

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 HOUSE BILL 1442

By: Roberts (Dustin)

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5  
6 AS INTRODUCED

7 An Act relating to marriage; amending 43 O.S. 2011,  
8 Section 118B, which relates to child support;  
9 excluding servicemember disability compensation as  
10 income; amending 43 O.S. 2011, Sections 121 and 134,  
11 as last amended by Sections 1 and 2, Chapter 334,  
12 O.S.L. 2012 (43 O.S. Supp. 2016, Sections 121 and  
13 134), which relate to alimony and property division;  
14 declaring servicemember disability compensation to be  
15 separate property; excluding servicemember disability  
16 compensation from alimony calculation; and providing  
17 an effective date.

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

SECTION 1. AMENDATORY 43 O.S. 2011, Section 118B, is  
amended to read as follows:

Section 118B. A. As used in this act:

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

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

a. salaries,

- 1           b.    wages,
- 2           c.    tips
- 3           d.    commissions,
- 4           e.    bonuses,
- 5           f.    severance pay, and
- 6           g.    military pay, including hostile fire or imminent
- 7                 danger pay, combat pay, family separation pay, or
- 8                 hardship duty location pay; and

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

- 11           a.    dividends,
- 12           b.    pensions,
- 13           c.    rent,
- 14           d.    interest income,
- 15           e.    trust income,
- 16           f.    support alimony being received from someone other than
- 17                 the other parent in this case,
- 18           g.    annuities,
- 19           h.    social security benefits,
- 20           i.    workers' compensation benefits,
- 21           j.    unemployment insurance benefits,
- 22           k.    disability insurance benefits,
- 23           l.    gifts,
- 24           m.    prizes,

- n. gambling winnings,
- o. lottery winnings, and
- p. royalties.

B. Income specifically excluded is:

1. Actual child support received for children not before the court;

2. Adoption Assistance subsidy paid by the Department of Human Services;

3. Benefits received from means-tested public assistance programs including, but not limited to:

a. Temporary Assistance for Needy Families (TANF),

b. Supplemental Security Income (SSI),

c. Food Stamps, and

d. General Assistance and State Supplemental Payments for Aged, Blind and the Disabled;

4. Disability compensation or Special Monthly Compensation (SMC) paid to servicemembers by the United States Department of Veterans Affairs;

5. The income of the child from any source, including, but not limited to, trust income and social security benefits drawn on the disability of the child; and

~~5.~~ 6. Payments received by the parent for the care of foster children.

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

4 a. all actual monthly income described in this section,  
5 plus such overtime and supplemental income as the  
6 court deems equitable,

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

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

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

12 2. If a parent is permanently physically or mentally  
13 incapacitated, the child support obligation shall be computed on the  
14 basis of actual monthly gross income.

15 D. Imputed income.

16 1. Instead of using the actual or average income of a parent,  
17 the court may impute gross income to a parent under the provisions  
18 of this section if equitable.

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

22 a. whether a parent has been determined by the court to  
23 be willfully or voluntarily underemployed or  
24 unemployed, including whether unemployment or

1 underemployment for the purpose of pursuing additional  
2 training or education is reasonable in light of the  
3 obligation of the parent to support his or her  
4 children and, to this end, whether the training or  
5 education will ultimately benefit the child in the  
6 case immediately under consideration by increasing the  
7 parent's level of support for that child in the  
8 future,

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

10 c. the past and present employment of the parent,

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

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

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

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

3           E. Self-employment income.

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

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

14           3. The district or administrative court shall deduct from self-  
15 employment gross income an amount equal to the employer contribution  
16 for F.I.C.A. tax which an employer would withhold from an employee's  
17 earnings on an equivalent gross income amount.

18           F. Fringe benefits.

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

23           2. Such fringe benefits might include, but are not limited to,  
24 company car, housing, or room and board.

