

# HOUSE BILL REPORT

## SHB 2302

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### As Passed Legislature

**Title:** An act relating to 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.

**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 History:**

##### **Committee Activity:**

Civil Rights & Judiciary: 1/15/20, 1/31/20 [DPS].

##### **Floor Activity:**

Passed House: 2/13/20, 57-41.

Senate Amended.

Passed Senate: 3/6/20, 27-21.

House Concurred.

Passed House: 3/9/20, 57-39.

Passed Legislature.

#### **Brief Summary of Substitute 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.

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### HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

*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.*

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Kilduff, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Goodman, Hansen, Kirby, Orwall, Peterson, Rude, Valdez and Walen.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Klippert and Ybarra.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Dufault, Assistant Ranking Minority Member; Graham.

**Staff:** Edie Adams (786-7180).

### **Background:**

#### Child Support and Federal Requirements.

Child support obligations are established 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 (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 makes this determination 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; and

- median net monthly income of year-round full-time workers as derived from the United States Bureau of Census reports.

Income may not be imputed to: (1) a person employed on a full-time basis unless the court finds the person is voluntarily underemployed for the purpose of reducing the 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. The DCS is required to review child support orders for families receiving TANF assistance every three years and review orders in nonassistance 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 nonassistance 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.

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.

#### Notices of Support Owed.

A notice of support owed is used by the DCS to establish a fixed dollar amount of a support debt or support obligation when a fixed amount is not provided in the underlying child support order. Under statute and DCS rules, the DCS may issue a notice of support owed when the underlying court order: (a) does not state the monthly support obligation as a fixed dollar amount; (b) contains an adjustment provision for which additional information is needed to determine the fixed dollar amount; (c) provides that the responsible parent must pay a portion of the child's nonmedical expenses, but does not reduce the amount owed to a fixed dollar amount; or (d) provides that either parent must provide medical support but does not reduce the medical support obligation to a fixed dollar amount.

The notice of support owed must state an initial finding of the fixed dollar amount of the support obligation, and a parent who objects to the amount has 20 days from the date of service of the notice to commence an adjudicative or judicial proceeding to contest the amount. The notice of support owed must be served on the responsible parent by personal service or any form of mailing requiring a return receipt, and on the applicant or recipient of services by first-class mail to the last known address. The DCS must conduct an annual review of a support order that was the subject of a notice of support owed if the DCS or a parent requests a review. A notice of support owed associated with an annual review is served in the same manner as the initial notice of support owed.

#### **Summary of Substitute Bill:**

##### Standards for Determination of a Parent's Income.

Standards for determining the income of parents for purposes of establishing child support obligations are revised.

When determining whether a parent is voluntarily unemployed or voluntarily underemployed, the court must consider the following additional factors relating to the parent: assets; residence; employment and earnings history; job skills; literacy; criminal record, dependency court obligations, and other employment barriers; record of seeking work; the local job market; the availability of employers willing to hire the parent; and the prevailing earnings level in the community.

When a parent is determined to be voluntarily unemployed or voluntarily underemployed, there is a rebuttable presumption that income should be imputed at earnings of 32 hours per week at minimum wage in the jurisdiction where the parent resides if the parent:

- is recently coming off the following assistance programs: Temporary Assistance for Needy Families; aged, blind, or disabled assistance benefits; pregnant women assistance benefits; essential needs and housing support; supplemental security income; or disability;
- has recently been released from incarceration; or
- is a recent high school graduate.

For a parent who has never been employed and has no earnings history, or who has no significant earnings history, income is imputed at full-time earnings at minimum wage in the jurisdiction where the parent resides. "Full time" is defined as the customary maximum, nonovertime hours in a person's occupation, industry, and labor market. "Full time" does not necessarily mean 40 hours per week.

When a parent is currently enrolled in high school, the court must look at the totality of the circumstances when determining whether each parent is voluntarily unemployed or voluntarily underemployed. When a parent currently enrolled in high school is determined to be voluntarily unemployed or voluntarily underemployed, there is a rebuttable presumption that income will be imputed at earnings of 20 hours per week at minimum wage in the jurisdiction where the parent resides.

#### Abatement of Child Support for Incarcerated Parents.

Procedures are established authorizing abatement of child support obligations for incarcerated parents who are confined in a jail, prison, or correctional facility for at least six months or serving a sentence greater than six months in a jail, prison, or correctional facility.

A child support order may include language providing for abatement of the child support obligation based on incarceration of the person required to pay support. The Department of Social and Health Services (DSHS) Division of Child Support (DCS) must review a child support order that includes abatement language when it receives notice that the person required to pay support is incarcerated. The DCS must provide notice to the person required to pay support and the payee or person entitled to receive support of its determination of whether or not abatement is appropriate.

A party must make any objection to the decision to abate or not abate the child support obligation within 20 days of notification. The DCS will refer the objection to the Office of Administrative Hearings for an adjudicative proceeding. A party objecting to abatement has the burden of proof to show that the incarcerated person has possession of, or access to, income or assets available to provide support while incarcerated.

If a child support order does not include language providing for automatic abatement based on incarceration, the DCS, the person required to pay support, or the payee or person entitled to receive support may commence an action to modify the order to include automatic abatement language and to abate the person's child support obligation due to incarceration for at least six months.

