose

The purpose of this legislative act is to amend Title 43 as it relates to the Office of Child Support Enforcement, now Office of Child Support Services and to update the code with necessary changes since the inception of the Office of Child Support Enforcement.

Section 3. Legislative History

Source. LA 12-05, effective March 21, 2005.

Amended. LA 32-06, effective December 20, 2006.

Section 4. Substantive Provisions of Law

§ 500. Office of Child Support ~~Enforcement~~ Services Recognized; Duties

The ~~Legislature~~ Cherokee Nation hereby recognizes the Office of Child Support ~~Enforcement Services~~ ("CSS" or "Office") of the ~~Department of Justice Human Services Department~~. The Legislature further recognizes that ~~CSE~~ CSS may enter into contracts within and without the Cherokee Nation for purposes of enforcement of child support orders. In all cases involving unmarried children under the age of eighteen (18) years or through the age of ~~nineteen~~ twenty (20) if regularly attending high school, the Court may order that child support be computed and/or collected by ~~CSE~~ CSS.

1. When the Court orders that child support shall be computed and/or collected by ~~CSE~~ CSS, the parties shall be ordered to provide proof of income to ~~CSE~~ CSS within ~~five~~ (5)-ten (10) business days of the court order. If a party does not comply with such

order, then all income alleged by the opposing party shall be accepted as true.

2. When so ordered, ~~CSE~~ CSS shall act as a referee of the Court, compute the amount(s) to be paid as child support, method(s) of payment, and all other necessary determinations within twenty (20) days of the court order. ~~CSE~~ CSS shall provide such determinations to the parties and to the Court for placement in the case file. The Court shall accept the determinations of ~~CSE~~ CSS as a child support order upon receipt.
3. If a party takes issue with a determination of ~~CSE~~ CSS, the party may apply to the Court for a hearing on the matter. If an application for hearing is granted, the matter shall be heard within thirty (30) days.

§ 501A. Definitions

1. “Address of Record” means an address for a party or a custodial person in a child support case that is used for service of process in child support actions. An address of record is a public record and may be different from the party’s or custodial person’s physical address.
2. “Child” means
 - a. a person under 18 years of age; and
 - b. a person 18 or more years of age with respect to whom a child support order has been issued pursuant to the laws of a state.
3. “Child support” means a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child.
4. “Child support order”
 - a. means a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum; and
 - b. includes:
 - i. a permanent or temporary order; and
 - ii. an initial order or a modification of an order.
5. “court” means a court or administrative agency of a state or tribe that is authorized by state or tribal law to establish the amount of child support payable by a contestant or make a modification of a child support order.
6. “Custodial parent” means a parent who has physical custody of a child
7. “Custodial party” means a court-appointed caretaker who has physical custody of a

child

8. “IV-D case” means a case in which child support services are being provided under the Cherokee Nation’s child support plan as approved by the Federal Administration for Children and Families.

9. “Modification” means a change in a child support order that affects the amount, scope, or duration of the order and modifies, replaces, supersedes, or otherwise is made subsequent to the child support order.

10. “Non-custodial parent” means a parent who does not have physical custody of a child.

§ 501. Costs in child support enforcement services cases

Costs incurred in a child support enforcement case ~~in which a party is represented by~~ through the Office of Child Support ~~Enforcement~~ Services shall be recorded by the Court Clerk. ~~The~~ Reasonable costs may be assessed by the Court against the noncustodial parent at the conclusion of the proceedings.

§ 502. Agreements to obtain certain necessary information

A. 1. The Office of Child Support ~~Enforcement~~ Services shall maintain a central case registry on all Title IV-D (42 U.S.C. 651 et seq.) cases and all child support orders established or modified in the Cherokee Nation after the date of the enactment of this subsection. ~~Title IV-D cases are cases in which child support services are being provided under the Nation’s child support plan as approved by the Federal Administration for Children and Families.~~

2. In Title IV-D cases, the case registry shall include, but not be limited to, information required to be transmitted to the federal case registry pursuant to 42 U.S.C., Section 654A.

