

**COMMENT DUE DATE: September 10, 2021**

**Date: August 26, 2021**

**Tammy Hall, Programs Manager 405-982-2855**  
**Holli Kyker, Policy Specialist 405-885-7805**  
**Dena Thayer, Programs Administrator 405-693-6542**

It is important that you provide your comments regarding the **draft copy** of policy by the comment due date. Comments are directed to \*STO.LegalServices.Policy@okdhs.org. The proposed policy is **EMERGENCY**.

**SUBJECT:**

**CHAPTER 25. CHILD SUPPORT SERVICES**

Subchapter 5. Operational Policies

Part 17 Past Support

340:25-5-140 [AMENDED]

340:25-5-178 [AMENDED]

Part 22 Review and Modification

340:25-5-198.2 Modification [AMENDED]

Part 23 Enforcement

340:25-5-200 [AMENDED]

Part 37 Recovery

340:25-5-305 [AMENDED]

**[REFERENCE WF 21-07]**

**SUMMARY:**

The proposed amendments to Chapter 25 Subchapters 5 amend the rules to: (1) align Child Support Services (CSS) process with Senate Bill 421 (SB 421) from the 1<sup>st</sup> Regular Session of the 58<sup>th</sup> Oklahoma Legislature as it amends Section 118A through 118I of Title 43 of the Oklahoma Statutes (43 O.S. §§ 118A through 118I) to modify the child support guidelines for income computation under certain conditions.

**EMERGENCY APPROVAL:**

Emergency rule approval is requested to comply with SB 421 November 1, 2021 effective date.

**LEGAL AUTHORITY:**

Director of Human Services, Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); 56 O.S. § 237; 75 O.S. § 253; 43 O.S. §§ 118A, 118B, 118G, 118I; SB 421; and Sections 302.56 and 303.8 of Title 45 of the Code of Federal Regulations.

## Rule Impact Statement

**To:** Programs Administrator  
Office of Intergovernmental Relations and Policy

**From:** Renee Banks, Director  
Child Support Services (CSS)

**Date:** August 25, 2021

**Re: CHAPTER 25. CHILD SUPPORT SERVICES**  
Subchapter 5. Operational Policies  
Part 17 Past Support  
340:25-5-140 [AMENDED]  
340:25-5-178 [AMENDED]  
Part 22 Review and Modification  
340:25-5-198.2 Modification [AMENDED]  
Part 23 Enforcement  
340:25-5-200 [AMENDED]  
Part 37 Recovery  
340:25-5-305 [AMENDED]  
**[REFERENCE WF 21-7]**

**Contact:** Tammy Hall, Programs Manager, 405-982-2855

### **A. Brief description of the purpose of the proposed rule.**

#### **Purpose:**

The proposed amendments to Chapter 25 Subchapters 5 amend the rules to: (1) align Child Support Services (CSS) process with Senate Bill 421 (SB 421) from the 1<sup>st</sup> Regular Session of the 58<sup>th</sup> Oklahoma Legislature as it amends Section 118A through 118I of Title 43 of the Oklahoma Statutes (43 O.S. §§ 118A through 118I) to modify the child support guidelines for income computation under certain conditions.

#### **Strategic Plan Impact.**

The proposed amendments support Oklahoma Human Services (OKDHS) goals of: (1) helping Oklahomans lead safer, healthier, more independent and productive lives; (2) keeping our workforce informed, supported, and engaged; (3) meeting the needs of vulnerable Oklahomans; and (4) cultivating a culture of continuous improvement. The proposed amendments: (1) support the CSS strategic plan by providing customers access to tools and resources to achieve and maintain healthy families; (2) prioritize CSS ability to provide core services to customers; and (3) clarify how CSS provides services to customers.

#### **Substantive changes.**

Subchapter 5. Operational Policies  
Part 17 Past Support

Oklahoma Administrative Code (OAC) 340:25-5-140 is amended to: (1) clarify rebuttable presumptions for incarcerated noncustodial parents (NCPs) per 43 O.S. § 118I; (2) add definitions per 43 O.S. § 118A.

Part 21 Establishment

OAC 340:25-5-178 is amended per 43 O.S. §§ 118G and 118I to: (1) remove references to child care subsidy; (2) clarify the child care subsidy copay is the actual child care expense used in the child support computation; (3) remove obsolete references used in the child support guideline computation to calculate income; and (4) clarify abatement of child support for qualified incarcerated NCPs.

Part 22 Review and Modification

OAC 350:25-5-198.2 is amended to align policy with SB 421.

Part 23 Enforcement

OAC 340:25-5-200 is amended to add authority for abatement of child support for incarcerated NCPs per 43 O.S. § 118I.

Part 37 Recovery

340:25-5-305 is amended to clarify CSS is not responsible for recovering overpayments on ongoing regular payments when NCP is incarcerated.

**Reasons.**

The proposed amendments **bring** OAC 340:25-5-140, 340:25-5-178, 340:25-5-200, and 340:25-5-305 **into compliance with federal and state law. SB 421, approved by the Governor and effective November 1, 2021, provides for modification and establishment of orders in line with actual income when an NCP is incarcerated for more than 180 days.**

**Repercussions.**

The proposed amendments are designed to align OAC 340:25-5-140, 340:25-5-178, 340:25-5-200, and 340:25-5-305 with federal and state statutes. Failure to do so could lose or suspend Title IV-D federal funding.

**Legal authority.**

Director of Human Services, Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); 56 O.S. § 237; 75 O.S. § 253; 43 O.S. §§ 118A, 118B, 118G, 118I; SB 421; and Sections 302.56 and 303.8 of Title 45 of the Code of Federal Regulations.

**Emergency rulemaking approval is requested.** Emergency rule approval is requested to comply with SB 421 November 1, 2021 effective date.

- B. A description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the costs of the proposed rule, and any information on cost impacts received by the Agency from any private or public entities:** The classes of persons most likely affected by the proposed amendments are children entitled to support, NCPs who owe child support, custodial parents (CPs) who are owed child support, CSS staff, CP or NCP private attorneys, and courts. Most affected classes of persons will bear no costs associated with implementation of the amendments.

- C. A description of the classes of persons who will benefit from the proposed rule:** The classes of persons who will benefit are NCPs who have been incarcerated for over 180 days. CPs and children will directly benefit through increasing compliance rates of previously incarcerated NCPs by enforcing orders based on actual income.
- D. A description of the probable economic impact of the proposed rule upon the affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change:** The proposed amendments do not have an effect on political subdivisions. There are no fees associated with the proposed amendments.
- E. The probable costs and benefits to the Agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the Agency:** The probable cost to OKDHS to implement the amendments is estimated to be under \$100, this includes the cost of printing and distributing the rules and training materials and is within current budget, and requires no additional funding
- F. A determination whether implementation of the proposed rule will have an impact on any political subdivisions or require their cooperation in implementing or enforcing the rule:** The proposed amendments do not have an impact on any political subdivision, nor will the cooperation of any political subdivisions be required in implementation nor enforcement of the rules.
- G. A determination whether implementation of the proposed rule will have an adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:** There are no anticipated adverse effects on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act.
- H. An explanation of the measures the Agency has taken to minimize compliance costs and a determination whether there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule:** The proposed amendments are intended to minimize compliance costs and intrusive regulations while fully complying with state and federal mandates. There are no less costly nor intrusive methods to achieve full compliance.
- I. A determination of the effect of the proposed rule on the public health, safety, and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety, and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk:** The proposed amendments are intended to comply with state and federal child support mandates, increase program effectiveness, protect CSS ability to deliver services, and

improve services delivered to families, thereby contributing to the health, safety, and wellbeing of children entitled to support.

- J. A determination of any detrimental effect on the public health, safety, and environment if the proposed rule is not implemented:** Failure to adopt these rules could cause hardships on families by negatively impacting the services CSS provides and result in unnecessary expenditures of public funds to provide support for children that could otherwise be provided by noncustodial parents.
- K. The date the rule impact statement was prepared and, if modified, the date modified:** Prepared: August 25, 2021.

**SUBCHAPTER 5. OPERATIONAL POLICIES  
PART 17. PAST SUPPORT**

**340:25-5-140. Past support**

Revised ~~9-16-19~~ 11-1-21

(a) **Legal authority.** Oklahoma Department of Human Services, Child Support Services (CSS) takes appropriate action to collect support and secure compliance with support orders. ■ 1 & 2

(1) When a support order does not specify an effective date, a payment is due on the first day of the month following the child support order's entry of the ~~child support order~~ and on the first day of each month thereafter except when another state's law governs the due date.

(2) CSS ~~bases its determination of~~ determines past-due support and support for a prior period based on information in available records from courts, Title IV-D and other public and private agencies, the custodial persons (CPs), the noncustodial parents (NCPs), and others.

(3) CSS may require sworn written statements and supporting documents from CPs, NCPs, and others pertaining to support payments. The primary legal foundations for determination and collection of past-due support and support for a prior period are applicable provisions of: ■ 2

- (A) Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code;
- (B) Section 1738B of Title 28 of the United States Code (28 U.S.C. § 1738B);
- (C) Chapters 302 and 303 of Title 45 of the Code of Federal Regulations; and
- (D) Sections 83 and 7700-636 of Title 10 of the Oklahoma Statutes (10 O.S. §§ 83 and 7700-636), Chapters 3 and 21 of Title 12, Title 43, and 56 O.S. §§ 231 through 240.23.

(b) **Definitions.** The following words and terms, when used in this Section shall have the following meanings unless the context clearly indicates otherwise:

(1) **"Abate"** means, per 43 O.S. Section 118I, an NCP does not owe the child support obligation when incarcerated for 180-consecutive days. Upon eligibility, child support is no longer owed effective the first day of the month following the entry date into the correctional facility or jail and does not accrue for the duration of the incarceration.

(2) **"Incarceration"** means, per 43 O.S. Section 118I, an obligor is in custody on a fulltime 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.

