
Civil Rights & Judiciary Committee

SHB 2302

Brief Description: Concerning child support, but only with respect to standards for determination of income, abatement of child support for incarcerated obligors, modification of administrative orders, and notices of support owed.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representative Kilduff).

Brief Summary of Bill

- Creates standards for the determination of income for purposes of establishing child support obligations.
- Authorizes and establishes procedures for the abatement of child support obligations for incarcerated parents.
- Revises provisions governing notices of child support owed and service of the hearing notices for modification of an administrative order.

Hearing Date:

Staff: Edie Adams (786-7180).

Background:

Child and Federal Requirements.

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). Child support obligations are determined based on the child support schedule, which includes the statutory standards and economic table, as well as worksheets developed by the Administrative Office of the Courts. The DSHS Division of Child Support

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

(DCS) is responsible for administering the state's child support enforcement program and provides services to establish, modify, and enforce child support orders.

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. The DCS convenes a work group to review Washington's child support laws every four years. The 2019 Child Support Schedule Work Group issued its recommendations in September, 2019, including recommendations regarding how to determine the income of the parents for purposes of establishing child support obligations.

Standards for Determination of a Parent's Income.

The child support schedule provides that all income and resources of each parent's household must be disclosed and considered by the court when determining the child support obligation for each parent.

The court must impute income when the court determines that a parent is voluntarily unemployed or voluntarily underemployed. The court must determine whether a parent is voluntarily unemployed or voluntarily underemployed based upon the parent's work history, education, health, age, or other relevant factors. Income is imputed in the following order of priority when there are no records of the parent's actual earnings:

- full-time earnings at the current rate of pay;
- full-time earnings at the historical rate of pay based on reliable information;
- full-time earnings at a past rate of pay where information is incomplete or sporadic;
- full-time earnings at minimum wage in the jurisdiction where the parent resides if the parent: has a recent history of minimum wage earnings; is recently coming off public assistance programs; has recently been released from incarceration; or is a high school student;
- median net monthly income of year-round full-time workers as derived from the United States (U.S.) Bureau of Census reports.

Income may not be imputed to: (1) a person who is employed on a full-time basis unless the court finds the person is voluntarily underemployed for the purpose of reducing his or her child support obligation; (2) an unemployable person; or (3) a person who is unemployed or significantly underemployed due to efforts to comply with court-ordered reunification efforts or a voluntary placement agreement with a supervising agency. Under case law, an incarcerated parent may not be considered voluntarily unemployed or underemployed.

Federal rules that went into effect in 2017 provided that states that authorize imputation of income should take into consideration the specific circumstances of the parent, including the following factors: assets; residence; employment and earnings history; job skills; educational attainment; literacy; age and health; criminal record and other employment barriers; record of seeking work; the local job market; the availability of employers willing to hire the parent;

prevailing earnings in the community; and other relevant background factors.

Modification of Child Support Court Orders.

A party to a child support order may petition for modification of the order at any time upon a showing of a substantial change in circumstances. An order may be modified without a showing of a substantial change in circumstances for limited reasons specified in statute (e.g. if the order works a severe economic hardship on either party or the child). The DCS is required to review child support orders for families receiving TANF assistance every three years and review orders in non-assistance cases if requested by one of the parties. 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 15 percent above or below the standard calculation. 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. In addition, the DCS may file an action in nonassistance cases to modify or adjust a child support order under any of the statutorily authorized circumstances if a party to the order requests review.

Incarcerated Parents.

Federal rules that went into effect in 2017 address modification of support obligations of incarcerated parents. The 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.

Legislation enacted in 2019 established standards for modification of child support for incarcerated parents. 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 DCS 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.

Testing.

Summary of Substitute Bill:

Appropriation: None.

Fiscal Note: Requested on January 7, 2020.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except section 13, which, due to a prior delayed effective date, takes effect January 1, 2021.