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

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

9           G. Social Security Title II benefits.

10          1. Social Security Title II benefits received by a child shall  
11 be included as income to the parent on whose account the benefit of  
12 the child is drawn and applied against the support obligation  
13 ordered to be paid by that parent. If the benefit of the child is  
14 drawn from the disability of the child, the benefit of the child is  
15 not added to the income of either parent and not deducted from the  
16 obligation of either parent.

17          2. Child support greater than social security benefit.

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

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

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

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

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

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

18 b. The court may determine if, under the circumstances of  
19 the case, it is appropriate to credit social security  
20 benefits paid to the custodial person prior to a  
21 modification of child support against the past-due  
22 child support obligation of the noncustodial parent.  
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1 c. The noncustodial parent shall not receive credit for  
2 any social security benefits paid directly to the  
3 child.

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

9 SECTION 2. AMENDATORY 43 O.S. 2011, Section 121, as last  
10 amended by Section 1, Chapter 334, O.S.L. 2012 (43 O.S. Supp. 2016,  
11 Section 121), is amended to read as follows:

12 Section 121. A. When a dissolution of marriage is granted, the  
13 decree shall restore:

14 1. To the wife her maiden or former name, if her name was  
15 changed as a result of the marriage and if she so desires;

16 2. To the husband his former name, if his name was changed as a  
17 result of the marriage and if he so desires.

18 B. The court shall enter its decree confirming in each spouse  
19 the property owned by him or her before marriage and the undisposed-  
20 of property acquired after marriage by him or her in his or her own  
21 right. Either spouse may be allowed such alimony out of real and  
22 personal property of the other as the court shall think reasonable,  
23 having due regard to the value of such property at the time of the  
24 dissolution of marriage. Alimony may be allowed from real or

1 personal property, or both, or in the form of money judgment,  
2 payable either in gross or in installments, as the court may deem  
3 just and equitable. As to such property, whether real or personal,  
4 which has been acquired by the parties jointly during their  
5 marriage, whether the title thereto be in either or both of said  
6 parties, the court shall, subject to a valid antenuptial contract in  
7 writing, make such division between the parties as may appear just  
8 and reasonable, by a division of the property in kind, or by setting  
9 the same apart to one of the parties, and requiring the other  
10 thereof to be paid such sum as may be just and proper to effect a  
11 fair and just division thereof. The court may set apart a portion  
12 of the separate estate of a spouse to the other spouse for the  
13 support of the children of the marriage where custody resides with  
14 that spouse.

15 C. A servicemember's portion of disability compensation or  
16 Special Monthly Compensation (SMC) awarded by or from the United  
17 States Department of Veterans Affairs for disabilities, diseases or  
18 injuries or service-connected loss or loss of use of specific organs  
19 or extremities shall be separate property, not divisible as a  
20 marital asset nor as community property. For purposes of  
21 identifying disability compensation or SMC, it is the sole  
22 responsibility of the servicemember to prove with competent evidence  
23 ~~what~~ the amount of his or her disability compensation ~~is~~ or SMC.

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1 D. A servicemember's portion of Combat-Related Special  
2 Compensation (CRSC) shall be separate property, not divisible as a  
3 marital asset nor as community property, if a specific dollar amount  
4 of CRSC can be proved by the servicemember as compensation for  
5 combat-related loss of limb or loss of bodily function and the CRSC  
6 award was applied for and established prior to the date of the  
7 filing of the dissolution of marriage action.

8 E. Pursuant to the federal Uniformed Services Former Spouses'  
9 Protection Act, 10 U.S.C., Section 1408, a court may treat  
10 disposable retired or retainer pay payable to a military member  
11 either as property solely of the member or as property of the member  
12 and the spouse of the member. If a state court determines that the  
13 disposable retired or retainer pay of a military member is the sole  
14 and separate property of the military member, the court shall submit  
15 clear and concise written findings of such determination to be  
16 included in the decree or final order. If a state court determines  
17 that the disposable retired or retainer pay of a military member is  
18 marital property, the court shall submit clear and concise written  
19 findings of such determination to be included in the decree or final  
20 order and shall award an amount consistent with the rank, pay grade,  
21 and time of service of the member at the date of the filing of the  
22 petition, unless the court finds a more equitable date due to the  
23 economic separation of the parties.