(b)(c) **Judgment payment.** Per 43 O.S. § 137, the monthly payment schedule on past support may not exceed three years unless specific findings of fact supporting the action are made. CSS considers a three-year payment schedule to be unjust, unreasonable, inequitable, or inappropriate when CSS has evidence that the NCP cannot comply with the payment plan. CSS requests a monthly payment schedule that may exceed three years in accordance with the best evidence available, including the NCP's earning records, past job history, earning ability based on education and training,

and mental or physical incapacities. CSS also considers an NCP's other child support obligations and total arrears. ■ 3

~~(c)~~(d) **Enforcement.**

(1) CSS takes action to enforce past-due support and support for a prior period, per Oklahoma Administrative Code (OAC) 340:25-5, Part 23. ■ 1 & 4

(2) CSS collects amounts from the original child support order ~~date of the original child support order~~, including any judgments for support for a prior period, and does not limit collection of past-due child support to amounts accruing from the time a case is opened or reopened. ■ 2

(3) When CSS receives a new case new to CSS with an existing order, or a when a previously closed case that was previously closed reopens and has an existing order, CSS does not calculate a past-due support balance, or take action to enforce past-due support, until 30-calendar days from the mailing date of the notice of case letter and affidavit of payments document to the NCP. This does not preclude ~~the~~ initiation of initiating an income assignment to collect current support. ■ 2

(4) Past-due child support remains due to the CP with whom a child resided during the month the past support was due.

(5) When CSS takes action to enforce past-due support and support for a prior period for a Servicemember's child of an NCP or a CP who is a servicemember, CSS applies the provisions of the Servicemembers Civil Relief Act, codified in 50 U.S.C. §§ 3901 through 4043. ■ 5

~~(d)~~(e) **Settlement of past support.**

(1) Settlements of past support may include:

(A) an NCP's lump sum partial payment or a series of payments made toward the total amount of past support;

(B) an agreement for the NCP to pay a specified number of current child support payments in the future; and

(C) acceptance of in-kind goods or services in exchange for waiving a certain amount of past child support.

(2) Settlements of past support must be memorialized in a court order and the CP must sign the court order when the past support is owed to the CP. ■ 6

(3) Per 43 O.S. § 112, CSS:

(A) acknowledges the rights of the CP and NCP to mutually agree to waive with approval of the court, all or a portion of the past child support due to the CP; or

(B) may negotiate the right to collect all or part of past support owed to Oklahoma. ■ 6

~~(e)~~(f) **Annual notice.** CSS uses the annual notice to the NCP parent, per 56 O.S. § 237A to confirm the amount of past-due support and remaining balances on previously confirmed judgments. Past-due support and remaining balances on judgments for support for a prior period may also be confirmed during other enforcement actions, per OAC 340:25-5, Part 23. ■ 7

~~(f)~~(g) **Death of CP.**

(1) When the CP dies, CSS issues child support payments for past due support to:

(A) the decedent's estate, when ~~notified in writing by the estate's administrator of the estate~~ notifies CSS in writing; or

(B) any state owed past due support, per OAC 340:25-5-351.

- (2) Except as provided in (1) of this subsection, CSS refunds payments to the:
  - (A) payor, when the payor's address is known;
  - (B) NCP parent when the payor's address is unknown, or payments are returned due to the inability to distribute.
- (3) CSS does not file a forced probate court action to determine heirs and distribute past support to heirs.

~~(g)~~**(h) Jurisdiction.** When an Oklahoma tribunal has personal and subject matter jurisdiction and can obtain service of process on the NCP, CSS uses the annual notice, notice of support debt, contempt, or other appropriate proceedings to determine past support and interest before requesting another state's tribunal ~~of another state~~ to enforce the child support orders.

**(i) Incarcerated NCP.** Per 43 O.S. § 118I, beginning November 1, 2021, there is a rebuttable presumption that an NCP who is incarcerated for a period of 180-consecutive days is unable to pay child support. When a payment is made during incarceration, the presumed ability to pay child support may be rebutted for that payment period. CSS makes a final determination whether the order is abated. ■ 8

## **INSTRUCTIONS TO STAFF 340:25-5-140**

**Revised ~~09-15-21~~ 11-1-21**

1. (a) In all cases, ~~Oklahoma Department of Human Services~~, **Child Support Services (CSS) staff requests the court set a periodic payment plan to collect past support.**
  - (b) When the court determines a judgment at an amount different from the amount shown on the CSS arrearage computation presented to the court, CSS staff updates the court's:
    - (1) judgment amount on the Oklahoma Support Information System (OSIS) Obligation screen; and
    - (2) decision and finding of fact, when included in the court order, on the OSIS Case Log (CSLOG) screen.
2. (a) Arrears are calculated and added to the case without waiting 30-calendar days, when:
  - (1) there is no address for the noncustodial parent (NCP) and the custodial person (CP) returned an affidavit of payments;
  - (2) the NCP responds and does not dispute arrears; or
  - (3) both parties respond within 30-calendar days and there is no dispute as to the arrears amount ~~of arrears~~.
  - (b) CSS staff files an action to determine arrears, when:
    - (1) both parties respond and there is a dispute as to the arrears amount; and
    - (2) the NCP requests credit for non-cash support and the CP does not agree. CSS staff files the action without including credit for the non-cash support.
  - (c) When the NCP fails to return the affidavit of payments, arrears are calculated and added to the case after 30-calendar days.
  - (d) When only the NCP returns the affidavit of payments, CSS staff:
    - (1) contacts the CP to verify the information provided by the NCP;

- (2) enforces current support only from the date the obligation is built, until arrears are determined;
  - (3) reviews the case for noncooperation and case closure, when appropriate; and
  - (4) files an action to determine arrears and serves the CP, per Oklahoma Administrative Code (OAC) 340:25-3-3.
- (e) When neither party returns the payment affidavits, CSS staff does not calculate or add arrears ~~or add arrears~~ to the case and enforces current support only from the date the obligation is built. CSS staff requests arrears be reserved for further court determination ~~by the court~~.
3. (a) When requesting a monthly payment schedule on past support, CSS staff reviews available information that may include the following sources to determine the NCP's ability to pay:
    - (1) OSIS screens, such as FCRL and OWL;
    - (2) Oklahoma Wage Report, available from the Oklahoma Employment Security Commission website at [https://www.ok.gov/oesc\\_web/index.html](https://www.ok.gov/oesc_web/index.html); and
    - (3) other sources as appropriate.
  - (b) When the payment schedule exceeds three years, CSS documents in the court order that a three-year payment schedule is unreasonable or not in the best interests of the child(ren).
  4. CSS continues to collect arrears that accrued under a valid district court temporary support order when the underlying court action is later dismissed as long as the support order was never vacated by the court.
  5. (a) CSS staff follows the Guide to the Servicemembers Civil Relief Act (SCRA), available from the CSS InfoNet, for procedures regarding:
    - (1) waivers of rights and protection, per SCRA;
    - (2) appearance in court actions;
    - (3) stays of court; and
    - (4) default orders.
  - (b) When one of the parties to the case is in default, CSS staff confirms the defaulting party's military status ~~of the defaulting party~~ on the SCRA website, <https://scra.dmdc.osd.mil/scra/#/home>, and files the default affidavit with the court, per Sections 3901 through 4043 of Title 50 of the United States Code.
  6. Settlement of past support. CSS staff includes the settlement terms, including any waivers of past support, in the court order. The district office CSS state's attorneys ~~must~~ approve all settlements of past support.
    - (1) Past support owed to Oklahoma. When there is a settlement of past support owed to Oklahoma, the Unreimbursed Assistance balance is reduced by the amount of the assigned arrears being compromised. This provision does not apply in instances where the CP has multiple children on different child support cases.
    - (2) Past support owed to the CP. CSS staff drafts the court order with language that states the CP makes the waiver knowingly, voluntarily, and without coercion, and with the understanding that the CP may not make a claim for the waived child support amounts in the future.

7. When initiating an enforcement action, CSS staff reviews the case to determine if the current support obligation is in accord with the child support guidelines and whether to initiate a modification of the current support obligation, per OAC 340:25-5-198.2.
8. (a) When an incarcerated NCP is participating in a work release program where all the earnings are required for room and board, CSS does not consider that program as gainful employment. The NCP does not have the ability to pay child support, and therefore CSS staff abate the order.  
(b) CSS staff follows the Quest article for instruction on updating the automated system to abate child support orders.  
(c) When a payment is received while an NCP is incarcerated, CSS staff determines whether the NCP has the ability to regularly pay child support. Examples for when a payment does not qualify for abatement include but are not limited to, payments that are not ongoing and regular, such as a tax intercept or payments from a third party, including a relative or friend.  
(d) Payments received while child support is abated are credited to arrearages.

**340:25-5-178. Calculation of Calculating new and modified child support obligations**

Revised ~~9-15-2011~~-1-21

(a) **Legal authority.** Oklahoma Department of Human Services (~~DHS~~)(OKDHS), Child Support Services (CSS) establishes current child support, per:

- (1) Sections 654, 656, and 666 of Title 42 of the United States Code (42 U.S.C. §§ 654, 656, and 666);
- (2) Parts 302 and 303 of Title 45 of the Code of Federal Regulations; and
- (3) Section 83 of Title 10 of the Oklahoma Statutes (10 O.S. § 83); Title 43; and 56 O.S. §§ 231 through 240.23.

(b) **Child support guidelines.** CSS uses the child support guidelines in 43 O.S. §§ 118-118I and 119 to:

- (1) establish current child support amount of ~~current support~~; and
- (2) prepare a child support computation form prescribed by CSS and published by the Administrative Office of the Courts on the Oklahoma State Courts Network website, per 43 O.S. § 120. ■ 1 through 6

(c) **Child support computation.** CSS uses the best evidence available to determine a parent's monthly gross income for the child support computation form, including written earning records, past job history, and earning ability based on education and training, with a continued emphasis on setting fair and equitable child support orders, per 43 O.S. §§ 118-118I. When requesting the court enter or modify child support orders in a noncustodial parent's (NCP) multiple cases, CSS may request the court deviate from the child support guidelines amounts, per 43 O.S. § 118H. ■ 7 & 8

(d) **Gross income.** When determining gross income for the child support computation, CSS uses ~~(1) through (4) of this subsection, per~~ follows 43 O.S. § 118B.

