



COUNTY ADVISORY BULLETIN

CAB

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CHANGES TO OHIO'S CHILD SUPPORT LAW

APPLICABLE LEGISLATION: HB 366 and SB 70 (132nd General Assembly)

REVISED CODE SECTIONS (HB 366): Amend sections 3119.01, 3119.02, 3119.021, 3119.04, 3119.05, 3119.06, 3119.22, 3119.23, 3119.24, 3119.29, 3119.30, 3119.302, 3119.31, 3119.32, 3119.61, 3119.63, 3119.76, 3119.79, 3119.89, 3121.36, and 3123.14; to enact new sections 3119.022 and 3119.023 and sections 3119.051, 3119.231, and 3119.303; and to repeal sections 3119.022, 3119.023, and 3119.024

REVISED CODE SECTIONS (SB 70): Amend sections 2919.21, 3111.29, 3111.38, 3111.46, 3111.49, 3111.78, 3111.80, 3111.81, 3111.84, 3119.06, 3119.30, 3119.38, 3119.43, 3119.60, 3119.61, 3119.63, 3119.72, 3119.76, 3119.77, 3119.82, 3119.87, 3119.88, 3119.89, 3119.90, 3119.91, 3119.92, 3121.01, 3121.02, 3121.035, 3121.12, 3121.29, 3121.33, 3121.34, 3123.031, 3123.04, 3123.05, 3123.06, 3123.14, 3123.25, 3123.27, 3123.30, 3123.31, 3123.34, 3123.35, 3123.72, 3123.821, and 3123.822, to enact sections 3111.801 and 3119.631 and to repeal section 3121.11

LEAD SPONSOR OF HB 366: Representative Gavarone

COSPONSORS OF HB 366: Representatives Seitz, Smith, K., Ginter, LaTourette, Becker, Brenner, Lang, Anielski, Antonio, Arndt, Blessing, Brown, Dean, Dever, Greenspan, Hambley, Hill, Hoops, Howse, Kick, Koehler, Manning, O'Brien, Patterson, Patton, Pelanda, Perales, Rezabek, Ryan, Schuring, Sheehy, Slaby, Smith, R., Stein, Sweeney, Wiggam, Young. Senators Lehner, Beagle, Burke, Coley, Eklund, Gardner, Hackett, Huffman

LEAD SPONSOR OF SB 70: Senator Coley

COSPONSORS OF SB 70: Senators Bacon, Eklund, Terhar, Beagle, Huffman, Burke, Hackett, Hite, Hoagland, Manning, O'Brien, Oelslager, Peterson, Sykes, Wilson. Representatives Ginter, Anielski, Arndt, Ashford, Barnes, Boyd, Brown, Craig, Fedor, Galonski, Gavarone, Greenspan, Hambley, Holmes, Johnson, Kent, Kick, Lang, LaTourette, Lepore-Hagan, Manning, Miller,

O'Brien, Patmon, Patterson, Patton, Pelanda, Perales, Reineke, Rezabek, Rogers, Seitz, Slaby, Sprague, West, Wiggam, Young

EFFECTIVE DATE HB 366: March 28, 2019 (includes delayed implementation)

EFFECTIVE DATE SB 70: February 11, 2019 (includes delayed implementation)

OVERVIEW OF HB 366 AND SB 70

HB 366 modernizes Ohio's child support guidelines. The bill makes revisions to the schedule used to determine child support orders and addresses cash medical and health insurance, credit for child care, multiple families and parenting time.

The guidelines used to determine the amounts in Ohio's child support orders contained economic data from the 1980's that hadn't been updated since 1992. Additionally, the methodology used to create the schedule included an error that resulted in orders on low income parents that were likely beyond their ability to pay. Even without this error, family structures and economics have undergone vast changes during the last 26 years and the guidelines needed to be addressed to reflect our changing family dynamics.

SB 70 provides technical fixes that streamline the child support enforcement administration (CSEA) system statewide and close loopholes.

These changes affect only new or modified orders and are not retroactive.