There is a presumption that an incarcerated person is unable to pay the child support obligation. A party may rebut the presumption by demonstrating that the person required to pay support has possession of, or access to, income or assets available to provide child support while incarcerated. If the court or administrative forum determines that abatement is appropriate, the child support obligation is abated to \$10 per month, regardless of the number of children covered by the order. Abatement continues until the last day of the third month after the person is released from confinement, at which point the support obligation is reinstated at 50 percent of the underlying support obligation, but not less than the presumptive minimum support obligation of \$50 per month per child. One year after release from confinement, reinstatement at 50 percent of the support amount is terminated, and the

support obligation is automatically reinstated at 100 percent of the support amount in the underlying order.

The effective date of an abatement of child support based on incarceration is the date on which the person required to pay support is incarcerated for at least six months or begins serving a sentence for greater than six months. However, a person required to pay support is not entitled to a refund of support payments received by the DCS prior to the date on which the DCS received notice of the incarceration, and the DCS, the payee, or the person entitled to receive support is not required to refund any payments received prior to that date.

Procedures are established for the DCS, the payee, or the person entitled to receive support to file a request to reverse or terminate the abatement of child support. The person must provide evidence at the administrative proceeding that the person required to pay support has possession of, or access to, income or assets available to provide support while incarcerated. The administrative law judge may order the abatement to be reversed, which reinstates all amounts owed under the support order, or terminated on the date specified in the order. The person required to pay support may request a reversal or termination of abatement without providing evidence to support the request.

After reinstatement of an abated child support order following a parent's release from incarceration, an action to modify or adjust the support order may be filed by the person required to pay support, the payee under the order, the person entitled to receive support, or the DCS, without a showing of substantial change of circumstances.

#### Notices of Support Owed.

More specific provisions are added governing use of notices of support owed when a person must pay a portion of medical support or child care or day care expenses. A notice of support owed must contain a statement that any subsequent notice of support owed created for reviewing amounts established in the current notice may be served on any party by regular mail to the person's last known address. A notice of support owed associated with an annual review may be served on the person required to pay support by regular mail to that person's last known address. An initial or subsequent notice of support owed may be served on the person who is entitled to receive the support by regular mail.

If an adjudicative hearing is requested to challenge the fixed dollar amount in a notice of support owed, the Office of Administrative Hearings must schedule a hearing at which all persons included in the notice are entitled to participate.

Any party may request that the DCS accelerate the annual review of a prior notice of support owed if a change in the actual expense occurs before 12 months pass. The DCS must determine whether the change in the actual expense is likely to create a significant overpayment or underpayment if it does not serve a new notice of support owed.

#### Other Provisions.

When the DCS petitions for a modification of an administrative child support order, the Office of Administrative Hearings, rather than the DCS, will generate and mail the notice of hearing to the parties.

The DSHS is granted rule-making authority to adopt rules necessary to implement the act.

Terminology is revised in numerous child support provisions, including changing terminology such as "responsible parent" and "custodial parent" to instead refer to "person required to pay support," "payee under the order," and "person entitled to receive support."

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed, except sections 3 through 13, relating to abatement of support based on incarceration, which take effect February 1, 2021.

**Staff Summary of Public Testimony:**

(In support) This bill includes five recommendations of the Child Support Work Group (Work Group) relating to income and imputation of income. The guiding principle for the Work Group was that child support should accurately reflect what a parent is earning or realistically is able to earn. Washington's higher minimum wage creates a risk of greater disparity between earnings potential and actual child support obligations. For high school parents, the court should look at the totality of circumstances because we want teen parents to obtain a high school diploma.

The bill also addresses support obligations for incarcerated parents. It is difficult for this group to hire an attorney to modify an order, so the bill allows a party to seek abatement of the support obligation for an incarcerated parent who has no income or assets. This will help eliminate accumulation of debt and barriers to reentry. There is still a minimum support obligation during incarceration because research shows that it is important for children that a parent is paying child support.

The other changes in the bill come by request of the Department of Social and Health Services Division of Child Support and allow for a more real-time assessment of obligations under notices of support owed and shifting the hearing notices for modification actions to the Office of Administrative Hearings.

(Opposed) None.

(Other) The income determination provisions come from recommendations of the Work Group, which consisted of a diverse set of members that considered all options and input from stakeholders. The section governing abatement of child support for incarcerated parents is intended to increase the number of parents who are able to contribute to their families and communities by removing barriers and aligning support orders with the parent's ability to pay. The bill creates a presumption of abatement when the parent will be incarcerated for six months or longer, but this presumption is overcome if the parent does in fact have assets. These provisions should be delayed until February 2021, to give time for necessary technology changes and training. The remaining sections of the bill are aimed at improving processes. A party should be able to obtain an adjustment of costs for day care or medical

care when circumstances change without having to wait a full year. Requiring the Office of Administrative Hearings to send the notice for a modification action will create efficiencies.

**Persons Testifying:** (In support) Representative Kilduff, prime sponsor.

(Other) Sharon Redmond, Department of Social and Health Services Division of Child Support.

**Persons Signed In To Testify But Not Testifying:** None.