B. 1. All orders entered after the date of the enactment of this subsection, which establish paternity or establish, modify or enforce a child support obligation shall state for all parties and custodians subject to the order:

a. an address of record for service of process in support, visitation and custody actions, and

b. the address of record may be different from the party’s or custodian’s physical address.

2. The address shall be maintained by the central case registry. The order shall direct that any changes in the address of record shall be provided in writing to the ~~central case registry~~ Office of Child Support Services within thirty (30) days of the change. The address of record is subject to disclosure to a party or custodian upon request pursuant to the provisions of this section and rules promulgated by the Office of Child

Support Enforcement. The Office of Child Support ~~Enforcement~~ Services may refuse to disclose address and location information if the Office has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to a party, custodian or child.

- C. 1. All parties and custodians ordered to provide an address of record to the ~~central case registry~~ Office of Child Support Services as specified in this section may, in subsequent child support actions, be served with process by regular mail to the last address of record provided to the ~~central case registry~~ Office of Child Support Services.
- 2. Proof of service shall be made by a certificate of mailing from a United States Post Office, ~~or in child support cases where services are being provided under the state child support plan, by a certificate of mailing from the child support representative.~~
- D. The Office of Child Support ~~Enforcement~~ Services shall promulgate rules as necessary to implement the provisions of this section.

§ 503. Establishment; Enforcement and modification of orders for support; Confidential records

- A. ~~When the right to receive support has been assigned to a party has filed an application with~~ the Child Support ~~Enforcement~~ Services Office, the Office may petition the District Court 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 at a reasonable cost;~~
 - 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 Office 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 the various states, territories, and foreign nations requesting assistance with the enforcement of support orders entered in the United States and elsewhere.

- B. ~~The Office may petition the district court to modify any order for support regardless of whether there has been a change of circumstances.~~ The Office of Child Support Enforcement Services shall be required to may petition to modify an order of support, on request of the payor or payee, if the income of either party increases or decreases by 15% or more or if the combined incomes of the parties increase or decrease such that the difference in the combined monthly incomes of the parties is 15% more or less than the combined monthly income in the most recent support order or if there is a material change of circumstances for any of the parties.
- C. 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/enforcement, paternity determination, or parent location. ~~Information may be released to public officials under rules adopted by the Office consistent with federal rules or regulations.~~

§ 504. ~~CSE~~ CSS attorneys represent the Cherokee Nation

- A. ~~Office attorneys~~ The attorneys for CSS represent the Cherokee Nation and not the interests of any other party. Providing services under Cherokee Nation Code Title 43 Section 500 et. seq. does not create an attorney-client relationship with any other party.
- B. No attorney providing services under Title 43 Section 500 et. seq. shall be authorized to accept service for any party other than the Office of Child Support ~~Enforcement Services~~ or the Cherokee Nation.

§ 505. Office of Child Support ~~Enforcement Services~~ Services to follow the Cherokee Nation child support guidelines

The amount of child support and other support shall be ordered and reviewed in accordance with the child support guidelines, as amended, provided in Section ~~516~~ 508 of Title 43 of the Cherokee Nation Statutes.

§ 506. Child support

- A. In all cases involving minor children, child support shall be determined or redetermined as the case may be upon hearing an application of either parent for any affirmative relief.
 - 1. A person under the age of ~~nineteen (19)~~ twenty (20) and not graduated from a high school shall be considered a minor child provided the child is regularly attending public or private school.