HB 366 CHANGES TO CHILD SUPPORT GUIDELINES

CHANGES TO THE CHILD SUPPORT SCHEDULE (ORC 3119.021; 3119.022; 3119.023; 3119.04)

The error that resulted in overburdening obligors at low income levels has been corrected by changing to an updated methodology. The schedule is now based on the parents combined annual income plus a self-sufficiency reserve that must be considered when calculating the amount to be paid. The self-sufficiency reserve is set at 116 percent of the federal poverty level for a single person and will make sure low-income parents don't face an order that far exceeds their ability to pay. Every four years after the effective date of the bill, the Ohio Department of Job and Family Services (ODJFS) must update the schedule and self-sufficiency reserve to reflect any changes made by the federal government to the consumer price index for all urban consumers and the federal poverty level.

The minimum order is now \$960 per year or \$80 per month, regardless of the number of children. The minimum order is used if the combined annual income of both parents falls below \$8,400.

The annual income amounts included in the schedule were also changed to reflect an annual income of up to \$300,000, instead of \$150,000. If the combined annual income of the parents is greater than \$300,000 a court or CSEA must determine the child support obligor's support obligation on a case-by-case basis.

A notable change in process, the schedule and worksheets associated with setting child support orders were moved from the Ohio Revised Code to the Ohio Administrative Code. This means they can now be revised through the rule making process instead of requiring legislative action, making it a lot easier to update in the future. ODJFS may revise them as needed, but must do so at least once every five years.

HEALTH INSURANCE AND CASH MEDICAL (ORC 3119.01; 3119.02; 3119.29; 3119.30; 3119.302; 3119.303; 3119.31; 3119.32)

Each child support order must determine the person or persons responsible for the health care of the children subject to the child support order and must include provisions for the health care of those children. HB 366 creates a rebuttable presumption that the custodial parent will provide the health insurance coverage. This can be rebutted if:

- Other parent is already providing coverage;
- Other parent can obtain coverage that is reasonable in cost;
- Other parent wants to “opt in” to cover the child; or
- Custodial parent is a caretaker or children services agency.

The total out of pocket cost will now be subtracted from the obligated parent’s income before addressing the child support income tables. In essence, the bill is recognizing that the amount paid for health insurance is not available income for child support.

Cash medical is defined as ordinary uninsured medical expenses that occur in both households. This expense is now separated from health insurance and is not tied to whether insurance is being provided. Whenever an order is issued or modified, it must include a cash medical support amount as a suborder.

CREDIT FOR CHILD CARE (ORC 3119.05; 3119.01)

The bill provides that as part of the child support calculation, both parents must also share the costs of child care. A child support obligor must pay an amount equal to the obligor's income share of the child care cost for all children subject to the order. The bill defines "child care cost" to mean the annual out-of-pocket costs for the care and supervision of a child or children subject to the order that is related to work or employment training. The child care cost required to be used in the child support calculation must:

- Be for child care determined to be necessary to allow a parent to work or for activities related to employment training;
- Be verifiable by credible evidence;
- Exclude reimbursed or subsidized child care costs, including any state or federal income tax credit for child care available to the parent or caretaker, whether or not claimed; and
- Not exceed the maximum statewide average cost estimates provided by ODJFS.

If the obligor's annual income is subject to the self-sufficiency reserve of the basic support schedule, the obligor's share of the child care cost must be equal to the lower of the obligor's income share of the child care cost or 50% of the child care cost. The bill defines "income share" as the percentage derived from a comparison of a parent's individual annual income after allowable deductions and credits as indicated on the worksheet to the total annual income of both parents.

MULTIPLE FAMILIES (ORC 3110.05)

The bill eliminates current law requirements regarding deductions from a parent's gross income for amounts paid for children under pre-existing support orders and amounts for children with another parent not involved in the child support proceedings. In their place, the bill requires a court or CSEA to adjust the amount of child support to be paid by a parent to give credit for children not included in the current calculation. To do this, the multiple family calculator was created within the child support worksheet. This creates consistent credit across all of the parent's child support cases that may adjust the amount of a child support order. The calculation looks at each parent and his/her total number of children separately to determine the credit.

