



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0410/1
EAW:cdc&wlj

2019 BILL

1 **AN ACT** *to amend* 767.511 (1m) (hs) and 767.553 (4) (c) 2.; and *to create* 49.22
2 (13) (am), 767.001 (1p), 767.57 (4m) and 767.775 of the statutes; **relating to:**
3 reduction of child support payments during incarceration.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Study Committee on Child Placement and Support. Generally, the bill creates a new process and standards for considering incarceration during an initial child support determination and for suspension of a current child support obligation during an obligated parent's incarceration.

Under federal regulations, a parent's incarceration cannot be considered to be voluntary unemployment for purposes of determining or revising child support.

Under current state law, incarceration is not identified as a circumstance that affects a child support determination. However, the Wisconsin Supreme Court has stated that incarceration is a change in circumstance that is sufficient to allow a court to review a child support order, but should not be the sole determinative factor in whether to revise an order. Accordingly, a child support payer's incarceration must be considered on a

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case-by-case basis, using certain identified relevant factors. [Rottscheit v. Dumler, 2003 WI 62.]

The bill specifies that in making an initial child support determination, a parent's incarceration cannot be considered to be voluntary unemployment in considering the parent's earning capacity.

Additionally, the bill specifies that if certain conditions are met, a current child support obligation is automatically suspended and no arrears accrue on the suspended current obligation while a parent who is obligated to pay child support is incarcerated. The obligation must be reinstated on the first day of the first month that begins 60 days after the obligated parent is no longer incarcerated.

Under the bill, to be eligible for a suspension of a current child support obligation during incarceration, all of the following conditions must apply:

- The parent is sentenced to incarceration for more than 180 days, not including time served.
- The parent does not have income or assets from which child support could be collected.
- The other parent was not the victim of the crime for which the person is incarcerated.
- The parent is not incarcerated for a crime against a child.
- The parent is not incarcerated for nonpayment of child support.

In processing the suspension, the bill requires the Department of Children and Families or a child support agency to provide notice of the suspension to both parents.

The bill specifies that a child support agency may choose whether to close a case and terminate enforcement services on arrears that accrued prior to a suspension. However, if child support arrears accrued prior to a suspension, interest continues to accrue on the prior amount in arrears.

Under the bill, "incarcerated" means a person is confined in a jail, prison, huber facility, or other house of correction.

1 **SECTION 1.** 49.22 (13) (am) of the statutes is created to read:

2 49.22 (13) (am) The department may terminate child support enforcement
3 services if a child support order is suspended under s. 767.775.

4 **SECTION 2.** 767.001 (1p) of the statutes is created to read:

5 767.001 (1p) "Incarcerated" means confined in a jail, prison, huber facility, or
6 other house of correction.

7 **SECTION 3.** 767.511 (1m) (hs) of the statutes is amended to read:

8 767.511 (1m) (hs) The earning capacity of each parent, based on each parent's
9 education, training and work experience and the availability of work in or near the

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1 parent's community. A court may not consider incarceration to be voluntary
2 unemployment for the purpose of determining earning capacity under this
3 paragraph.

4 **SECTION 4.** 767.553 (4) (c) 2. of the statutes is amended to read:

5 767.553 (4) (c) 2. The payer was seeking an adjustment and the payee
6 establishes that the payer voluntarily and unreasonably reduced his or her income
7 below his or her earning capacity. Incarceration may not be considered a voluntary
8 and unreasonable reduction of income below the payer's earning capacity.

9 **SECTION 5.** 767.57 (4m) of the statutes is created to read:

10 767.57 (4m) PROCEDURE IF ORDER SUSPENDED DURING INCARCERATION. If an order
11 for child support is suspended during incarceration under s. 767.775, the department
12 or its designee shall do all of the following:

13 (a) Suspend the current obligation for child support, effective on the first day
14 of the first month following receipt of notice that the payer has been sentenced to
15 incarceration for 180 days or more.

16 (b) Provide notice to the payer and the payee of the suspension.

17 **SECTION 6.** 767.775 of the statutes is created to read:

18 767.775 **Child support order and enforcement suspended during**
19 **incarceration.** (1) A current obligation for child support under s. 767.225, 767.511,
20 767.805, or 767.89 is suspended and may not be enforced against a person who is
21 incarcerated if all of the following apply:

22 (a) The person is sentenced to incarceration for more than 180 days
23 postconviction, not including time served.

24 (b) The person does not have income or assets during the period of incarceration
25 from which child support can be collected.