2. A person under the age of eighteen (18) shall be considered a minor child.
- B. The Court shall determine child support by referring the parties to the Cherokee Nation Office of Child Support Enforcement Services (CSE CSS) to act as referee to determine child support pursuant to guidelines established by Title 43 Section 516 et seq.
- C. Should either the payor or payee of child support take issue with the ruling of ~~child support~~ CSE CSS, said party may appeal the child support order within ten (10) days of ~~the CSE CSS's~~ filing of the determination with the Court. Hearing on such appeal shall be a de novo review; however, either party may request ~~the CSE CSS~~ appear before the Court to explain the determination made on the basis that CSE CSS maintains expertise in child support determination.
- D. Absent specific direction of the Court, all child support shall be due on the first day of each month.
- E. The CSE CSS may institute child support collection cases in the name of the Cherokee Nation on behalf of any payee for whom CSE CSS is collecting support; ~~provided~~ nothing herein shall prevent any payee of child support from retaining independent counsel and collecting child support directly in the name of the payee.
- F. Any attorney retained to collect child support for a payee shall provide notice to the CSE CSS of being so retained. Said attorney shall report all child support legal action and collection to CSE CSS within ten (10) days of such action or collection.

§ 507. Purpose

The purpose is to provide child support guidelines for the Cherokee Nation. The child support guidelines as provided herein shall be used by the courts of the Cherokee Nation in any proceeding which involves the care, custody and control of minor children and/or incompetents and the Court determines a need for child support to be provided by one (1) or more parties.

§ 508. ~~Child support orders to include provision for income assignment—Voluntary income assignment—~~Child Support Guidelines

- A. 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 Schedule of Basic Child Support Obligations, 43 Okla. Stat. Ann. §119, as amended, assumes that all families incur certain child-rearing expenses and includes in the basic child support obligation an average amount to cover these expenses for

various levels of the parents' combined income and number of children, comprised of housing, food, transportation, basic educational expenses, clothing, and entertainment.

C. The district court shall have the authority to deviate from the guidelines, up or down, if the court finds that doing so is in the best interest of the child or application would be unjust or inappropriate. The standard of proof shall be preponderance of the evidence.

§508A. Definitions

1. “Child” means

- c. a person under 18 years of age; and
- d. a person 18 or more years of age with respect to whom a child support order has been issued pursuant to the laws of a state.

2. “Child support” means a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child.

3. “Child support order”

- c. means a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum; and
- d. includes:
 - i. a permanent or temporary order; and
 - ii. an initial order or a modification of an order.

3. “Court” means a court or administrative agency of a state or tribe that is authorized by state or tribal law to establish the amount of child support payable by a contestant or make a modification of a child support order.

4. “Custodial parent” means a parent who has physical custody of a child

5. “Custodial party” means a court-appointed caretaker who has physical custody of a child

6. “Non-custodial parent” means a parent who does not have physical custody of a child

7. “Obligor” means the person who is required to make payments under an order for support

8. “Obligee” means the person or entity to whom a support obligation is owed.

9. “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. The twelve (12) hour period could be during the day if the child is under school age.

§508B. 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, and

f. military 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,

- 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 Human 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. 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 monthly income described in this section, plus such overtime and supplemental income as the court deems equitable, or

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

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

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

2. 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. Imputed income.

1. Instead of using the actual or average income of a parent, the court may impute 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. 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,

b. when there is no reliable evidence of income,

c. 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 other factors deemed relevant to the particular circumstances of the case.

E. 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 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.

F. 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, may be counted as income if they significantly reduce personal living expenses.

2. Such fringe benefits might include, but are not limited to, 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.

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.

G. 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 noncustodial parent.

c. 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.

§ 508C. Deductions from gross income for qualified other children

A. Deductions for other children of either parent who are qualified under this section may be considered by the court for the purpose of reducing the gross income of the parent. Adjustments are available for a child:

1. Who is the biological, legal, or adopted child of the parent;
2. Who was born prior to the child in the case under consideration;
3. Whom the parent is actually supporting; and
4. Who is not before the court to set, modify, or enforce support in the case immediately under consideration.

B. Children for whom support is being determined in the case under consideration, stepchildren, and other minors in the home that the parent has no legal obligation to support shall not be considered in the calculation of this deduction.