~~(1) Written earning record.~~ For time periods when a parent has a written earning record, CSS uses the:

- (A) actual monthly gross income; or

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

~~(2) **Ability to work and no written earning record.** For time periods when a parent has an earning ability, but no written earning records, CSS imputes the most equitable of the:~~

~~(A) minimum wage paid for a 40-hour work week; or~~

~~(B) amount of gross income a person with comparable education, training, and experience could reasonably expect to earn.~~

~~(3) **Combination.** For time periods when a parent has a written earning record for some months, but no written earning record for other months, for the months worked CSS uses the actual income and for the months with no written earning record CSS uses the most equitable of either:~~

~~(A) the actual gross income; or~~

~~(B) an imputed amount of either:~~

~~(i) minimum wage paid for a 40-hour work week; or~~

~~(ii) the amount of gross income per person with comparable education, training, and experience could reasonably expect to earn.~~

~~(4) **Reduced earning ability.** CSS uses actual income when a parent has reduced earning ability due to the parent's limited education, physical or mental disability, incarceration, or other obstacle to employment, and there is evidence the parent has income of less than minimum wage for 40 hours per week. —■ 8~~

(e) **Child care.** To establish the current child support amount of current support, CSS considers "actual" child care expenses to be the amount paid the parent(s) or custodial person (CP) pays to the child care provider by the parent(s) or custodial person (CP) except when (f) of this Section applies. CSS considers a child care subsidy recipient's copay to be the actual child care expenses. CSS determines the amount of prospective annual child care costs and allocates this amount between the parents in the same proportion as their adjusted gross income. The amount allocated to the NCP becomes part of the fixed monthly child support obligation.

~~(f) **Child care subsidy.** When the parent(s) or CP is participating in the DHS Child Care Subsidy Program, per 56 O.S. § 230.50, CSS uses DHS Appendix C-4, Child Care Eligibility/Co-payment Chart, to determine the family share co-payment amount considered as actual child care costs on the child support computation form, per 43 O.S. § 118G.~~

~~(1) CSS considers a parent's share of the base monthly obligation for child support and the monthly income amount reflected in the records of the DHS Child Care Subsidy Program as the monthly income when applying Appendix C-4. CSS allocates the family share co-payment amount indicated on Appendix C-4, in the same proportion as base child support. CSS staff performs a separate child support guidelines calculation for each NCP. —■ 9~~

~~(2) When a parent has a child(ren) in DHS subsidized child care other than a child(ren) included in the child support case being established, CSS uses the proportionate share of the family share co-payment for the child(ren) included in the case.~~

(g) **Juvenile Court cases.**

(1) **Deprived cases.** When a case is referred, CSS establishes child support orders in deprived court actions, per 10A O.S. § 1-4-702, and prepares the child support order on the standard child support order form prescribed by CSS and published by the Administrative Office of the Courts on the Oklahoma State Courts Network website. ■ 9 & 10

(2) **Delinquent cases.** When a case is referred, CSS establishes a child support order against each parent of a child in the custody of the Oklahoma Office of Juvenile Affairs, per 43 O.S. §§ 118 through 118I. ■ 10

~~(h)~~(g) **Intergovernmental majority age.** CSS establishes child support orders for a child(ren) for whom child support is imposable under applicable law. ■ 11

~~(i)~~(h) **Minor parents.** When a parent is a minor, CSS establishes paternity, per Oklahoma Administrative Code 340:25-5-176, when necessary, and establishes a child support order. ■ 12

(1) When a minor NCP or a CP is younger than 16 years of age, CSS does not impute gross income for the minor parent in the child support computation and only uses actual income.

(2) When a minor NCP or CP is between 16 and 18 years of age and regularly and continuously attending high school, unless otherwise inappropriate, CSS uses either the minor parent(s) imputed gross income for the ~~minor parent(s)~~ based on minimum wage at 20 hours per week or actual income.

~~(i) **Minor parents.** When the NCP is a minor, CSS establishes paternity, per Oklahoma Administrative Code 340:25-5-176 when necessary and establishes a child support order. When a minor NCP or a CP is younger than 16 years of age, CSS does not impute gross income for the minor parent in the child support computation and only uses actual income. When a minor NCP or CP is between 16 and 18 years of age and regularly and continuously attending high school, unless otherwise inappropriate, CSS uses either the imputed gross income for the minor parent(s) based on minimum wage at 20 hours per week or actual income.~~

~~(j)~~ **Adult disabled child.** CSS enforces child support orders for adults with disabilities, per 43 O.S. § 112.1A. CSS establishes or modifies child support orders to continue after the child reaches the age of majority, per 43 O.S. § 112.1A, when the application or referral for Title IV-D services is received during the period when child support is due, per 43 O.S. § 112.

~~(k)~~(j) (1) **Incarcerated NCP.** ~~Per 43 O.S. §§ 118B and 118I, When when an NCP is expected to be incarcerated for at least more than six consecutive months 180 consecutive days, from the date the support amount is reviewed or established, CSS requests the court enter a temporary child support and medical support amount order~~ using actual income of \$0, unless:

~~(A) there is evidence of income or assets outside independent of the correctional institution incarceration;~~

~~(B) incarceration is a result of indirect contempt of court for failure to pay child support;~~

~~(C) incarceration is a result of a crime of omission to provide child support; or~~

~~(D) the incarceration is a result of an offense in which the CP dependent child or the CP was a victim.~~

(2) **Release from incarceration.** At the time the order is entered

(A) When an existing child support order is abated there is:

~~(1)~~ a pre-incarceration child support order, CSS requests the order state that upon release from incarceration, the monthly child support obligation reverts back to the pre-incarceration order amount beginning the first day of the month following a lapse of 90-calendar days upon release from incarceration, per 43 O.S. §§ 118B and 118I. When the NCP within the lapse period, requests in writing a review of the pre-incarceration order, the post incarceration monthly child support obligation does not begin until the review or modification is complete. When a review is requested and the NCP fails to appear for hearing, the monthly child support obligation reverts back to the pre-incarceration amount to begin the first day of the month following a lapse of 90-calendar days upon release from incarceration; or

~~(2)~~ (B) When there is no existing pre-incarceration child support order, CSS requests the court order state; that upon release from incarceration, the monthly child support amount is set based on 43 O.S. §§ 118B and 118I minimum wage for a 40-hour work week beginning the first day of the month following a lapse of 90-calendar days upon release from incarceration. When the NCP within the lapse period requests in writing a hearing, the post incarceration monthly child support amount does not begin until the review or modification is complete. When a hearing is requested and the NCP fails to appear for the hearing, the monthly child support obligation reverts back to the support amount set based on minimum wage for a 40-hour work week, to begin 90-calendar days upon release from incarceration. ■ 8

~~(j)~~ (k) **Military.** When CSS establishes a child support order for a Servicemember's child of an NCP or a CP who is a servicemember, CSS applies the provisions of the Servicemembers Civil Relief Act, codified in 50 U.S.C. §§ 3901 through 4043. ■ 13

~~(m)~~ (l) **Disability benefits.** CSS does not impute gross income to a person ~~determined~~ the Social Security Administration determines disabled by the Social Security Administration. ■ 3 & 5

~~(n)~~ (m) **Default orders.** When a default order for child support is ordered and either party contacts CSS in writing within 30-calendar days of the entry of the default order and provides information to calculate an accurate child support obligation, CSS treats the request as a motion to vacate or modify, and requests the court enter a new order consistent with the evidence presented. ■ 14 & 15

## **INSTRUCTIONS TO STAFF 340:25-5-178**

**Revised ~~09-15-24~~11-1-21**

**1. Oklahoma Human Services Child Support Services (CSS) staff must calculate calculates, per Sections 118 through 118I of Title 43 of the Oklahoma Statutes (43 O.S. §§ 118 through 118I) on the child support computation form, each parent's contribution toward:**

- (1) the base child support according to the both parents' combined adjusted gross income of ~~both parents~~ following the child support guidelines schedule, per 43 O.S. § 119;**
- (2) any actual medical and dental insurance premium; and**
- (3) any actual employment related child care expenses, per 43 O.S. § 118G and Oklahoma Administrative Code 340:25-5-178.**

2. When the child(ren) is receiving monthly Social Security (SS) benefits from the noncustodial parent's (NCP) claim, either disability or retirement, the benefit is offset from current child support, per 43 O.S. § 118B(G), and the remainder is offset against any cash medical support.
3. (a) When a parent or minor child is disabled and receiving monthly Supplemental Security Income (SSI), CSS excludes SSI from either parent's gross income, per 43 O.S. § 118B(G)(1).
  - (b) When a parent's Social Security Disability Insurance (SSD) benefit amount, or a combination of SSD and SSI benefits, does not exceed the maximum monthly SSI benefit amount, CSS staff uses only the SSD amount as income and requests the court deviate from the guidelines to set the current child support at \$0. ~~In~~ To support of the deviation, CSS state's attorneys advocate the guidelines amount is unjust or inappropriate under the circumstances, because it treats a similarly situated parent who receives only SSI benefits differently from a parent receiving a combination of benefits that equals the SSI amount.
    - (1) An example of the unjust guideline amount is:
      - (A) a parent with some work history receives a total of \$710 in monthly Social Security benefits. This includes \$350 SSD and \$360 SSI benefits. Under the guidelines, child support ~~would be~~ is calculated based on the monthly \$350 SSD benefit. The parent ~~would be~~ is ordered to pay child support because the child ~~would~~ is not be receiving an SSD benefit at this payment level of payment; or
      - (B) a similarly disabled parent without work history ~~would receive~~ receives the full \$710 as SSI benefits and is not be ordered to pay any child support. Therefore, CSS state's attorneys request the court to deviate from the guideline computation, per 43 O.S. § 118H, due to the guideline amount being unjust and inappropriate under these circumstances.
    - (2) The maximum monthly SSI benefit amount is found at the SSI Federal Payment Amounts webpage at: <http://www.ssa.gov/oact/cola/SSIAMts.html>.
4. (a) When CSS staff verifies an NCP is receiving disability through the Veterans Administration (VA) and the custodial person (CP) ~~is receiving~~ receives an apportionment of the benefits on the minor child's behalf of a minor child, CSS requests the court:
  - (1) consider the apportionment as alternative compliance with the child support order; and
  - (2) calculate child support in the same manner as when SSD benefits are received on the minor child's behalf of a minor child, per 43 O.S. § 118B(G).
- (b) CSS staff requests the court include the apportionment as part of the NCP's income.
- (c) When the child support amount is:
  - (1) greater than the apportionment, CSS requests the court find the apportionment partially ~~satisfied~~ satisfies the child support obligation and the NCP pay only the amount in excess of the apportionment; or

