

HOUSE BILL REPORT

HB 1576

As Reported By House Committee On:
Judiciary

Title: An act relating to contempt actions to enforce child support obligations.

Brief Description: Specifying how a contempt action may be used to collect court-ordered child support.

Sponsors: Representatives Brown, L. Johnson, Riley, Karahalios, Appelwick, Kessler, Veloria, Ogden, Dunshee, Miller, Ludwig, Cooke, Schmidt, Long, Eide, Cothorn, Romero, Johanson and G. Cole.

Brief History:

Reported by House Committee on:
Judiciary, March 3, 1993, DPS.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Campbell; Chappell; Forner; Johanson; Locke; Long; Mastin; H. Myers; Schmidt; Scott; and Wineberry.

Minority Report: Do not pass. Signed by 4 members: Representatives Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Riley; and Tate.

Staff: Patricia Shelledy (786-7149).

Background: A divorced parent may be obligated to pay child support for a "dependent child." A dependent child means any child for whom a support order has been established or for whom a duty of support is owed. A child may be dependent even if the child is over the age of 18. A divorced parent may also be ordered to pay support for post-majority support, including educational expenses. If a person who is obligated to pay support pursuant to a support order fails to comply with the order, the court may find the obligor in contempt of court.

The court may impose a remedial sanction, which is a sanction imposed to coerce the obligor into complying with

the order, or a punitive sanction, which is imposed to punish a past contempt of court. Only a court may find an obligor in contempt of court. The court or the aggrieved party may initiate a contempt proceeding to seek a remedial sanction. Only a prosecuting attorney may initiate a contempt action to impose a punitive sanction.

A remedial sanction may include: (1) imprisonment, which may extend only for so long as it serves a coercive purpose; (2) forfeiture not to exceed \$2,000 for each day the contempt continues; (3) an order designed to ensure compliance with the order; or (4) any other remedial sanction other than sanctions (1) - (3) if the court expressly finds that those sanctions would be ineffective in ensuring compliance.

A punitive sanction may include not more than a \$5,000 fine or imprisonment for not more than one year, or both, for each separate contempt of court.

If the obligor contends that he or she lacked the means to comply with the support order, the obligor must establish that he or she exercised due diligence in seeking employment, in conserving assets, or otherwise in rendering himself or herself able to comply with the court order.

A question exists whether contempt of court may be used as a remedy to enforce a support order when the child is no longer dependent, even if the obligor has failed to pay support that accrued while the child was dependent. The court, in Dawson v. Dawson, 71 Wn. 2d 66 (1967), held that the court was without jurisdiction to hold an obligor in contempt after the child was no longer a minor. The court held that contempt is an extraordinary remedy which is not available when the child reaches the age of majority. The court stated that the obligee may use other remedies to collect the past due support. However, the Dawson v. Dawson case was based upon an earlier statute no longer in effect which referred to "minor" children, which did not expressly provide that the court had continuing jurisdiction to enforce the support order, and which did not expressly provide that contempt was an available remedy for past due support, even if the child was no longer dependent. A question may also exist whether contempt is a remedy to enforce support orders entered for purposes other than "child" support, such as support orders entered for post-majority support and postsecondary educational support.

Summary of Substitute Bill: Current law is clarified to provide that a contempt action is a remedy to enforce any support order established by a court or pursuant to an administrative hearing. A contempt action may be used to

enforce a support order until the obligor satisfies all duties of support, including arrearages that accrued pursuant to the support order.

Substitute Bill Compared to Original Bill: The amendment is rewritten to provide that the court has continuing jurisdiction over the parties until all obligations of any support order, not just child support, are paid, including arrearages.

Fiscal Note: Requested February 15, 1993.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: A court should be able to enforce its order even if the child is no longer dependent. Contempt is a very important mechanism to obtain compliance. Sometimes obligers hide income and assets, so other forms of collection do not work. Courts should be able to use the remedy to enforce orders for postsecondary education support.

Testimony Against: Divorced parents should not have to pay postsecondary education support and therefore should not be subjected to jail or fines to enforce payment for postsecondary education. Using contempt as an enforcement mechanism when the child is no longer dependent may be unconstitutional.

Witnesses: Representative Lisa Brown, prime sponsor (pro); Paula Crane, Washington State Bar Association Family Law Section (pro); Judy Turpin, Northwest Women's Law Center (pro); Michele Delo, Washington Families (con); and Lonnie Johns-Brown, National Organization for Women, Washington Chapter (pro).