C. If the court finds a parent has a parent-child relationship with a child not before the court, the court may grant a deduction for that child as set forth in subsection D of this section.

D. Calculation of deduction for qualified other children.

1. Out-of-home children.

a. To receive a deduction against gross income for child support provided pursuant to a court order for qualified other children whose primary residence is not in the home of the parent seeking deduction, the parent shall establish the existence of a support order and provide documented proof of support paid for the other child consistently over a reasonable and extended period of time prior to the initiation of the proceeding that is immediately under consideration by the tribunal, but in any event, such time period shall not be less than twelve (12) months.

b. Documented proof of support includes:

(1) physical evidence of monetary payments to the caretaker of the child, such as canceled checks or money orders, and

(2) evidence of payment of child support under another child support order, such as a payment history from a tribunal clerk or child support office.

c. The available deduction against gross income for either parent's qualified children not in the home of the parent is the actual documented court-ordered current monthly child support obligation of the qualified other children, averaged to a monthly amount of support paid over the most recent twelve-month period.

2. In-home children.

a. To receive a deduction against gross income for qualified prior-born other children whose primary residence is with the parent seeking deduction, but who are not part of the case being determined, the parent must establish a legal duty of support and that the child resides with the parent more than fifty percent (50%) of the time. Documents that may be used to establish that the parent and child share the same residence include the school or medical records showing the address of the child and the utility bills of the parents mailed to the same address, court orders reflecting the parent is the primary residential parent or that the parent shares the parenting time of the child fifty percent (50%) of the time.

b. The deduction for other qualified children shall be computed as a hypothetical child support order calculated using the deduction worksheet, the gross income of the parents, the total number of qualified other children living in the home of the parent, and the Child Support Guideline Schedule.

c. The available deduction against gross income for the qualified in-home children of either parent is seventy-five percent (75%) of a hypothetical support order calculated according to these Guidelines, using the Deduction Worksheet, the gross income of the parent less any self-employment taxes paid, the total number of qualified other children living in the home of the parents, and the Child Support Guideline Schedule, 43 Okla. Stat. Ann. §119, as amended.

§508D.Computation of child support as percentage of parents' combined gross income--Prospective adjustment--Transportation expenses--Support order summary form

A. 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 Title 43 of the Oklahoma Statutes, as amended, shall be used for such computation. The child support obligation of each parent shall be computed. The share of the obligor shall be paid monthly to the obligee and shall be due on a specific date.

B. In cases in which one parent has sole physical 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.

C. 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.

D. 1. In cases of split physical custody, where each parent is awarded physical custody of at least one of the children for whom the parents are responsible, the child support obligation for each parent shall be calculated by application of the child support guidelines for each custodial arrangement.

2. 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.

E. Child support shall be computed as set forth in subsections A through D of this section in every case, regardless of whether the custodial arrangement is designated as sole custody or joint custody.

F. 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, extraordinary costs, and the satisfaction of jointly acquired debt of the parents used as a deduction from the gross income of a parent.

§508E. Parenting time adjustment--Reduction in child support obligation

A. Parenting time adjustment.

1. The adjustment may be granted based upon a court order or agreement that the noncustodial parent is granted at least one hundred twenty-one (121) overnights of parenting time per twelve-month period with the children in the case under consideration.

2. Average parenting time. If there are multiple children for whom support is being calculated, and the parent seeking the parenting time adjustment is spending a different amount of time with each child, then an annual average of parenting time with all of the children shall be calculated.

B. In cases of split physical custody, either parent may be eligible for a parenting time adjustment.

C. Parenting time adjustments are not mandatory, but presumptive. The presumption may be rebutted in a case where the circumstances indicate the adjustment is not in the best interest of the child or that the increased parenting time by the noncustodial parent does not result in greater expenditures which would justify a reduction in the support obligation.