PARENTING TIME (ORC 3119.051; 3119.76; 3119.231)

The old methodology transferred all child support dollars into one household and did not recognize that variable costs travel with the child. Under the bill, a court or CSEA calculating the amount to be paid under a child support order must reduce by 10% the amount of the parent or parents' annual individual support obligation when a court has issued or is issuing a parenting-time order that equals or exceeds 90 overnights per year.

The 10% reduction may be in addition to other deviations and reductions provided in the bill and current law. If requested by a child support obligee, however, a court may eliminate a previously granted adjustment if the child support obligor does not exercise the court-ordered parenting time, without just cause.

If court-ordered parenting time exceeds 90 overnights per year, the court must consider whether to grant a deviation for extended parenting time. This deviation is in addition to any adjustments provided if court-ordered parenting time equals 90 overnights per year. If the court-ordered parenting time equals or exceeds 147 overnights per year and the court does not grant a deviation under the bill, the court must specify in the order the facts that are the basis for the court's decision.

SB 70 CHILD SUPPORT TECHNICAL FIXES

CHANGES TO IV-D APPLICATION REQUIREMENTS (ORC 3111.38; 3111.80; 3119.60; 3119.89)

The bill adds a requirement for a federal IV-D application to any labor intensive administration process. This will increase the CSEA's ability to draw down federal dollars and helps defray costs from state and local sources.

CHANGES TO PATERNITY ESTABLISHMENT (ORC 3111.38; 3111.46; 3111.49)

A IV-D application or referral is now required to determine the existence of a parent/child relationship and a court process was created to determine parentage when identical siblings are named as the alleged father of a child. The appeal period for determining existence or non-existence of a parent/child relationship changes from 30 days to 14 days in order to attain consistency between counties.

CHANGES TO CHILD SUPPORT ESTABLISHMENT (ORC 3111.29; 3111.78)

A IV-D application or referral is now required for this process and the bill adds the ability for a CSEA to make reasonable assumptions regarding information that either parent failed to provide.

The support establishment process is clarified to acknowledge that a CSEA may order a mother or a father to pay support once paternity is finalized. In the past, CSEA's could only order fathers to pay support. The bill also removes the option for a direct request to an administrative hearing officer as an action against a presumed father. The party can file a complaint with the court or contact the CSEA to request assistance.

A request has been added for production of documents mirroring the Administrative Review and Adjustment Process. These documents include federal tax returns and the supporting schedules.

Support orders are now final and enforceable 14 days after issuance. This provides statewide consistency on the effective date of an order that did not previously exist. For example, some counties were making orders enforceable 30 days from the hearing date, the first day of the month after the hearing date, the first Friday after the hearing date etc. This change will affect counties differently depending on what timeframe they were using.

Finally, the law now states that if either parent objects, the administrative order must remain in effect during the pendency of the objection unless a party requests and is granted a stay by the court. Previously some counties were dismissing the order if an objection was filed.

MINIMUM ORDER CLARIFICATIONS (ORC 3119.06)

Creates consistency between ORC section 3119.06 and ORC section 3119.05 regarding the definition of "means tested public assistance" when establishing minimum orders. This includes cash assistance payments under the Ohio Works First program, financial assistance under the disability financial assistance program, supplemental security income and means tested veterans' benefits. Previously, the definitions did not match.

CASH MEDICAL CHANGES (ORC 3119.30)

Obligors now have the opportunity for an administrative hearing if they believe there is a Mistake of Fact regarding the availability of private health insurance at a reasonable cost. Previously, the statute only spoke to "an opportunity to be heard" and did not specify an administrative or court hearing. To receive a hearing, a written request must be filed no later than 14 days after notice is issued.

NATIONAL MEDICAL SUPPORT NOTICE (NMSN) CHANGES (ORC 3119.38)

NMSN is a legal notice that the CSEA sends to an employer to notify that an employee is obligated by a child support order to provide health care coverage. Hearing request timelines for NMSN were streamlined to be consistent with other child support processes. They must now be filed no later than 14 days after the notice of medical support enforcement activity is sent. The CSEA will determine whether there was a mistake of fact and issues its determination. This determination is final unless the person files a written motion with the court within 14 days of issuance.

