

Department of Planning and Budget

2022 Fiscal Impact Statement

1. Bill Number: SB348-ER

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: Surovell

3. Committee: Passed Both Houses

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: The conference amendments to SB348 bring the bill closer in line with federal regulations; however, the second enactment clause is still of concern to the Department of Social Services (DSS). DSS has received written notification from the federal Office of Child Support Enforcement (OCSE) that applying the provisions of the bill only to petitions commenced on or after July 1, 2022 is out of compliance with federal regulations.

The state is required to comply with federal child support regulations during calendar year 2022 to avoid a potential loss of federal funding. The agency is concerned that the written notification it received from the federal OCSE on March 15, 2022 will not meet the requirements in the third enactment clause, because the letter was received before the law becomes effective on July 1, 2022. In the event that the federal OCSE letter meets the requirements of the third enactment clause, this legislation does not have a fiscal impact. In the event that the letter dated March 15, 2022 does not meet the requirements of the third enactment clause because it was written before the legislation goes into effect, then Virginia may be found to be in noncompliance until another written notification is issued by the federal oversight agency.

If the state is found to be in noncompliance with federal regulations, it could lose approximately \$76 million in federal child support funding annually and 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. With the loss of enforcement tools, the agency's ability to sustain the current collection efforts will be severely impaired. As a result, the annual average of \$20 million in collections retained as cost recovery, which provides the majority of the state share of program operations budget, would be lost. The agency's inability to earn performance-based incentive awards which are mandated in the Child Support Performance and Incentive Act will result in the loss of additional program operations funding equal to \$13 million annually.

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.