D. Reduction in child support obligation for additional parenting time.

1. If the parent receiving the parenting time adjustment is granted one hundred twenty-one (121) or more overnights of parenting time per twelve-month period

with a child, or an average of one hundred twenty-one (121) overnights with all applicable children, a reduction to the child support obligation of the parent may be made as set forth in this section.

2. A parenting time adjustment 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 a factor determined by the number of overnights granted to the noncustodial parent. The result shall be designated the adjusted combined child support obligation. In a case where the noncustodial parent is granted:

a. one hundred twenty-one (121) overnights to one hundred thirty-one (131) overnights, the factor shall be two (2).

b. one hundred thirty-two (132) overnights to one hundred forty-three (143) overnights, the factor shall be one and three-quarters (1.75), or

c. one hundred forty-four (144) or more overnights, the factor shall be one and one-half (1.5).

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

4. a. The percentage of time a child spends with each parent shall be calculated by determining the number of overnights for each parent and dividing that number by three hundred sixty-five (365).

b. The share of the adjusted combined child support obligation for each parent 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.

c. 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 (\$0.00).

5. 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 event shall the provisions of this paragraph be construed to authorize or allow the payment of child support by a parent having more than two hundred five (205) overnights.

E. 1. Failure to exercise or exercising more than the number of overnights upon

which the parenting time adjustment is based, is a material change of circumstances.

2. If the court finds that the obligor has failed to exercise a significant number of the overnights provided in the court order necessary to receive the parenting time adjustment, in a proceeding to modify the child support order, the court may establish the amount that the obligor has underpaid due to the application of the parenting time adjustment as a child support judgment that may be enforced in the same manner as any other child support judgment.

3. The court may rule that the obligor will not receive the parenting time adjustment for the next twelve-month period. After a twelve-month period during which the obligor did not receive the parenting time adjustment, the obligor may petition the court to modify the child support order. The obligor may be granted a prospective parenting time adjustment upon a showing that the obligor has actually exercised the threshold number of overnights in the preceding twelve months. No retroactive modification or credit from the child support guidelines amount shall be granted based on this section.

§ 509. ~~Child support orders to include provision for health insurance and day care expenses~~ Child support orders to include provision for income assignment—Voluntary income assignment – In Kind Payment

- A. In all child support cases arising out of an action for divorce, paternity or other proceeding, the 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 (1) of the parties demonstrates and the Court finds there is good cause not to require immediate income withholding; or
 - 2. a signed, written agreement is reached between the parties which provides for an alternative arrangement and approved by the Court.
- B. The obligated party may execute a voluntary income assignment at any time. The voluntary assignment shall be filed with the Court and shall take effect after service on the payor.
- C. With the consent of the custodial parent and under the supervision of the Office, the payor may make payments of in-kind goods or services. In-kind payments cannot be used to pay arrearages.

§ 510. ~~Security or bond for payment of child support~~ Child support orders to include provision for health insurance and day care expenses

In all cases where child support is ordered, such order ~~shall~~ may include provisions for providing or sharing the expenses of health insurance and/or other out-of-pocket medical costs of the minor child(ren), and for employment-related day care expenses.

§ 511. Past due support payments as judgment—Arrearage payment schedule Security or bond for payment of child support

The Court may order a person obligated to support a minor child to post a security, bond, or other guarantee in a form and amount satisfactory to the Court to ensure the payment of child support.

§ 512. Modification, suspension or termination of income assignment order 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 court or administrative order of the Cherokee Nation, another tribal government, or a state department of human services, or an equivalent state/tribal organization, 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 the Cherokee Nation, including the ability to be enforced by any method available under the laws of the Cherokee Nation and the State of Oklahoma to enforce and collect money judgments; and
2. be entitled to full faith and credit as a judgment in the Cherokee Nation and any state or tribal government.
3. An order that provides for payment of child support, if willfully disobeyed, may be enforced by indirect civil contempt proceedings, notwithstanding that the support payment is a judgment on and after the date it becomes past due. Any amounts determined to be past due by the Court may subsequently be enforced by indirect civil contempt proceedings.