HEALTH INSURANCE CHANGES (ORC 3119.43)

Changes “shall” to “may” for a CSEA notifying the court of health insurance obligor not obtaining coverage within 30 days after the order is issued, giving the CSEA more discretion. However, language was added that allows the court to punish the obligor for contempt if the CSEA reports that they have failed to obtain coverage.

ADMINISTRATIVE REVIEW AND ADJUSTMENT TO ORDERS (ORC 3119.60; 3119.61; 3119.63; 3119.72; 3119.76; 3119.82)

IV-D application is now required when a CSEA reviews a support order and the CSEA may add or adjust a payment on arrears for administrative and court orders. The previous 45-day notice was changed to a 30-day notice before beginning the review, which allows faster processing of reviews. The notice will include language that it may add or adjust a payment on arrears and a clarification was made to required documentation that includes all supporting schedules and documents with tax returns and specifies leave and earnings statements for military personnel.

If the order is a court order, the notice includes a warning that willful failure to provide documents is contempt of court, and that the CSEA may proceed with the review and make reasonable assumptions with respect to the information that was not provided. If the order is an administrative order, the notice includes a statement that the CSEA may proceed with the review and make reasonable assumptions with respect to the information not provided. Notice to both obligor and obligee of revised child support is sent by ordinary mail for administrative and court orders.

Objection to an administrative order review and adjustment must be filed with the court in the county in which the CSEA that issued the order is located. Previously, the law allowed it to be filed in the county in which the mother, father, child, guardian or custodian resides.

The requirement for a CSEA to file on behalf of a person requesting a review is removed. The CSEA does not represent either party to the action.

The objection period to request an administrative or court ordered review hearing is now 14 days from issuance.

When a parent fails to provide information during a review, the CSEA now has two options:

- Request the court to issue an order requiring the parent to comply; or

- Make reasonable assumptions with respect to the information the parent failed to provide.

CHANGES TO TERMINATION (ORC 3119.87; 3119.88; 3119.90; 3119.91; 3119.92)

Now expresses that a person can notify the CSEA when a reason for which the child support order should terminate is imminent. This assists the CSEA in processing terminations more efficiently. Changes objection period from 30 days to 14 days from issuance. Clarifies that 3119.88 speaks to administrative termination only and adds reasons for termination consistent with the Ohio Administrative Code such as child's adoption, obligor's death and marriage of obligor to obligee, if they reside together with the child.

ADMINISTRATION OF WITHHOLDING ORDER MADE EASIER (ORC 3121.035)

Permits issuance of income withholding notice or deduction notice via ordinary mail or electronic means within 15 days of locating the obligor following the issuance or modification of the support order.

LUMP SUMS (ORC 3121.12)

The bill allows for issuance of an administrative order to transmit a lump sum payment of \$150.00 or more. This will expedite the lump sum process and makes administration easier for employers and CSEAs.

GENERAL NOTICES (ORC 3121.29)

The following additional language was added to standard notices given in each support order or modification of a support order:

If you are an obligor or obligee and you fail to give the required notices to the child support enforcement agency, you may not receive notice of the changes and requests to change the child support amount, health care provisions, or termination of the child support order.

DEFAULT NOTICES (ORC 3123.031; 3123.04; 3123.05)

The date on default notices changes to the date of issuance, the objection period is now 14 days from issuance of the notice and the objection period for mistake of fact determination is now 14 days from issuance.

ARREARS ORDERS (ORC 3123.14)

The CSEA is granted the administrative authority to establish payment on arrears in cases that were previously terminated without an ordered arrears payment. This allows for any administrative or judicial action or proceeding to obtain compliance.

TAX OFFSET (ORC 3123.821; 3123.822)

Expands the use of Ohio state tax offset to include collection of overdue spousal support, providing an additional remedy for the collection of overdue payments.

CRIMINAL NON-SUPPORT (ORC 2919.21)

The bill allows for indictment if the current support order has terminated, but arrears are still unpaid, and the six-year statute of limitations has not run out. Indictment must be only for periods of time when the child was still a minor.