(2) equal to or less than the apportionment, CSS requests the court find the child support obligation is met and the NCP pays no additional child support amount ~~must be paid by the NCP.~~

(d) When the court grants the CSS request, CSS staff memorializes the court's order regarding the offset of the current child support amount by the apportionment. For example, CSS staff includes the following language in the child support order. When the child support amount is:

(1) greater than the apportionment: "The court finds the obligor is satisfying the child support obligation by the apportionment of VA benefits in the amount of \$x.xx. Therefore, the obligor is ordered to pay the remaining amount of \$x.xx. If at any time the apportionment is not in effect, the obligor is responsible for payment of the full current child support as shown on the guidelines computation attached."; or

(2) is equal to or less than the apportionment: "The court finds the obligor is satisfying the child support obligation by the apportionment of VA benefits in the amount of \$x.xx. Therefore, the court finds the child support obligation is met in full and no further payment by the obligor is required. If at any time the apportionment is not in effect, the obligor is responsible for payment of the full current child support as shown on the guidelines computation attached."

5. CSS staff consults with the district office CSS state's attorneys for a legal interpretation when the monthly child support obligation amount ~~of the monthly child support obligation~~ in the body of an order conflicts with the amount in the child support computation form.
6. CSS staff computes the child support obligation on the basis of actual monthly gross income for an NCP or a CP who is permanently physically or mentally incapacitated, per 43 O.S. § 118B(C)(2). The documentation required to determine if an NCP or a CP is permanently physically or mentally incapacitated includes a Social Security Administration award letter or a physician's statement affirming the:
  - (1) person is unable to do the work they he or she did before and cannot adjust to other work because of a medical condition; and
  - (2) disability ~~must continue~~ is continuous or ~~be~~ is expected to continue for at least one year or to result in death.
7. CSS staff accesses the Guidelines screen (GLS) on the CSS automated Oklahoma Support Information System. CSS staff may also use Form 03EN025E, Child Support Computation, and its child support guidelines computation form completion instructions, available on the Oklahoma Department of Human Services (DHS) OKDHS website at <http://www.okdhs.org>.
8. ~~(a) CSS staff reviews information provided by the parents to determine if a parent's earning records or other evidence of income is in accordance with the parent's prior job history. CSS staff consults with the district office CSS state's attorneys if the information provided by the parent differs significantly from the parent's known job history or earning ability.~~

~~(b) CSS applies the following hierarchy, subject to other evidence of a parent's job history or earning ability when requesting the court to determine a parent's monthly gross income.~~

~~(1) Written earning record.~~

~~(A) When a parent has a written earning record, CSS uses the:~~

~~(i) actual monthly gross income; or~~

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

~~(B) When a parent has a written earning record from an employer, such as a paystub or employer verification of hourly wages, CSS uses that written earning record as the parent's income in the child support computation form.~~

~~(C) When a parent has evidence of employment for the last three years but the parent's wages are inconsistent, CSS uses the average of the last three years income.~~

~~(D) When the biological parent (BP) is receiving family assistance benefits, CSS staff uses actual income in the child support computation when that information is available. Otherwise CSS staff imputes an amount based on the parent's work history, education, training, and availability to work. When these options are unavailable, staff imputes minimum wage for up to a 40-hour work week.~~

~~(2) Ability to work and no written earning record. For time periods when a parent has an earning ability, but no written earning records, CSS uses the most equitable of the minimum wage paid for a 40-hour work week or an amount of gross income a person with comparable education, training, and experience could reasonably expect to earn using either Oklahoma Wage Report from the Oklahoma Employment Security Commission's website, available at [https://www.ok.gov/oesc\\_web/index.html](https://www.ok.gov/oesc_web/index.html), or Oklahoma State Occupational Employment and Wage Estimates from the United States Department of Labor website, available at <https://www.bls.gov/home.htm>. For example, when:~~

~~(A) the parent is purposefully underemployed, CSS uses at least minimum wage in the child support computation forms; or~~

~~(B) there is information indicating a parent is a plumber and CSS has no evidence of income, CSS may use the median hourly wage for a plumber in the child support computation form.~~

~~(3) Combination.~~

~~(A) When a parent has a written earning record for some months, but no written earning record for other months, CSS may apply both (2) and (3) of this subsection.~~

~~(B) For example, a parent may have a written earning record showing earnings of \$6,000 in a quarter and no written earning record for the other quarters of the year. Staff inquires about the parent's earning ability for those quarters without a written earning record, and may impute income for those quarters or use actual wages, according to the evidence.~~

**~~(4) Reduced earning ability.~~**

**~~(A) CSS uses actual income when a parent has reduced earning ability due to the parent's limited education, physical or mental disability, incarceration, or other obstacle to employment, and there is evidence the parent has income of less than minimum wage for 40 hours per week. For example when:~~**

- ~~(i) a parent works 10 hours a week at \$8 an hour, CSS uses actual income of \$347.66 per month in the child support computation form;~~**
- ~~(ii) an incarcerated parent has no assets or income, CSS uses actual income of \$0 per month in the child support computation form; or~~**
- ~~(iii) a parent has documentation of a disability that prevents him or her from working at least 40 hours a week and is not receiving any disability benefits, CSS uses actual income, even when it is \$0 per month, in the child support computation form.~~**

**~~(B) When a parent is incarcerated, CSS staff registers on VINE Link at [www.vinelink.com](http://www.vinelink.com) for notice of the imminent release or transfer of an incarcerated NCP. When registering, staff provides the anonymous district office email address as a method of contact.~~**

**~~(c) When establishing or modifying a child support order, CSS considers the Compliance Predictor Tool available on the Infonet. As part of the Healthy Families Initiative, the Compliance Predictor Tool is designed to encourage staff to request the court enter realistic child support orders. A realistic child support order is 20 percent or less of an NCP's gross monthly income. uses current monthly income when a parent has an earning record. Current monthly income may be zero based on the parent's circumstances. CSS only imputes income when there is no evidence of an earning record or it is not equitable. When a parent is voluntarily unemployed, CSS calculates the parent's income based on their previous earning record, education, training, and ability to work.~~**

**9. (a) CSS staff requests the court establish child support orders for each parent in a deprived court action.**

**(b) When the parent has lost custody of more than one child and one or more of these children has a different mother or father, CSS staff requests the court deviate from the child support guidelines and set a child support order for the parent who lost custody per (c) of this Instruction.**

**(c) To determine the former CP's gross monthly income (found on Line 1 of the child support computation form), CSS staff follows 43 O.S. §§ 118 through 118I.**

**(1) CSS staff calculates the child support obligation by using the former CP's gross monthly income and the average gross income amount of the other parent's in Line 1 of the child support computation form.**

**(2) To determine the amount to use in Line 1 for the other parent's income, CSS staff averages all of the other parents' gross incomes and divides the total by the number of the other parents.**

**(d) For example, a mother has three children with three different fathers. The mother's gross monthly income is \$1,000 per month. Father # 1 earns \$1,500**

per month, father # 2 earns \$1,800 per month, and father # 3 is imputed at minimum wage, or \$893 per month. CSS staff totals the fathers' income (\$1,500 + \$1,800 + \$893) to obtain a total of \$4,193. This amount is divided by three to obtain an average of \$1,397.66. CSS staff calculates the total child support obligation using \$1,000 for the mother and \$1,397.66 for the father. The mother's child support obligation would be \$299.04 for three children, \$254.41 for two children, and \$176 for one child. If there is a prior order against this former CP, a new child support order supersedes that order.

10. CSS staff requests the court order support against each parent according to the parent's proportional share. When the parents of a child in ~~the state's~~ OKDHS custody live together as an intact family and the total child support amount per the guidelines is equal to or exceeds 20 percent of the family's gross income, CSS staff requests a deviation when a child support amount set per the guidelines would cause extreme economic hardship.
11. The age of majority varies by state. CSS staff may use the federal Office of Child Support Enforcement (OCSE) Intergovernmental Reference Guide (IRG), available at <https://ocsp.acf.hhs.gov/irg/welcome.html>, to obtain information about referrals to other states ~~for~~ to establishment of support orders.
12. (a) CSS requests an adult guardian or next friend of the minor parent accompany the minor parent to any office visit, settlement conference, or court hearing.  
(b) ~~When an adult, CSS staff consults with the CSS state's attorney about how to proceed.~~  
When an adult does not accompany the minor parent ~~is not accompanied by an adult,~~ CSS staff consults with the CSS state's attorney about how to proceed.
  - (1) When a minor parent is younger than 16 years of age, CSS requests the case be transferred to district court and requests the court appoint an attorney for the child.
  - (2) When a minor parent is between 16 and 18 years of age, CSS requests the court enter an order without the an adult's presence ~~of an adult~~ after an evidentiary hearing about the minor parent's capacity to understand the consequences of the court proceedings.
13. (a) CSS staff follows the Guide to the Servicemembers Civil Relief Act (SCRA), available from the CSS InfoNet for procedures regarding:
  - (1) waivers of rights and protection under SCRA;
  - (2) appearance in court actions;
  - (3) stays of court; and
  - (4) default orders.(b) When a party to the case is in default, CSS staff confirms the defaulting party's military status ~~of the defaulting party~~ on the SCRA website, <https://scra.dmdc.osd.mil/scra/#/home>, and files the default affidavit with the court in accordance with Sections 3901 through 4043 of Title 50 of the United States Code.
14. When a party provides CSS with a written request to reconsider a default order within 30-calendar days of the entry of the order, CSS staff:
  - (1) files the written request and sets the request for hearing; or
  - (2) provides the party with an appropriate CSS pro se self-help motion.

