

SENATE BILL REPORT

SHB 2302

As of February 28, 2020

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

Committee Activity: Law & Justice: 2/20/20, 2/27/20 [DPA-WM, w/oRec].

Ways & Means:

Brief Summary of Amended Bill

- Modifies standards for the determination of income for purposes of establishing child support obligations.
- Establishes procedures for the abatement of child support obligations for parents incarcerated six months or greater.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Kuderer and Salomon.

Minority Report: That it be referred without recommendation.
Signed by Senators Padden, Ranking Member; Holy and Wilson, L..

Staff: Tim Ford (786-7423)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Sarah Emmans (786-7478)

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.

Background: Establishing Child Support Obligation. Child support obligations are established through the court or with an administrative law judge. The amount of child support is determined using the statutory child support schedule, which includes the economic table and the child support worksheets developed by the Administrative Office of the Courts. The 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.

All income and resources of each parent's household shall be disclosed and considered by the court when the court determines the child support obligation of each parent. The court shall impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed. The court makes that determination based upon the parent's work history, education, health, and age, or any other relevant factors.

Summary of Amended Bill: Determination of a Parent's Income Who is Voluntarily Unemployed or Underemployed. When determining whether a parent is voluntarily unemployed or underemployed, the court must consider the following additional factors: 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.

For parents determined to be voluntarily unemployed or underemployed, there is a rebuttable presumption that income should be imputed at earnings of 32 hours per week at minimum wage. This presumption applies for parents:

- recently coming off the certain public assistance program;
- recently released from incarceration; or
- recent high school graduates.

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

Parents Enrolled in High School. For parents 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. If determined to be voluntarily unemployed or underemployed, there is a rebuttable presumption that income will be imputed at earnings of 20 hours per week at minimum wage.

Abatement of Child Support for Incarcerated Parents. For parents incarcerated for at least six months a child support order may be abated. For child support orders containing language providing for abatement based on incarceration, there is a rebuttable presumption that an incarcerated person is unable to pay the child support obligation. For child support orders that do not contain language providing for abatement based on incarceration, an action may be commenced to abate the child support obligation.

The 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 make a determination whether abatement is appropriate. The DCS determination must provide notice to the person required to pay support and the payee or person entitled to receive support. Notice must include information regarding the process to object, information regarding the effective date of the abatement and estimated date the abatement will end, and how the abatement may be modified after the person's release from incarceration.

Where abatement is determined to be 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. The 50 percent abatement automatically one year after release from confinement.

Abatement is limited to only those instances where a court or administrative forum finds:

- the incarcerated person is indigent as defined in RCW10.101.010;
- the incarcerated person lacks assets to cover the child support obligation; and
- the custodial parent is receiving public assistance and an abatement will not result in a reduction of child support payments received by the custodial parent.

The DCS must conduct a review of an abated order that has been reinstated after release from incarceration of the person required to pay support if the DCS receives information that the person has been employed after release from incarceration.

The goal of the act is to ensure the obligor parent makes the largest child support monthly payment amount as possible to comply with an order for child support.

EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S): Limits abatement to only those instances where a court or administrative forum finds:

- the incarcerated person is indigent as defined in RCW10.101.010;
- the incarcerated person lacks assets to cover the child support obligation; and
- the custodial parent is receiving public assistance and an abatement will not result in a reduction of child support payments received by the custodial parent.

Terminates the 50 percent abatement automatically one year after release from confinement.

Provides a goal of ensuring the obligor parent makes the largest child support monthly payment amount as possible to comply with an order for child support.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Substitute House Bill (Law & Justice): *The committee recommended a different version of the bill than what was heard.* PRO: The bill is an omnibus update to our child support laws. Our child support laws are really about making sure that when parents are no longer together, families remain strong. There are five consensus recommendations from the quadrennial work group that reviews our child support laws. Child support orders should accurately reflect the income or earnings potential of the person paying child support. We need to remove barriers to reentry for incarcerated obligors. You still need to pay but there is abatement of the obligations down to \$10 per month during incarceration.

We need to promote family reunification and strong families. People will not be able to pay during incarceration. DOC employment starts a pattern of compliance and positive contributions at \$10 per month.

OTHER: Sections 3 through 13 deal with abatement of child support for incarcerated parents. This proposal is intended to increase the number of parents who are able to contribute to their communities and families after release from incarceration by removing barriers to reentry. This concept is in alignment with Governor Inslee's Executive Order 16-05 as well as federal guidance and current trends across the country. The primary focus of this proposal is to allow for the abatement of child support to \$10 per month per order when a person obligated to pay support is incarcerated for longer than six months, providing an obligation more closely aligned with their ability to pay. The proposal includes a rebuttable presumption that an incarcerated person does not have the ability to pay child support. This presumption may be overcome by a showing that the incarcerated person has income or assets available to pay support. Once the parent is released, the abatement will continue for three months. In the fourth month, the support obligation goes up to 50 percent of the original amount, subject to the presumptive minimum support obligation of \$50 per month per child.

In the Substitute House Bill, there is a provision in Section 4(4) requiring DCS to conduct a review of the support order of a formerly-incarcerated parent if the department receives information from employer new hire reports or other sources that the parent has become employed. The bill does not provide a time limit for that requirement. Having no time limit for the review would create a significant workload impact for the Division of Child Support. It may cause a violation of the state plan under Title IV-D of the social security act. The state plan provides that a child support agency must review orders for modification or adjustment every three years. The agency may institute the review on its own initiative for cases where the family receives assistance, but if the family does not receive assistance, a request from a party to the order or another child support agency is required. We believe that setting a reasonable time limit on the duty of the department to review the support orders for formerly-incarcerated parents will help to address those concerns.

Persons Testifying (Law & Justice): PRO: Representative Christine Kilduff, Prime Sponsor; Christopher Poulos, Washington Statewide Reentry Council.

OTHER: Sharon Redmond, Director, Division of Child Support.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.