B. An arrearage payment schedule set by the Court or administrative order of the Cherokee Nation shall not exceed three (3) years, unless imposition of a payment schedule would be unjust, inequitable, unreasonable, or inappropriate under the circumstances, or not in the best interests of the child or children involved. When making this determination, reasonable support obligations of either parent for other children in the custody of the parent may be considered. If an arrearage payment schedule that exceeds three (3) years is set, specific findings of fact supporting the action shall be made.

C. The Office of Child Support ~~Enforcement~~ Services shall have the authority to negotiate a lump sum payment to settle a child support arrearage and interest due thereon. Consent of the payee ~~and approval of the district court~~ shall be required.

§ 513. Interest on delinquent child support and suit moneys payment Modification, suspension or termination of income assignment order

A person obligated to pay support or the person entitled to the support may petition the Court to:

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.

§ 514. Child support guidelines Interest on delinquent child support and suit moneys judgments

If the order is established under Cherokee Nation law, delinquent court-ordered child support payments and court-ordered payments of suit moneys child support judgments (whether accrual or arrearage) shall may draw interest at the rate of ten five percent (10 5%) per year from the date they become delinquent, and the interest shall be collected in the same manner as the payments upon which the interest accrues. If the order is established under another jurisdiction's laws, interest shall accrue based on the law of the jurisdiction from which the order originated. Private interest may be waived by the custodial parent/party and/or by the Court if the non-custodial parent makes regular, consistent payments and no arrearage exists.

§ 514. Child support guidelines

~~In determining the amount of child support to be awarded in divorce, separate maintenance and paternity determinations the district court shall follow the Oklahoma Child Support Guidelines. The district court shall have the authority to deviate from the guidelines, up or down, if the court finds that doing so is in the best interest of the child. The standard of proof shall be preponderance of the evidence.~~

§ 515. Child support computation form

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~~ by the Office of Child Support Enforcement IV-D plan Services, a support order summary form shall be prepared by the attorney of record or the pro se litigant and presented to the judge with all orders which establish paternity or establish, modify or enforce a child support obligation. No paternity or child support order shall be signed by the judge without presentation of the support order summary form. After the order is signed by the judge, the summary of support order form ~~shall~~ may be submitted to the ~~Central Case Registry provided for in Section 502 of this title to the~~ Office of Child Support Services for collection and enforcement.

§ 516. Children not otherwise considered

A. Any parent that has child support calculated may submit a child support calculation for any child not otherwise considered in the calculation of child support, provided such parent is, in fact, the ~~lawful~~ legal parent of such child and such parent actually supports the child to the extent identified in the child support calculation form.

B. The Court may consider any and all support provided to such child in determining the Child Support calculation and in its discretion may deduct the child support attributed to such parent in the same manner as for approved child support deductions.

§517. Full faith and credit for child support orders validly issued by foreign jurisdictions

A. General Rule. The Office of Child Support ~~Enforcement~~ Services

1. shall enforce according to its terms a child support order made consistently with this section by a court of another State; and
2. shall not seek or make a modification of such an order except in accordance with subsections E, F, and I.

B. Definitions. In this section:

1. “child” means
 - e. a person under 18 years of age; and
 - f. a person 18 or more years of age with respect to whom a child support order has been issued pursuant to the laws of a state.
2. “child’s state” means the state in which a child resides.
3. “child’s home state” means the state in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the 6-month period.
4. “child support” means a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child.
5. “child support order”
 - e. means a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum; and
 - f. includes:

- i. a permanent or temporary order; and
- ii. an initial order or a modification of an order.

6. “contestant” means

- a. a person (including a parent) who
 - ii. i. claims a right to receive child support;
 - iii. ii. is a party to a proceeding that may result in the issuance of a child support order; or
 - iv. iii. is under a child support order; or
- b. a state or political subdivision of a state to which the right to obtain child support has been assigned.