- 15. After one party files a written request, CSS sets the case for hearing and notifies the parties by mail, per Rule 2 of the Rules for District Courts. After considering the income information provided, CSS requests the court:**
- (1) dismiss or deny the motion to vacate and leave the default order in effect; or**
  - (2) enter a new order replacing the default order.**

**340:25-5-198.1. Review of a child support order**

Revised ~~9-17-18~~ 11-01-21

(a) **Purpose.** The purpose of the review process is to determine whether a child support order should be modified to ensure substantial compliance with the child support guidelines in Sections 118-118I through 119 of Title 43 of the Oklahoma Statutes (43 O.S. §§ 118-118I & 119) and Oklahoma Administrative Code (OAC) 340:25-5-178.

(b) **Notification requirements.** At least once every three years after a child support order is established, reviewed, or modified, Oklahoma Department of Human Services (DHS) Child Support Services (CSS) notifies all parties in a full-service case of the right to request a review of the child support order and the process for requesting a review.

(c) **Authority for review.** CSS conducts a review every three years in cases with a Temporary Assistance for Needy Families (TANF) assignment. CSS determines the tribunal with jurisdiction under subsection (e) of the Full Faith and Credit for Child Support Orders Act, codified in Section 1738B(e) of Title 28 of the United State Code (28 U.S.C. § 1738B(e)) and the Uniform Interstate Family Support Act (UIFSA) in 43 O.S. §§ 601-101 through 601-903 to modify the order. ■ 1 When another tribunal has jurisdiction to modify the child support order, CSS follows the provisions in (j) of this Section. When Oklahoma has jurisdiction to modify the child support order, CSS follows the provisions of this subsection. CSS completes the review and modification process within 180-calendar days after a request is received or the non-requesting party is located, whichever is later.

(d) **Initiation of review.**

- (1) CSS reviews an order upon written request by a customer or on its own initiative:
  - (A) when there is a material change in circumstances per 43 O.S. § 118I;
  - (B) per 56 O.S. § 237 when the evidence in the case justifies a modification as per OAC 340:25-5-198.2, regardless of whether there is a change of circumstances; or ■ 2 through 5
  - (C) per Section 303.8 of Title 45 of the Code of Federal Regulations and OAC 340:25-5-178(k), when the NCP is incarcerated.
- (2) CSS notifies the parties of the review with instructions for submitting financial and other information required for the review.
- (3) CSS does not initiate a review upon customer request when:
  - (A) the non-initiating party is not located;
  - (B) it has been less than 12 months since the child support order was established, reviewed, or modified unless there is a material change of circumstances;
  - (C) the preliminary information indicates the change of circumstances will not significantly impact the child support amount or the change of circumstances is

temporary; or

(D) there is evidence the monthly child support amount or judgment payment is based on a noncustodial parent's (NCP) ability to pay and the NCP is working in a job consistent with his or her education and training.

(4) When CSS determines the customer review request does not meet the provisions in (1) of this subsection, CSS provides available pro se self-help modification forms to the customer.

(5) CSS does not seek an upward modification of a child support order or a judgment payment upon request when an NCP is:

(A) employed full-time in an occupation consistent with his or her education and training;

(B) ordered to pay more than 20 percent of his or her gross income; and

(C) is not paying the full court-ordered monthly child support amount.

**(e) Medical enforcement only (MEO) cases.**

(1) When either the custodial person or the noncustodial parent requests a review, CSS changes the services offered from an MEO to a full-service case. CSS notifies the parties of the change in services provided.

(2) When the non-applicant requests the review, the non-applicant must complete Form 03EN001E, Application for Child Support Services, per OAC 340:25-5-110.1.

**(f) Initial review.** Within 15-calendar days after receiving a request for a review, CSS determines if the criteria described in (d)(1) of this Section are met. CSS notifies the requesting person when the criteria for review are not met. If the criteria are met, CSS may:

(1) request further information as necessary from the parties; or

(2) proceed with the review process when CSS considers it has information sufficient to complete the process.

**(g) Final review.** Within 30-calendar days after the deadline for the parties to submit requested financial and other information to CSS, per (d) of this Section, CSS completes the review process and notifies parties of its determination as to whether the support order should be modified. ■ 4

**(h) Modification after review.** CSS staff follows OAC 340:25-5-198.2 to determine if the child support order is modified after the review process is complete.

**(i) Termination of the review process.**

(1) The person requesting a review may withdraw the request after the review process begins, upon CSS approval. CSS does not accept requests to withdraw the review after making a determination that the child support order be modified.

(2) When the requesting person fails to supply information requested by CSS as instructed, CSS may terminate the review process, unless CSS or the non-requesting party requests the process continue. ■ 6

(3) When the review is initiated by CSS, failure of the parties to return requested information does not stop the review process. CSS proceeds, using the best information available.

**(j) Interstate cases.**

(1) When a tribunal other than an Oklahoma district or administrative court has jurisdiction under UIFSA to modify an order, CSS obtains the information necessary for the review.

(A) CSS transmits the documents to the Title IV-D agency in the other state within 20-calendar days after receipt of the request to modify the order and of the completed documents from the person requesting the modification. ■ 7

(B) CSS issues and enforces a subpoena to compel compliance with the request for documents if the non-requesting party fails to return the required documents or CSS is unable to obtain the necessary information to proceed and an Oklahoma tribunal has personal jurisdiction over the non-requesting party.

(C) CSS may terminate the review process in an interstate case per (i) of this Section and 43 O.S. §§ 601-611 and 601-615.

(2) When Oklahoma has jurisdiction to modify the order of another state or foreign country per 43 O.S. § 601-102, the order is registered in Oklahoma for modification per 28 U.S.C. § 1738B(i) and 43 O.S. §§ 601-609 through 601-616.

## **INSTRUCTIONS TO STAFF 340:25-5-198.1**

**Revised ~~9-17-18~~11-01-21**

### **1. Controlling order.**

(1) When Oklahoma is the only state that entered a child support order and both parents reside in Oklahoma, the modification occurs in Oklahoma.

(2) Oklahoma ~~Department of Human Services (DHS)~~ **(OKDHS) Child Support Services (CSS)** determines the controlling order and the proper forum state for a modification proceeding when:

(A) an order was entered outside of Oklahoma; or

(B) one or both parents reside outside of Oklahoma.

(3) To assist in determining the controlling order and the state of continuing exclusive jurisdiction, CSS staff uses the Worksheet to Determine Controlling Order and the Modification Worksheet on the CSS InfoNet.

(4) CSS staff may seek modification of the controlling order in an Oklahoma tribunal, even if another state or tribunal has jurisdiction to modify the order, when:

(A) an individual party or the child resides in Oklahoma;

(B) the custodial person (CP) and noncustodial parent (NCP) sign a written consent to jurisdiction; and

(C) CSS staff files a copy of the signed consent to jurisdiction with the Oklahoma and issuing tribunals.

2. When calculating the 12-month time period for initiating a review, CSS uses the date the order was entered to compute time periods. When an order is not entered after the review or modification process, CSS uses the completion date of the review to compute time periods. The 12-month time period does not apply when a CP or NCP enters or leaves active duty military service, per the Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code. For information regarding military reservists called to active duty, refer to the federal Office of Child Support Enforcement (OCSE) Information Memorandum IM-01-09, available from the OCSE website at <http://www.acf.dhhs.gov/programs/cse/pol/IM/2001/im-01-09.htm>.

3. A material change of circumstances may include, but is not limited to:
  - (1) a change in residence or custody of one or more of the children listed in the child support order;
  - (2) a change of either parent's gross income;
  - (3) either parent receiving Social Security Administration disability benefits;
  - (4) a child reaching the age of majority per Section 112 of Title 43 of the Oklahoma Statutes (43 O.S. § 112);
  - (5) changes in child care expenses; or
  - (6) changes in court-ordered medical support, including:
    - (A) the cost of health insurance;
    - (B) cash medical support is no longer appropriate because health insurance is provided for the child(ren);
    - (C) health insurance is no longer available for the child(ren);
    - (D) health insurance is not accessible; or
    - (E) health insurance is not reasonable in cost; or
  - (7) when the NCP is incarcerated for ~~at least~~ more than 180-calendar consecutive days.
4. Review of child support order.
  - (1) Examples of cases where CSS may initiate a review of the child support order include, but are not limited to, when:
    - (A) a case includes a child(ren) receiving DHS in child care ~~subsidy~~ benefits and the child support computation does not include any contribution toward child care expenses;
    - (B) a case does not include a medical support order, the cost, or availability of medical support changed;
    - (C) the joint custody order does not include a child support order;
    - (D) the child support guidelines were not followed;
    - (E) CSS staff has information from the CP that the NCP is not exercising the number of ordered overnights per 43 O.S. § 118E;
    - (F) a parent has a significant change in income, such as involuntary job loss or disability; or
    - (G) either parent becomes the recipient of Supplemental Security Income or Social Security Disability benefits.
  - (2) When an NCP notifies CSS that he or she now has physical custody of the child(ren), CSS staff follows the procedures in Oklahoma Administrative Code 340:25-5-201.1 ~~for verification of~~ to verify this information.
  - (3) When CSS staff verifies a custody change for the child(ren), CSS initiates a review of the child support order. CSS staff does not initiate a review of the child support order if:
    - (A) there is any indication of parental kidnapping or involuntary relinquishment of custody; or
    - (B) the NCP is unable to provide convincing verification of a change in custody.
5. Examples of a temporary change of circumstances include, but are not limited

to, a pattern of:

- (1) of frequent changes in physical custody of the child(ren); and or
  - (2) ~~or history of frequent job changes by the parent requesting the review.~~
6. When CSS terminates a review because a party fails to provide information requested by CSS, CSS does not consider the review completed. When a review is terminated and a party subsequently requests a review, CSS staff reviews the last order or completed review date to determine when it has been 12 months since the support order was reviewed at the party's request of a party.
7. CSS staff uses the Paperwork Checklist for Interstate Actions in the Interstate Actions Made Easy guide located on the CSS InfoNet to determine which forms to send to a responding state to request a modification. Prior to transmitting documents to a responding state, CSS calculates past child support, including interest; obtains certified copies of orders, and requires parties to complete necessary documents. CSS uses the documents in interstate cases prescribed by the federal OCSE Action Transmittals AT-05-03, AT-05-04 and AT-05-05, available from the OCSE website at <http://www.acf.hhs.gov/programs/cse/pol/AT/2005/at-05-03.htm>, <http://www.acf.hhs.gov/programs/cse/pol/AT/2005/at-05-04.htm>, and <http://www.acf.hhs.gov/programs/cse/pol/AT/2005/at-05-05.htm>.

### 340:25-5-198.2. Modification

Revised ~~9-17-18~~ 11-10-21

(a) **Authority for modification.** Oklahoma Department of Human Services (~~DHS~~)(OKDHS) Child Support Services (CSS) may initiate modification of a child support order per Section 303.8 of Title 45 of the Code of Federal Regulations (45 C.F.R. §303.8), Sections 112, 118-118I, 118.1, 119, 601-611, 601-613, and 601-615 of Title 43 of the Oklahoma Statutes (43 O.S. §§ 112, 118-118I, 118.1, 119, 601-611, 601-613, and 601-615), and 56 O.S. § 237. CSS initiates a modification in the appropriate tribunal when facts indicate modification is warranted under applicable state or federal law or regulation.

(b) **Modification of child support order.** CSS seeks a modification when: ■ 1 through 3

(1) there is a material change in circumstances per 43 O.S. § 118I including, but not limited to:

(A) a change in either parent's gross income or changes in child support guideline calculation, such as child care expenses or medical support;

(B) a child reaching the age of majority per 43 O.S. § 112;

(C) a component of or the new current child support amount is 20 percent higher or lower than the existing order;

(D) there is a change in physical custody verified, per Oklahoma Administrative Code (OAC) 340:25-5-201.1;

(E) when the noncustodial parent (NCP) is incarcerated for at least more than 180-calendar consecutive days per 45 C.F.R. § 303.8 and OAC 340:25-5-178(k);

■-4 or

(F) one of the parents is determined disabled by the Social Security

Administration and the parent is receiving Supplemental Security Income or Social Security Disability Income; or ■ 54

(2) per 56 O.S. § 237 when the evidence in the case justifies a modification regardless of whether there has been a change of circumstances including, but not limited to, when:

- (A) the original order fails to set child support according to the guidelines;
- (B) an adjustment is needed to maximize a noncustodial parent's (NCP's) available income to meet the current child support obligation in each of the NCP's cases; or
- (C) a parent provides proof the child support obligation is being satisfied in full or in part by an apportionment of the veteran's disability compensation. ■ 65

**(c) Modification of medical support order.**

(1) CSS seeks a modification of a medical support order, when:

- (A) there is no existing order for either parent to provide dependent health care coverage. CSS initiates a modification of a support order to require either or both parents to provide dependent health care coverage when CSS obtains information the child(ren) is not covered under an existing health care plan, regardless if coverage is currently available to either parent;
- (B) the availability of medical insurance changes;
- (C) there is an order for the custodial person to provide medical support for the minor child(ren) and enforcement of the order is not appropriate per 43 O.S. § 139.1 or 21 O.S. § 566;
- (D) an order for the NCP to provide medical insurance and the release of information necessary for enrollment of the child is inappropriate due to family violence and a cash medical order is appropriate per OAC 340:25-5-198; or
- (E) there is an order for a parent to provide medical insurance, the applicant for child support services did not request services against that parent, and the ordered parent is not actually providing medical insurance for the child. ■ 76

(2) When CSS participates in the modification of a child support order filed by a party, CSS requests the court order contain a provision for medical support consistent with OAC 340:25-5-168.

(3) When a child support order exists, CSS considers a request to establish a medical support order as a request for modification of the order per 43 O.S. § 118.1. CSS seeks a medical support order in a tribunal with jurisdiction to modify the child support order and follows procedures per OAC 340:25-5-198.1.

(4) When cash medical support is ordered as part of a modification action, CSS requests a cash medical support order be effective the same date the modified child support amount is effective, unless the parties agree to a different date or the change in health coverage cost or availability occurred on a later date.

**INSTRUCTIONS TO STAFF 340:25-5-198.2**

Revised ~~09-15-21~~11-01-21

- 1. Upon completion of a child support order modification, Oklahoma Department of Human Services Child Support Services (CSS) staff updates the OBLRV screen in the Oklahoma Support Information System (OSIS) associated with the current support amount that was modified.**

2. When there is a subsequent child(ren) born to parents who live in the district office's county, the district office requests the court modify the valid underlying order.
3. When a custodial person (CP) fails to appear for the modification hearing after service, CSS State's Attorney decides when to ask the court to confirm a judgment for arrears that have accrued under the prior order.
4. ~~CSS staff does not remove the judgment or arrears balances from the CSS computer system when modifying an existing order for an incarcerated noncustodial parent (NCP). CSS State's Attorney decides when to ask the court to confirm a judgment for arrears that have accrued under the prior order.~~
5. When a parent is receiving Supplemental Security Income, staff follows Oklahoma Administrative Code (OAC) 340:25-5-178 and Instructions to Staff (ITS).
- 6.5. CSS requests the court consider the apportionment of the veteran's disability compensation amount, per OAC 340:25-5-178 and ITS.
- 7.6. When a third party custodial person does not seek services against one of the parents and that parent is ordered to provide medical support for the child, CSS cannot enforce the medical support order. Therefore, when the ordered parent is not providing the medical insurance, CSS seeks modification to establish the medical support order against the parent for whom CSS has an open case.

## PART 23. ENFORCEMENT

### 340:25-5-200. Enforcement

Revised ~~09-15-21~~11-01-21

(a) **Scope and applicability.** ~~The Oklahoma Department of Human Services Child Support Services (CSS) follows Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code and Section 1738B of Title 28 of the United States Code (28 U.S.C. § 1738B) Section 303.6 of Title 45 of the Code of Federal Regulations (45 C.F.R. § 303.6), and Section 240.1 of Title 56 of the Oklahoma Statutes (56 O.S. § 240.1) in~~ initiating enforcement proceedings.

(1) Orders for current and past child and spousal support, health care coverage, fixed amounts of medical support, judgments, and delinquencies may be enforced through expedited and judicial processes, or through other collection efforts. ■ 1

(2) Past-due child support is a judgment by operation of law and may be enforced in the same manner as any other money judgment, per 43 O.S. § 137.

(3) Post-judgment remedies do not require an adjudicated judgment by a district or administrative court.

(4) Each missed support payment is a judgment; thus, a judgment increases with each missed payment. This total judgment becomes a lien on the noncustodial parent's (NCP) real and personal property ~~of the noncustodial parent (NCP).~~

(b) **Non-Oklahoma support order.** CSS registers a support order from another state, Native American tribe, territory, or foreign country, per subsection (b) of the Full Faith and Credit for Child Support Orders Act codified in 28 U.S.C. § 1738B(b) and 43 O.S. §

601-101(21) when enforcement of the order is sought.

(c) **Multiple support orders.** When multiple child support orders are entered in the same or different tribunals involving the same NCP and child, CSS seeks a determination of controlling order, per 43 O.S. §§ 601-207, 601-307, and 601-601 through 601-603 and Oklahoma Administrative Code (OAC) 340:25-5-270.

(d) **Legal remedies.** CSS determines appropriate enforcement actions and may use any legal remedy to enforce support obligations. ■ 1 CSS chooses remedies designed to obtain compliance with an obligor's support obligations and does not use any remedy for the purpose of punishment. When an NCP is participating in the CSS problem-solving court program or complying with a seek work order, CSS considers the NCP's participation and compliance, per OAC 340:25-5-200.3, when choosing enforcement remedies. Remedies CSS may use include, but are not limited to:

- (1) annual notice to ~~NCPs~~ NCP, per 56 O.S. § 237A and OAC 340:25-5-213;
- (2) income assignment, garnishment, and levy, per Chapter 21 of Title 12 Oklahoma Statutes, 43 O.S. §§ 115 and 601-501 through 601-507, 56 O.S. §§ 237, 240.2, and 240.23, and 42 U.S.C. § 666; ■ 2
- (3) hearing on assets, per 12 O.S. § 842;
- (4) intercept of federal tax refunds, per 42 U.S.C. § 664, 31 C.F.R. § 285.3, and 45 C.F.R. § 303.72, OAC 340:25-5, Part 25;
- (5) Intercept of state tax refunds, per 45 C.F.R. § 303.102, 68 O.S. § 205.2, and OAC 340:25-5, Part 27;
- (5)(6) administrative offsets per 31 U.S.C. § 3716, 31 C.F.R. § 285.1, and Executive Order 13019;
- (6)(7) denial, revocation, or suspension of United States passports, per 56 O.S. § 240.1 and 42 U.S.C. §§ 652 and 654;
- (7)(8) revocation, suspension, non-renewal, and non-issuance of various licenses including, but not limited to, ~~revocations of certificates of motor vehicle titles~~, per 43 O.S. §§ ~~139 and 139.1~~, 47 O.S. §§ 1-153, 6-201, and 6-211, and 56 O.S. §§ 237.1 and 240.15 through 240.21A;
- (8)(9) imposing liens and executing and levying on personal and real property, including, but not limited to, workers' compensation benefits, personal injury, wrongful death, and probate actions, per 43 O.S. § 135, 56 O.S. §§ 237B and 240.23, and Titles 12 and 58 of the Oklahoma Statutes; ■ 3 & 4
- (9)(10) registration of foreign support orders and judgments, per the Uniform Interstate Family Support Act per 43 O.S. §§ 601-100 through 601-903 and the Uniform Enforcement of Foreign Judgments Act, 12 O.S. §§ 719 through 726;
- (10)(11) credit bureau referrals, per 42 U.S.C. § 666 and 15 U.S.C. § 1681b, 56 O.S. § 240.7, and OAC 340:25-5, Part 31;
- (11)(12) financial institution data match, per 42 U.S.C. §§ 666 and 669A, 56 O.S. §§ 240.22 through 240.22G, and OAC 340:25-5-212;
- (12)(13) seek work orders, per 56 O.S. § 240.10;
- (13)(14) indirect civil contempt of court, per 21 O.S. §§ 566 and 567, 43 O.S. § 137, and 56 O.S. § 234. CSS does not use contempt as a penal sanction and does not recommend incarceration to the district court at sentencing in an indirect civil contempt proceeding unless there is evidence or information available that the obligor can purge the contempt. CSS asks the court to set a reasonable purge fee,

- per Rule 8.3 of the Rules of the District Court; ■ 5 & 6  
~~(14)(15) when a debtor transfers income or property to avoid child support payments, action to void the transfer or obtain favorable settlement in cases in which a debtor transferred income or property to avoid payment to a child support creditor~~  
 per the Uniform Fraudulent Transfer Act, 24 O.S. §§ 112 through 123 and 42 U.S.C. § 666;  
~~(15) registration of foreign judgments per the Uniform Enforcement of Foreign Judgments Act, 12 O.S. §§ 719 through 726;~~  
 (16) criminal actions brought per 21 O.S. § 852;  
 (17) civil actions brought per 42 U.S.C. § 660;  
 (18) transfer of child support obligation to another custodian, per 56 O.S. § 237;  
 (19) referral to the United States Attorney for federal prosecution, per 18 U.S.C. § 228;  
 (20) full collection services by the Secretary of the Treasury, per 6305 of the Internal Revenue Code of 1954; and  
 (21) attachment of lottery prize winnings from the Oklahoma Lottery Commission, per 3A O.S. § 724.1.

(e) **Servicemember.** When CSS initiates proceedings to enforce a child support order for a child of an NCP or a custodial person who is a servicemember, CSS applies the provisions of the Servicemembers Civil Relief Act, per 50 U.S.C. §§ 3901 through 4043. ■ 7

(f) **Incarcerated NCP.** When an NCP is incarcerated for 180-consecutive days, CSS follows 43 O.S. §118I and OAC 340:25-5-140 regarding abatement of child support orders.

### **INSTRUCTIONS TO STAFF 340:25-5-200**

1. **The Oklahoma Department of Human Services (DHS) Director authorizes Child Support Services (CSS) state's attorneys and caseworkers to approve subpoenas, issued by the Director's authority per Section 240.23 of Title 56 of the Oklahoma Statutes (56 O.S. § 240.23), through the DHS Director's Authorization memorandum dated December, 2012.**
2. (a) **CSS does not send a notice of income assignment to an employer in another state when there is an active full-service outgoing interstate referral.**  
 (b) **CSS staff sends a manual notice of income assignment to an employer, checking the "One-Time" box, when CSS staff learns an employer is going to pay a noncustodial parent (NCP) a lump sum payment, such as, but not limited to, a bonus, strike, vacation, or severance pay.**
  - (1) **CSS staff considers the arrearage, including interest subject to the withholding limits per 12 O.S. § 1171.2. When the arrearage, including interest is less than the allowable withholding amount available from the lump sum payment, CSS staff advises the employer to withhold the lesser amount.**
  - (2) **When a CSS state's attorney's review of the child support case results in a legal decision to collect the entire lump sum, CSS staff also sends a notice of lien to an employer.**
3. **CSS state's attorneys endorse checks in exchange for a payment in an amount**

that satisfies in full or in part, the CSS lien for workers' compensation benefits, personal injury proceeds, or any child support lien. The CSS office where the check is presented confirms the amount of the settlement with the assigned CSS office prior to endorsing the check and accepting a payment in satisfaction.

4. (a) When an NCP dies, CSS proceeds with case closure per Oklahoma Administrative Code 340:25-5-123 unless CSS staff is aware of a pending probate action.  
(b) When the district office is aware of a probate action and there are funds to be distributed, CSS staff files a lien.  
(c) When there is no probate action pending at the time of case closure, the district office may provide the custodial person (CP) a record of payments for the CP to pursue collection against the estate.
5. (a) In a contempt action, CSS staff follows the Contempt User Guide, available on the CSS Infonet.  
(b) When requesting incarceration, CSS state's attorneys:
  - (1) request the court hold an evidentiary hearing on the obligor's present ability to purge. CSS state's attorneys request the court set a purge amount per Rule 8.3 of the Rules for the District Courts (Rule 8.3) and the evidence elicited at the hearing;
  - (2) may request purge conditions that are less than the full sentence allowed or for less than the full amount owed. For example, CSS state's attorneys may request incarceration for less than the statutory period of 180-calendar days and a purge amount of less than the full amount owed in order to coerce the obligor's partial compliance. When this occurs, CSS state's attorneys request the obligor continue paying based on a new payment plan and the provisions of the court's order for release per Rule 8.3(e)(3);
  - (3) request alternative sentencing options per 21 O.S. § 566.1 as part of the purge when appropriate, including, but not limited to:
    - (A) ordering obligor to participate in the problem solving court program;
    - (B) weekend jail; or
    - (C) ankle monitors that allow the obligor to maintain employment; and
  - (4) ensure a record memorializing the evidence is made. When possible, CSS state's attorneys request a court reporter record the proceedings. When a court reporter is not available, CSS state's attorneys draft a Journal Entry and narrative when appropriate that includes all of the evidence submitted to the court and the court's specific findings regarding the purge conditions.
6. When CSS files a contempt action with the court, staff attaches the Notice of Your Rights in Civil Contempt Actions to the contempt citation and application packet, as an exhibit.
7. (a) CSS staff follows the Guide to the Servicemembers Civil Relief Act (SCRA), available from the CSS InfoNet for procedure regarding:
  - (1) waivers of rights and protection under SCRA;
  - (2) appearance in court actions;

- (3) stays of court;
- (4) default orders; and
- (5) enforcement actions affected by SCRA.

(b) When a party to the case is in default, CSS staff confirms the military status of the defaulting party on the SCRA website, <https://scra.dmdc.osd.mil/scra/#/home>, and files the default affidavit with the court, per Sections 3901 through 4043 of Title 50 of the United States Code.

#### **INSTRUCTIONS TO STAFF 340:25-5-200**

1. The Oklahoma Department of Human Services (DHS) Director authorizes Child Support Services (CSS) state's attorneys and caseworkers to approve subpoenas, issued by the Director's authority per Section 240.23 of Title 56 of the Oklahoma Statutes (56 O.S. § 240.23), through the DHS Director's Authorization memorandum dated December, 2012.
2. (a) CSS does not send a notice of income assignment to an employer in another state when there is an active full-service outgoing interstate referral.  
(b) CSS staff sends a manual notice of income assignment to an employer, checking the "One-Time" box, when CSS staff learns an employer is going to pay a noncustodial parent (NCP) a lump sum payment, such as, but not limited to, a bonus, strike, vacation, or severance pay.
  - (1) CSS staff considers the arrearage, including interest subject to the withholding limits per 12 O.S. § 1171.2. When the arrearage, including interest is less than the allowable withholding amount available from the lump sum payment, CSS staff advises the employer to withhold the lesser amount.
  - (2) When a CSS state's attorney's review of the child support case results in a legal decision to collect the entire lump sum, CSS staff also sends a notice of lien to an employer.
3. CSS state's attorneys endorse checks in exchange for a payment in an amount that satisfies in full or in part, the CSS lien for workers' compensation benefits, personal injury proceeds, or any child support lien. The CSS office where the check is presented confirms the amount of the settlement with the assigned CSS office prior to endorsing the check and accepting a payment in satisfaction.
4. (a) When an NCP dies, CSS proceeds with case closure per Oklahoma Administrative Code 340:25-5-123 unless CSS staff is aware of a pending probate action.  
(b) When the district office is aware of a probate action and there are funds to be distributed, CSS staff files a lien.  
(c) When there is no probate action pending at the time of case closure, the district office may provide the custodial person (CP) a record of payments for the CP to pursue collection against the estate.
5. (a) In a contempt action, CSS staff follows the Contempt User Guide, available on the CSS Infonet.  
(b) When requesting incarceration, CSS state's attorneys:
  - (1) request the court hold an evidentiary hearing on the obligor's present

ability to purge. CSS state's attorneys request the court set a purge amount per Rule 8.3 of the Rules for the District Courts (Rule 8.3) and the evidence elicited at the hearing;

(2) may request purge conditions that are less than the full sentence allowed or for less than the full amount owed. For example, CSS state's attorneys may request incarceration for less than the statutory period of 180-calendar days and a purge amount of less than the full amount owed in order to coerce the obligor's partial compliance. When this occurs, CSS state's attorneys request the obligor continue paying based on a new payment plan and the provisions of the court's order for release per Rule 8.3(e)(3);

(3) request alternative sentencing options per 21 O.S. § 566.1 as part of the purge when appropriate, including, but not limited to:

(A) ordering obligor to participate in the problem solving court program;

(B) weekend jail; or

(C) ankle monitors that allow the obligor to maintain employment; and

(4) ensure a record memorializing the evidence is made. When possible, CSS state's attorneys request a court reporter record the proceedings.

