

Department of Planning and Budget

2021 Fiscal Impact Statement

1. Bill Number: HB2055-ER

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|------------------------|---------------------------------------|-------------------------------------|--|
| House of Origin | <input type="checkbox"/> Introduced | <input type="checkbox"/> Substitute | <input type="checkbox"/> Engrossed |
| Second House | <input type="checkbox"/> In Committee | <input type="checkbox"/> Substitute | <input checked="" type="checkbox"/> Enrolled |

2. Patron: Scott

3. Committee: Passed Both Houses

4. Title: Child support obligations; party's incarceration not deemed voluntary unemployment/underemployment.

5. Summary: Provides that a party's incarceration for 180 or more consecutive days shall not ordinarily be deemed voluntary unemployment or underemployment for the purposes of calculating child support and imputing income for such calculation.

An enactment clause applies provisions of this act only to petitions for child support that commence on or after July 1, 2021, and petitions for modifications of such orders. The clause goes on to say that the provisions of this act shall not be construed to create a material change in circumstances for the purposes of modifying an existing child support order.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: See Item 8.

8. Fiscal Implications: This change would allow noncustodial parents who are currently incarcerated for 180 days or more to have their incarceration considered voluntary unemployment or underemployment in the event of a new child support petition filed on or after July 1, 2021, or a modification of an existing child support order, if filed for a material change in circumstances. Incarceration alone, according to the enactment clause, will not count as a material change of circumstances.

The original version of HB 2055 brought the Commonwealth into compliance with the requirements of a final rule by the federal government in 2016 related to “Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs (FEM).” FEM amended federal law to require that states’ child support guidelines “must...provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders.” Additionally, the final rule also addresses incarceration as a significant change in circumstance when determining the standard for adequate grounds for petitioning review and adjustment of a child support order.

However, the enactment clause approved by the conference report may result in noncompliance with federal regulation. Failure to comply with the federal regulation for setting child support orders may result in significant reductions to federal funding for the

DSS Division of Child Support Enforcement (DCSE) program. The agency estimates this loss of federal funding could be as much as \$74 million annually. The potential loss in federal funding will not occur until December 2023, which is the compliance date set by the federal government. The original date was December 2022, but it has been extended due to the COVID-19 pandemic, according to the agency.

While some custodial parents may see a reduction in support payments, the Department of Social Services is rarely able to collect support from incarcerated parents, so any fiscal impact before the federal compliance date would be minimal. Additionally, most of the support collected is transferred to the custodial parent. The loss of federal funding could begin as early as the second half of state fiscal year 2024.

9. Specific Agency or Political Subdivisions Affected: Department of Social Services

10. Technical Amendment Necessary: No.

11. Other Comments: None.