7. “court” means a court or administrative agency of a state or tribe that is authorized by state or tribal law to establish the amount of child support payable by a contestant or make a modification of a child support order.

8. “modification” means a change in a child support order that affects the amount, scope, or duration of the order and modifies, replaces, supersedes, or otherwise is made subsequent to the child support order.

9. “state” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and ~~Indian country (as defined in section 1151 of title 18)~~ a federally recognized Indian tribe.

C. Requirements of Child Support Order. A child support order made by a court of a state is made consistently with this section if a court that makes the order, pursuant to the laws of the state in which the court is located and subsections E, F and G and

1. has subject matter jurisdiction to hear the matter and enter such an order; and
2. has personal jurisdiction over the contestants; and
3. gives reasonable notice and opportunity to be heard to the contestants.

D. Continuing Jurisdiction. A court of a state that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the state is the child’s state or the residence of any individual contestant unless the court of another state, acting in accordance with subsections E and F, has made a modification of the order.

E. Authority to Modify Orders. A court of a state may modify a child support order issued by a court of another state if

1. the court has jurisdiction to make such a child support order pursuant to subsection I, and
2. a. the court of the other state no longer has continuing, exclusive jurisdiction of the child support order because that state no longer is the child's state or the residence of any individual contestant; or
b. each individual contestant has filed written consent with the state of continuing, exclusive jurisdiction for a court of another state to modify the order and assume continuing, exclusive jurisdiction over the order.

F. Recognition of Child Support Orders. If one or more child support orders have been issued with regard to an obligor and a child, a court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement:

1. If only one court has issued a child support order, the order of that court must be recognized.
2. If two or more courts have issued child support orders for the same obligor and child, and only one of the courts would have continuing, exclusive jurisdiction under this section, the order of that court must be recognized.
3. If two or more courts have issued child support orders for the same obligor and child, and more than 1 of the courts would have continuing, exclusive jurisdiction under this section, an order issued by a court in the current home state of the child must be recognized, but if an order has not been issued in the current home state of the child, the order most recently issued must be recognized.
4. If two or more courts have issued child support orders for the same obligor and child, and none of the courts would have continuing, exclusive jurisdiction under this section, a court having jurisdiction over the parties shall issue a child support order, which must be recognized.
5. The court that has issued an order recognized under this subsection is the court having continuing, exclusive jurisdiction under subsection D.

G. Enforcement of Modified Orders. A court of a state that no longer has continuing, exclusive jurisdiction of a child support order may enforce the order with respect to nonmodifiable obligations and unsatisfied obligations that accrued before the date on which a modification of the order is made under subsections E and F.

H. Choice of Law.

1. *In general.* In a proceeding to establish, modify, or enforce a child support order, the forum state's law shall apply except as provided in paragraphs 2 and 3.
2. *Law of state of issuance of order.* In interpreting a child support order including

the duration of current payments and other obligations of support, a court shall apply the law of the state of the court that issued the order.

3. *Period of limitation.* In an action to enforce arrears under a child support order, a court shall apply the statute of limitation of the forum state or the state of the court that issued the order, whichever statute provides the longer period of limitation.

I. Registration for Modification. If there is no individual contestant or child residing in the issuing state, the party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in a state with jurisdiction over the nonmovant for the purpose of modification.

§ 518. Cooperation with Other IV-D programs

The Cherokee Nation Office of Child Support ~~Enforcement~~ Services shall extend the full range of services available under its IV-D program to respond to all requests from, and cooperate with, State, Tribe, and other IV-D agencies.

Section 5. Provisions as cumulative

The provisions of this act shall be cumulative to existing law.

Section 6. Severability

The provisions of this act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

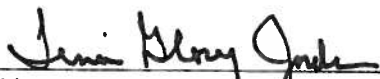
Section 7. Effective Date

The provisions of this act shall become effective thirty (30) days from and after the date of its passage and approval.

