

HOUSE BILL REPORT

ESHB 1916

As Passed House:
March 1, 2019

Title: An act relating to improving the delivery of child support services to families by increasing flexibility and efficiency.

Brief Description: Improving the delivery of child support services to families by increasing flexibility and efficiency.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Kilduff, Leavitt, Ortiz-Self and Ormsby; by request of Department of Social and Health Services).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/19/19, 2/22/19 [DPS].

Floor Activity:

Passed House: 3/1/19, 93-1.

Brief Summary of Engrossed Substitute Bill

- Revises child support provisions regarding: the data and analyses the quadrennial child support work groups must consider; standards for modification or adjustment of court or administrative child support orders; and the annual fee for support enforcement services in non-assistance cases.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Jinkins, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Goodman, Graham, Hansen, Kilduff, Kirby, Klippert, Orwall, Shea, Valdez, Walen and Ybarra.

Staff: Edie Adams (786-7180).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Child Support and the Interplay of Federal and State Laws.

Child support obligations are established in the context of dissolution of marriage or parentage proceedings through the court or an administrative process with the Department of Social and Health Services (DSHS). The DSHS Division of Child Support (DCS) is responsible for administering the state's child support enforcement program.

Federal law requires states to have an approved child support program as a condition of receiving federal funds for various programs, including child support enforcement and Temporary Assistance for Needy Families (TANF) programs. To meet federal requirements, states must conduct quadrennial reviews of their child support laws. Every four years, the DCS convenes a work group to review Washington's child support laws. The first meeting of the 2019 Child Support Work Group was held on January 25, 2019.

2018 State Legislation. The amount of child support is determined using the statutory child support schedule, which includes an economic table and the child support worksheets developed by the Administrative Office of the Courts. The economic table is used to establish the basic support obligation for each parent, which can then be modified based on statutorily established adjustments and deviations. In 2018 a new economic table was adopted as recommended by the 2011 and 2015 Child Support Work Groups. Under the new economic table, the basic support obligation is based on the combined monthly net income of the parents and the number of children before the court. Prior to adoption of the new economic table, the ages of the children were also a factor in determining basic support obligation amounts. The 2018 legislation also clarified language relating to the application of low-income limitations on support obligations.

New Federal Rules. Federal rules that went into effect on January 19, 2017, require that, as part of each state's first quadrennial review of child support guidelines following revision of its guidelines a state must:

- consider economic data on the cost of raising children, labor market data by occupation and skill-level for the state and local job markets, the impact of guideline policies and amounts on custodial and noncustodial parents who have family incomes below 200 percent of the federal poverty level, and factors that influence employment rates among noncustodial parents and compliance with child support orders; and
- analyze case data on the application of and deviations from the child support guidelines, as well as the rates of default, imputed child support orders, and orders determined using the low-income adjustment. The analysis must also include a comparison of payments on child support orders by case characteristics, including whether the order was entered by default, based on imputed income, or determined using the low-income adjustment. The analysis of the data must be used in the state's review of the child support guidelines to ensure that deviations from the guidelines are limited and guideline amounts are appropriate based on certain criteria.

These same federal rules address modification of support obligations of incarcerated parents. The federal rules permit states to establish an automatic review and adjustment procedure after learning that a parent will be incarcerated for more than 180 calendar days. If a state does not elect an automatic review procedure, the state must provide notice within 15 business days of learning that a parent will be incarcerated for more than 180 calendar days to both parents informing them of the right to request the state to review and, if appropriate,

adjust the order. The notice must specify, at a minimum, the place and manner in which the request should be made. Neither the notice nor a review is required if the state has a comparable law or rule that modifies a child support obligation upon incarceration by operation of state law.

Modification of Child Support Court Orders.

A party to a child support order may petition the court for modification of the order at any time upon a showing of a substantial change in circumstances. An order may be modified one year or more after it has been entered without a showing of a substantial change in circumstances for limited reasons specified in statute, such as:

- if the order works a severe economic hardship on either party or the child;
- if the party requests an adjustment in an order for support which was based on guidelines which determined the amount according to the child's age, and the child is no longer in that age category; or
- if the child is in high school and support beyond the child's eighteenth birthday is needed.

Child support orders may be adjusted once every 24 months based upon changes in the parents' income without a showing of a substantial change in circumstances. An order may also be adjusted 24 months from the date of the entry or the last adjustment, whichever is later, based upon changes in the statutory child support economic table.

The DCS provides services to establish, modify, and enforce child support orders. The DCS must provide services if a family is receiving TANF. In cases in which assistance is being paid on behalf of the child, the DCS may file an action to modify or adjust a child support order if the order is at least 25 percent above or below the standard calculation and the reasons for deviation are not set forth in findings. In non-assistance cases, the DCS may file an action to modify or adjust an order if the case meets the DCS's review criteria, the order is at least 25 percent above or below the standard calculation, and a party to the order or another jurisdiction has requested review. In addition, the DCS may file an action in non-assistance cases to modify or adjust a child support order under any of the statutorily authorized circumstances if a party to the order requests review.