1 F. Unless otherwise agreed to by the parties, any division of  
2 an active duty military member's retirement or retainer pay shall  
3 use the following language:

4 "The former spouse is awarded a percentage of the member's  
5 disposable military retired pay, to be computed by multiplying fifty  
6 percent (50%) times a fraction, the numerator of which is \_\_\_\_x\_\_\_\_  
7 months of marriage during the member's creditable military service,  
8 divided by the member's total number of months of creditable  
9 military service."

10 G. In the case of a member's retiring from reserve duty, unless  
11 otherwise agreed by the parties, any division of a reservist's  
12 retirement or retainer pay shall use the following language:

13 "The former spouse is awarded a percentage of the member's  
14 disposable military retired pay, to be computed by multiplying fifty  
15 percent (50%) times a fraction, the numerator of which is  
16 \_\_X\_\_ reserve retirement points earned during the period of the  
17 marriage, divided by the member's total number of reserve retirement  
18 points earned."

19 SECTION 3. AMENDATORY 43 O.S. 2011, Section 134, as last  
20 amended by Section 2, Chapter 334, O.S.L. 2012 (43 O.S. Supp. 2016,  
21 Section 134), is amended to read as follows:

22 Section 134. A. In any dissolution of marriage decree which  
23 provides for periodic alimony payments, the court shall plainly  
24 state, at the time of entering the original decree, the dollar

1 amount of all or a portion of each payment which is designated as  
2 support and the dollar amount of all or a portion of the payment  
3 which is a payment pertaining to a division of property. The court  
4 shall specify in the decree that the payments pertaining to a  
5 division of property shall continue until completed. Payments  
6 pertaining to a division of property are irrevocable and not subject  
7 to subsequent modification by the court making the award. An order  
8 for the payment of money pursuant to a dissolution of marriage  
9 decree, whether designated as support or designated as pertaining to  
10 a division of property shall not be a lien against the real property  
11 of the person ordered to make such payments unless the court order  
12 specifically provides for a lien on real property. An arrearage in  
13 payments of support reduced to a judgment may be a lien against the  
14 real property of the person ordered to make such payments.

15 B. The court shall also provide in the dissolution of marriage  
16 decree that upon the death or remarriage of the recipient, the  
17 payments for support, if not already accrued, shall terminate. The  
18 court shall order the judgment for the payment of support to be  
19 terminated, and the lien released upon the presentation of proper  
20 proof of death of the recipient unless a proper claim is made for  
21 any amount of past-due support payments by an executor,  
22 administrator, or heir within ninety (90) days from the date of  
23 death of the recipient. Upon proper application the court shall  
24 order payment of support terminated and the lien discharged after

1 remarriage of the recipient, unless the recipient can make a proper  
2 showing that some amount of support is still needed and that  
3 circumstances have not rendered payment of the same inequitable,  
4 provided the recipient commences an action for such determination,  
5 within ninety (90) days of the date of such remarriage. Any  
6 modification of alimony payments shall be effective upon the date of  
7 the filing of the requested modification.

8 C. The voluntary cohabitation of a former spouse with a member  
9 of the opposite sex shall be a ground to modify provisions of a  
10 final judgment or order for alimony as support. If voluntary  
11 cohabitation is alleged in a motion to modify the payment of  
12 support, the court shall have jurisdiction to reduce or terminate  
13 future support payments upon proof of substantial change of  
14 circumstances of either party to the dissolution of marriage  
15 relating to need for support or ability to support. As used in this  
16 subsection, the term cohabitation means the dwelling together  
17 continuously and habitually of a man and a woman who are in a  
18 private conjugal relationship not solemnized as a marriage according  
19 to law, or not necessarily meeting all the standards of a common-law  
20 marriage. The petitioner shall make application for modification  
21 and shall follow notification procedures used in other dissolution  
22 of marriage decree modification actions. The court that entered the  
23 dissolution of marriage decree shall have jurisdiction over the  
24 modification application.

