

Testimony
Engrossed Senate Bill 2132 - Department of Human Services
House Judiciary Committee
Representative Lawrence Klemin, Chairman

March 15, 2021

Chairman Klemin and members of the Judiciary Committee, I am Jim Fleming, Director of the Child Support Division of the Department of Human Services (Department). I am here today to testify in support of Engrossed Senate Bill 2132.

As reflected in the legislative history of the 2017 bill enacting Section 14-09-09.38, the purpose of the law is “addressing uncollectible child support arrears rather than reducing the amount of money that is actually collected and distributed to families.” The 2017 bill was introduced by legislators and supported by both the Department of Corrections and Rehabilitation and the Department of Human Services.

During the 2017 hearings on the bill, the legislative committees in both houses agreed it would be better for the obligations of former inmates to be reestablished based on the parent’s post-incarceration ability to earn rather than revert to the amount owed prior to incarceration. On this point, the federal Office of Child Support Enforcement offered this advice to states:

We strongly encourage States to review child support orders after the noncustodial parent is released to determine whether the parent has been able to obtain employment and to set the orders based on the noncustodial parent’s ability to pay. States should not automatically reinstate the order established prior to incarceration because it may no longer be based on the noncustodial parent’s ability to pay, especially if the noncustodial parent is not able to find a job or find a job similar to pre-incarceration employment. A recent study found that incarceration results in 40 percent lower earnings upon release [footnote omitted]. Instead, the order should be reviewed and adjusted according to the State’s guidelines under § 302.56.

Federal Register Volume 81, No. 244, page 93539 (December 20, 2016).

A recent article indicated that over half of formerly incarcerated individuals are still unemployed one year after release and almost 70% are re-arrested within three years. 5 New Policy Ideas for Fixing Life After Prison, Politico Magazine (12-30-2020).

Engrossed Senate Bill 2132 requires the Department to communicate proactively with both parents to explain how a child support obligation can be re-established when the incarcerated parent is released from jail. The engrossed bill also requires the Department to take steps to re-establish a child support obligation once the parent is released without the other parent needing to request the re-establishment or hire a private attorney. This minimizes the burden on the parent with primary residential responsibility for the child yet recognizes the realities a parent faces in trying to rebuild his or her earning ability after a period of incarceration.

These amendments to current law reflect the Department's current practices and we support adding them to state law. This concludes my testimony, and I am happy to answer any questions you may have.