When a court reporter is not available, CSS state's attorneys draft a Journal Entry and narrative when appropriate that includes all of the evidence submitted to the court and the court's specific findings regarding the purge conditions.

6. When CSS files a contempt action with the court, staff attaches the Notice of Your Rights in Civil Contempt Actions to the contempt citation and application packet, as an exhibit.
7. (a) CSS staff follows the Guide to the Servicemembers Civil Relief Act (SCRA), available from the CSS InfoNet for procedure regarding:
  - (1) waivers of rights and protection under SCRA;
  - (2) appearance in court actions;
  - (3) stays of court;
  - (4) default orders; and
  - (5) enforcement actions affected by SCRA.(b) When a party to the case is in default, CSS staff confirms the military status of the defaulting party on the SCRA website, <https://scra.dmdc.osd.mil/scra/#/home>, and files the default affidavit with the court, per Sections 3901 through 4043 of Title 50 of the United States Code.

## **PART 37. RECOVERY**

### **340:25-5-305. Overpayment and recovery policies**

Revised 09-15-2111-01-21

(a) **Legal authority.** Oklahoma Department of Human Services (~~DHS~~)(OKDHS), Child Support Services (CSS) recovers CSS overpayments per Title IV, Part A of Subchapter IV of Chapter 7 of Title 42 of the United States Code; Section 109.5 of Title 43 of the Oklahoma Statutes (43 O.S. § 109.5); and 56 O.S. §§ 171, 185, and 231 through 244.

(b) **Purpose.** The rules in this Part:

(1) establish CSS policies and procedures used to recover CSS overpayments to custodial persons (~~GPs~~)(CP), noncustodial parents (~~NCPs~~)(NCP), and other entities; and

(2) resolve payment disputes arising from overpayments.

(c) **Overpayment recipient and categories.** An overpayment means a CSS payment to a CP, NCP, or other entity to which the entity or person is not entitled. The recipient of the overpayment owes the amount to CSS, acting on behalf of the state of Oklahoma. Categories of overpayments are described in (1) through (3) of this subsection.

(1) Retained support occurs when the CP kept support payment(s) in violation of the assignment of support rights.

(2) Erroneous payment occurs when CSS incorrectly paid money to a CP, NCP, or other entity, or failed to retain money assigned to Oklahoma because of an administrative error.

(3) Bad debt occurs when:

(A) the funding for a payment made by CSS to a CP or NCP is subsequently withdrawn when a tax intercept or other collection is revoked;

(B) a check or other payment instrument received by CSS from an NCP or other payor on behalf of the NCP is dishonored after a payment ~~was~~ is made to the CP; or

(C) CSS issues a payment to a CP based on an incorrect arrearage balance or an incorrect allocation of a payment.

(d) **Overpayment recovery.**

(1) CSS may use any legal remedy to recover overpayments including, but not limited to:

(A) voluntary payments;

(B) state income tax refund intercepts, per 68 O.S. § 205.2; and

(C) lottery prize claims, per 3A O.S. § 724.1.

(2) When an overpayment resulted in whole or in part from false or misleading statements, concealed information, willful misrepresentation, or when fraud is otherwise suspected, CSS reports the information to the ~~DHS~~ OKDHS Office of Inspector General for appropriate action. Action may include, but is not limited to, investigation and criminal prosecution. ■ 1 & 2

(3) In active Temporary Assistance for Needy Families (TANF) cases, when a TANF recipient retains child support receipts, CSS may make a noncooperation referral to Title IV-A staff. CSS recovers overpayments from TANF customers through voluntary payments, state income tax refund intercepts, and lottery prize claims.

(e) **Recovery amount.**

(1) ~~In order to~~ recover child support overpayments, CSS retains 25 percent of monthly current support payments collected for the recipient and retains the total amount of any arrearage payments collected at any time until the overpayment is recovered in full. The percent retained can be changed:

(A) at the CSS director's discretion; or

(B) when the CSS Center for Finance and Budget determines the overpayment ~~was~~ is a result of CP fraud ~~by the CP~~.

(2) When the CP ~~received~~ receives his or her full monthly support payment in the same month as an overpayment, CSS retains the full amount of any subsequent

payments for that month up to the overpayment amount of the overpayment. CSS satisfies any remaining overpayment as set forth in (1) of this subsection.

**(f) Notice and administrative review.**

(1) CSS sends a an overpayment and recovery notice of overpayment and recovery to the overpayment recipient. The notice includes the overpayment amount, payment withholding and collection remedies, and instructions for requesting an administrative review and hearing, per OAC 340:25-5-200.1.

(2) The administrative review provides an opportunity for the overpayment recipient to offer new or additional information regarding the overpayment amount of the overpayment. After the review, CSS issues a notice of administrative review decision.

**(g) Limits to overpayment recovery.**

(1) CSS Center for Finance and Budget completes a case review on the balances owed to a ~~custodial person~~ CP prior to disbursing an overpayment. ■ 3

(2) CSS is not responsible for creating or recovering overpayments for:

(A) non-Title IV-D time periods when non-Title IV-D cases convert to Title IV-D cases; or

(B) time periods when:

(i) CSS ~~collected~~ collects under a court order that was later vacated or after the case is dismissed; ■ 4

(ii) the parties ~~failed~~ fail to provide CSS with verification of a change in the child's physical custody of the child;

(iii) CSS ~~collected~~ collects under a court order that is later modified; or ■ 4 & 5

(iv) CSS ~~collected~~ collects under a court order and the child is adopted.

(C) time periods when cash medical support is distributed to a CP and the Oklahoma Health Care Authority retroactively certifies medical assistance.

(D) ongoing regular payments during the period an NCP incarcerated.

(3) When a child support modification order is effective back to the date the motion to modify was filed and the modified support amount is less than the amount previously ordered and paid, CSS satisfies the amount due when the NCP owes past-due child support, by offsetting the arrears amount, up to the balances currently owed.

(4) CSS does not charge, collect, or pay interest on overpayments.

**(h) Issuance of issuing refunded amounts.** When an NCP makes an overpayment, amounts less than \$3 are not refunded unless issued on an Electronic Benefits Transfer (EBT) card. Amounts less than \$3 and not issued on an EBT card are remitted to the DHS OKDHS General Revenue Fund Treasury.

(i) **Return of Returning excess support amounts.** When CSS receives a payment in ~~excess of that exceeds~~ the NCP's total arrears balance, CSS returns the excess amount to the payor within 45-calendar days after discovering the over collection; ■ 6

(j) **Payments made in error.** When CSS receives a an erroneous payment ~~made due to an error on the part of from~~ the payor that is not disbursed, CSS returns it to the payor within 45-calendar days after discovery. CSS is not required to correct, redirect, or recover the payment unless it is retained;

**(k) Payments that cannot be disbursed to a party.**

(1) CSS applies support collections to other applicable balances associated with the NCP, such as assigned state balances or balances owed to another CP, when the:

- (A) CP's address is unknown;
- (B) CP fails to activate the debit card; or
- (C) debit card is returned to the vendor;

(2) CSS remits a payment to the ~~DHS~~ OKDHS General Revenue Fund Treasury, when the payment cannot be:

- (A) disbursed to a CP;
- (B) applied to assigned state balances associated with an NCP;
- (C) disbursed to the NCP, when the:
  - (i) address is unknown;
  - (ii) debit card is not activated; or
  - (iii) debit card is returned to the vendor; or
- (D) returned to the payor.

**INSTRUCTIONS TO STAFF 340:25-5-305**

Revised 09-15-21

**1. (a) Oklahoma Department of Human Services (DHS) Child Support Services (CSS) staff reports to the DHS Office of Inspector General (OIG) cases, when the overpayment recipient:**

- (1) improperly received at least \$500;**
- (2) had no judgments for recovery of the overpayment;**
- (3) had a last incident of fraud no older than two and one-half years from the date of the fraud report; and**
- (4) resides in Oklahoma.**

**(b) OIG evaluates a referral involving an out-of-state overpayment recipient on a case-by-case basis.**

**2. CSS staff reports fraud to OIG on Form 19MP001E, Referral Form, with documentation evidencing the fraud, including original documents when available.**

**3. When an overpayment is in excess of \$500, Center for Finance and Budget (CFB) staff does not refund prior to a review of the case facts to determine if a refund is appropriate.**

**(a) Prior to informing the parties of a potential refund and possible overpayment CSS district office staff do a review and decide if a hearing is needed,**

**(1) CSS district office staff review the reason for the overpayment that may include reviewing caselog to see if the parties have been calling in about issues on the case (for example: incorrect emancipation date, child support should not be accruing as noncustodial parent (NCP) has child) and contact the parties regarding any waivers or private agreements.**

**(2) CSS district office may contact CFB or Center of Operations for guidance on next appropriate steps.**

**(3) CSS staff sets a hearing to determine the arrears and/or**

- overpayment when the CSS States Attorney decides it is appropriate.
- (b) When the district office review or hearing is complete,
- (1) CSS district office staff request CFB review the overpayment through a Finance Action Request referenced in the Consistent Excellence (CE) Overpayment Guide.
  - (2) CSS district office staff provide all relevant documents, including court orders for overpayments, and facts.
4. When CSS staff was notified of a change in the child support order and failed to update the Oklahoma Support Information System (OSIS), CSS refunds the amount to the payor and recovers the overpayment.
  5. When the CSS call center sends a For Your Information (FYI) message to a district office advising of a child support order obtained or modified without CSS involvement, CSS staff attempts to obtain a copy of the new order from the parties or court records.
  6. Collections for future support are not excess support amounts.