1 D. Except as otherwise provided in subsection C of this  
2 section, the provisions of any dissolution of marriage decree  
3 pertaining to the payment of alimony as support may be modified upon  
4 proof of changed circumstances relating to the need for support or  
5 ability to support which are substantial and continuing so as to  
6 make the terms of the decree unreasonable to either party.  
7 Modification by the court of any dissolution of marriage decree  
8 pertaining to the payment of alimony as support, pursuant to the  
9 provisions of this subsection, may extend to the terms of the  
10 payments and to the total amount awarded; provided however, such  
11 modification shall only have prospective application.

12 E. In no event shall an award of alimony, whether designated  
13 for support or for property division, be based on the  
14 servicemember's portion of any disability compensation or Special  
15 Monthly Compensation (SMC) award from the United States Department  
16 of Veterans Affairs.

17 F. Pursuant to the federal Uniformed Services Former Spouses'  
18 Protection Act, 10 U.S.C., Section 1408, a court may treat  
19 disposable retired or retainer pay payable to a military member  
20 either as property solely of the member or as property of the member  
21 and the spouse of the member. If a state court determines that the  
22 disposable retired or retainer pay of a military member is the sole  
23 and separate property of the military member, the court shall submit  
24 clear and concise written findings of such determination to be

1 included in the decree or final order. If a state court determines  
2 that the disposable retired or retainer pay of a military member is  
3 marital property, the court shall submit clear and concise written  
4 findings of such determination to be included in the decree or final  
5 order and shall award an amount consistent with the rank, pay grade,  
6 and time of service of the member at the date of the filing of the  
7 petition, unless the court finds a more equitable date due to the  
8 economic separation of the parties.

9 G. Unless otherwise agreed to by the parties, any division of  
10 an active duty military member's retirement or retainer pay shall  
11 use the following language:

12 "The former spouse is awarded a percentage of the member's  
13 disposable military retired pay, to be computed by multiplying fifty  
14 percent (50%) times a fraction, the numerator of which is \_\_\_x\_\_\_  
15 months of marriage during the member's creditable military service,  
16 divided by the member's total number of months of creditable  
17 military service."

18 H. In the case of a member's retiring from reserve duty, unless  
19 otherwise agreed by the parties, any division of a reservist's  
20 retirement or retainer pay shall use the following language:

21 "The former spouse is awarded a percentage of the member's  
22 disposable military retired pay, to be computed by multiplying fifty  
23 percent (50%) times a fraction, the numerator of which is  
24 \_\_\_x\_\_\_ reserve retirement points earned during the period of the



1 marriage, divided by the member's total number of reserve retirement  
2 points earned."

3 I. The provisions of subsection D of this section shall have  
4 retrospective and prospective application with regards to  
5 modifications for the purpose of obtaining support or payments  
6 pertaining to a division of property on dissolution of marriage  
7 decrees which become final after June 26, 1981. There shall be a  
8 two-year statute of limitations, beginning on the date of the final  
9 dissolution of marriage decree, for a party to apply for division of  
10 disposable retired or retainer pay.

11 J. The provisions of subsections C and D of this section shall  
12 have retrospective and prospective application with regards to  
13 modifications of the provisions of a final judgment or order for  
14 alimony as support, or of a dissolution of marriage decree  
15 pertaining to the payment of alimony as support, regardless of the  
16 date that the order, judgment, or decree was entered.

17 SECTION 4. This act shall become effective November 1, 2017.

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