

080266336

SENATE BILL NO. 629

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice)

(Patron Prior to Substitute—Senator Ticer)

Senate Amendments in [] — February 12, 2008

A BILL to amend the Code of Virginia by adding a section numbered 20-108.3, relating to child support; incarcerated parents.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 20-108.3 as follows:

§ 20-108.3. Tolling of child support for incarcerated parents.

A. In any proceeding under this title, Title 16.1, or Title 63.2 on the issue of determining child support, any parent ordered to pay child support who is sentenced to a term of incarceration of at least six months during the period he is obligated to pay support may petition the court that entered the order of child support for an order or, in the case of an administrative support order entered pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2, may request a review by the Department of Social Services for a determination that his obligation to make support payments be tolled during the term of his incarceration. Upon receipt of such parent's petition or request, the court or the Department shall enter an order tolling such parent's support obligation for the duration of his incarceration, unless the court or the Department determines that the parent has the present financial ability to pay his child support obligation.

B. Nothing in this section shall preclude a court or the Department of Social Services from establishing the support obligation of a parent who is sentenced to a term of incarceration for whom no support order has previously been entered. Any order establishing such support obligation of a parent sentenced to a term of incarceration of at least six months may be tolled pursuant to subsection A upon the petition or request of the parent ordered to pay support.

C. A parent whose child support payments have been tolled pursuant to subsection A shall remain liable for any support arrearages that accrue while his support payments have been tolled. Upon such parent's release from incarceration, the court or the Department of Social Services shall order the resumption of his child support payments and shall determine the amount of his support arrearage. The order of the court or the Department shall include a plan for the payment of the parent's support arrearage. Any such order shall provide that all payments are to be credited to current child support obligations first, with any payment in excess of the current obligation applied to arrearages.

D. ~~[No interest, costs, fees, or other penalties shall accrue to a parent whose child support payments have been tolled pursuant to subsection A for the period during which child support payments were tolled.~~

~~E.]~~ Nothing in this section shall preclude a parent whose child support payments have been tolled pursuant to subsection A from seeking a modification of his child support obligation based on a material change in circumstances upon which a modification of child support may be based that is unrelated to his incarceration.

[2. That the provisions of this act shall not become effective unless an appropriation of general funds effectuating the purposes of this act is included in a general appropriations act passed by the 2008 Session of the General Assembly, which becomes law.]

ENGROSSED

SB629ES1