Section 8. Self-Help Contributions


To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.

Enacted by the Council of the Cherokee Nation on the 16th day of April, 2012.

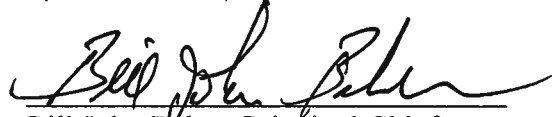


Tina Glory Jordan, Speaker
Council of the Cherokee Nation


ATTEST:


Charles R. Head
Jodie Fishinghawk, Secretary
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 18th day of April, 2012.


Bill John Baker, Principal Chief
Cherokee Nation

ATTEST:


Charles Head, Secretary of State
Cherokee Nation

YEAS AND NAYS AS RECORDED:

Tina Glory Jordan	<u>Yea</u>	Meredith A. Frailey	<u>Yea</u>
Joe Byrd	<u>Yea</u>	David Walkingstick	<u>Yea</u>
Frankie Hargis	<u>Yea</u>	Cara Cowan Watts	<u>Yea</u>
Jodie Fishinghawk	<u>Yea</u>	Buel Anglen	<u>Yea</u>
Janelle Lattimore Fullbright	<u>Yea</u>	Dick Lay	<u>Yea</u>
David W. Thornton, Sr.	<u>Yea</u>	Charles Hoskin, Jr.	<u>Yea</u>
Don Garvin	<u>Yea</u>	Julia Coates	<u>Yea</u>
Lee Keener, Jr.	<u>Yea</u>	Jack D. Baker	<u>Yea</u>
Curtis G. Snell	<u>Yea</u>		

**ADMINISTRATIVE
CLEARANCE**

Dept/Program:

Kara Whitworth
Office of Child Support Services 1/27/12

Signature/Initial Date

Executive Director:

Marsha Lamb
Marsha Lamb 1-31-12

Signature/Initial Date

Finance (if needed):

Signature/Initial Date

Government Resources:

Signature/Initial Date

Administration Approval:

Charles H. Head 2-1-12

Signature/Initial Date

LEGISLATIVE CLEARANCE:

Legal & Legislative Coordinator:

Brittany 2/10/12

Signature/Initial Date

Standing Committee & Date:

Rules 2/23/12

Chairperson:

Haskin Jr.

Signature/Initial Date

Returned to Presenter:

Date

**Cherokee Nation
Act/Resolution Proposal Form**

Act Resolution

A LEGISLATIVE ACT AMENDING TITLE 43 OF THE
CHEROKEE NATION CODE ANNOTATED - CHILD SUPPORT:
AMENDING CHAPTER 5 OFFICE OF CHILD SUPPORT
ENFORCEMENT AND CHAPTER 6 CHILD SUPPORT
GUIDELINES

TITLE:

DEPARTMENT CONTACT: Kara Whitworth

RESOLUTION PRESENTER: Marsha Lamb, Kara Whitworth

COUNCIL SPONSOR: Meredith Frailey

NARRATIVE:

This Act provides the following amendments:

- References throughout the Act changing the program name from Child Support Enforcement to Child Support Services.
- The original Act placed the program within the Department of Justice but the program is under Human Services. The Act amends placement from Justice to Human Services.
- An expanded definitions section was added
- Reasons for modifying a child support order were expanded to include a material change of circumstances.
- Language requiring a non-custodial parent to buy private health insurance was removed and stipulated that employee-provided insurance may be required if it is available at a reasonable cost
- Child support guidelines were expanded to clarify what is considered income and imputed income for a child support computation.
- Language clarifying gross income for qualified other children, percentages of combined parents gross income provisions, and parenting time adjustment were added.
- Language providing for the inclusion of other tribal governments, tribal organizations and tribal courts with state government, state organizations and state courts.
- Interest rate on past due support was reduced from 10 to 5%.
- Other amendments were made in wording for clarity and ease of understanding.