Modification of Child Support Administrative Orders.

Modification of an administrative order may be sought by the DCS, the physical custodian, or the responsible parent if the administrative order has not been superseded by a court order and there has been a substantial change of circumstances. One year or more after an order has been entered, it may be modified without showing a substantial change of circumstances:

- if the order works a severe economic hardship on either party or the child;
- if the party requests an adjustment in an order for support which was based on guidelines which determined the amount according to the child's age, and the child is no longer in that age category; or
- if a child is a full-time student and reasonably expected to complete secondary school or the equivalent level of vocational or technical training before the child turns age 19 upon a finding that there is a need to extend support beyond the eighteenth birthday.

Annual Fee for Support Enforcement Services in Non-Assistance Cases.

In providing child support services, federal law requires states to impose an annual fee on families who have never received TANF cash assistance. State law requires the \$25 annual fee to be deducted from the support collected on behalf of the individual after the first \$500 in child support is collected.

The Bipartisan Budget Act of 2018 (Public Law 115-123) raises the annual fee for child support enforcement services from \$25 to \$35, and increases the amount of child support that must be collected for a case to be subject to the fee from \$500 to \$550. This provision is effective in federal fiscal year 2019, but allows a delay for states that require a legislative change for implementation.

Summary of Engrossed Substitute Bill:

The quadrennial child support work groups must consider the economic and case data and perform the analyses expressly required by the federal rules in conducting the review of the child support guidelines.

In cases in which Temporary Assistance for Needy Families (TANF) assistance is being paid on behalf of the child, the Department of Social and Health Services' Division of Child Support (DCS) may file an action to modify or adjust a child support order if the order is at least 15 percent above or below the standard calculation. It is no longer a prerequisite to such filing that the reasons for deviation are not set forth in findings.

In non-assistance cases, the DCS may file an action to modify or adjust an order if the case meets the DCS's review criteria, the order is at least 15 percent above or below the standard calculation, and a party to the order or another jurisdiction has requested review. The determination of whether the child support order is at least 15 percent above or below the appropriate child support amount must be based on the current income of the parties.

If incarceration of the parent obligated to pay support is the basis for the difference between the existing child support order amount and the proposed amount of support determined as a result of a review, the DCS may file an action to modify or adjust a child support order even if there is no other change of circumstances and the change in support does not meet the 15 percent threshold. An administrative order of child support may be modified at any time without a showing of substantially changed circumstances if incarceration is the basis for the inconsistency between the existing child support order amount and the amount of support determined as a result of a review.

Effective October 1, 2019, the annual fee for individuals receiving child support who have never received TANF assistance is increased from \$25 to \$35, and the amount of child support that must be collected for a case to be subject to the fee is increased from \$500 to \$550.

In accord with 2018 changes to the economic table, language governing modification based on the age of the children is stricken.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 4, 2019.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) There are four pieces to this bill. The first piece is cleanup (necessitated by 2018 legislation that removed the age of the children as a factor in determining the basic support obligation) of some statutes that still have language that needs to be stricken. The second and third pieces are made in order to comply with federal law and will have the work group consider considerably more information and will allow for an action for modification to be filed so as to allow the court to consider the fact that a parent obligated to pay has been incarcerated. The fourth piece allows filing by the Department of Social and Health Services (DSHS) for modification to adjust the amount if it is at least 15 percent, rather than 25 percent, above or below the standard calculation in order to make sure that the obligation is tied to parents' wages. This is DSHS request legislation. It will improve the process. The new federal rule, known as the flexibility rule, updates the review criteria. When the legislature enacted the new law last year, it triggered this federal rule that requires that the new review criteria be considered. The federal government has assured the state that if the child support work group does consider these things, the state will be considered in compliance even if the state law is not officially changed to reflect these new considerations until the effective date, which is after the date that the work group first convened. The change from a 25 percent threshold to a 15 percent threshold reflects the fact that 25 percent can be too restrictive. Orders can be hard on either or both of the parents, even if the 25 percent threshold has not been met. The change with respect to incarceration will only allow modification to be considered by the court. Modification is not automatic. A judge will still have to decide in any case whether the order should be modified. If the bill is not passed, there is a possibility that the federal government could find the state out of compliance, which could affect the Temporary Assistance for Needy Families block grant.

(Opposed) None.

Persons Testifying: Representative Kilduff, prime sponsor; and Sharon Redmond, Department of Social and Health Services.

Persons Signed In To Testify But Not Testifying: None.