

Department of Planning and Budget

2022 Fiscal Impact Statement

1. Bill Number: SB348-E

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

2. Patron: Surovell

3. Committee: Passed the Senate

4. Title: Support orders; retroactivity; arrearages; party's incarceration.

5. Summary: Makes various changes to provisions of law related to child and spousal support orders, including (i) providing that in cases in which jurisdiction over child support or spousal support has been divested from the juvenile and domestic relations district court and no final support order has been entered, any award for child support or spousal support in the circuit court shall be retroactive to the date on which the proceeding was commenced by the filing of the action in the juvenile and domestic relations district court and (ii) specifying that prejudgment interest on child support should be retroactive to the date of filing. The bill provides that a party's incarceration alone 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. The bill further provides that a party's incarceration for 180 or more days shall be a material change of circumstances upon which a modification of a child support order may be based. A second enactment clause states that the provisions of the bill related to imputation of income apply only to petitions for child support and petitions for a modification of a child support order commenced on or after July 1, 2022, and do not create a material change in circumstances for the purposes of modifying a child support order if a parent was incarcerated prior to July 1, 2022, and the incarcerated party cannot establish a material change in circumstances other than incarceration. A third enactment clause vacates the second enactment clause if the Office of Child Support Enforcement of the U.S. Department of Health and Human Services determines in writing that the second enactment is not in compliance with federal regulations.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: See Item 8.

8. Fiscal Implications: Based on various pieces of new information from the Department of Social Services (DSS), it is unclear whether this bill fully addresses the deficiencies of House Bill 2055 (2021 Special Session I). The original version of HB 2055 would have brought Virginia into compliance with the federal regulations; however, the final legislation had an enactment clause that would keep Virginia out of compliance with federal regulations. The second enactment clause on HB 2055, 2021 Special Session I requires that the provisions of the act only apply to petitions commenced on or after July 1, 2021 and that the provisions of the act do not create a material change in circumstances for the purpose of modifying any

existing child support order. The third enactment clause on HB 2055, 2021 Special Session I requires the act to be reenacted by the 2022 session of the General Assembly.

Under current state law, the state could lose federal funds. Additionally, the current iteration of SB 348 exempts incarceration for failure to pay child support as ordered or for a crime against the child who is the subject of the child support order or the custodial parent of that child from being considered a material change in circumstances upon which a modification of child support may be based. Finally, the second enactment clause does not allow modifying an existing child support order if a parent was incarcerated prior to July 1, 2022. DSS has provided new information that makes it unclear if these inclusions in SB 348 align with the federal regulations. The federal final rule provides that state guidelines under 45 CFR 302.56(c)(3) may not treat incarceration as voluntary unemployment in establishing or modifying child support orders. The rule prohibits states from legally barring modification of support obligations during incarceration. The agency estimates a loss of \$76 million in federal child support funding annually.

If the state is found to be in noncompliance with federal regulations, it could lose between \$3.1 million and \$157 million in TANF funding annually. The agency believes it could lose \$3.1 million in TANF funding, which equates to the annual amount of TANF funding used for child support disregards. However, the federal child support office indicates that the state could lose its entire \$157 million annual TANF grant. Further, Virginia would lose access to many child support collections tools provided by the federal government, including but not limited to: federal tax refund intercepts, passport denials, and new employee hire information.

9. Specific Agency or Political Subdivisions Affected: Department of Social Services, local departments of social services, Juvenile and Domestic Relations Courts

10. Technical Amendment Necessary: No.

11. Other Comments: None.