



**Sub. H.B. 208\***

124th General Assembly

(As Reported by S. Judiciary on Civil Justice)

**Reps. Raga, Willamowski, Grendell, Manning, Jones, Latta, DePiero, Seitz, Allen, Barrett, Carano, Beatty, DeWine, Gilb, Niehaus, Fessler, Flowers, Hughes, Key, Kilbane, Woodard, Barnes, Hagan, Evans, Latell, Patton, Husted, Williams, Schmidt, Buehrer, Roman, Faber, Young, Aslanides, Flannery, White, Collier, Peterson, Coates, Webster, Perry, Cirelli, S. Smith, G. Smith, Widowfield, Strahorn, Reidelbach, Hollister, D. Miller, R. Miller, Boccieri, Sferra, Otterman, WomerBenjamin, Salerno**

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**BILL SUMMARY**

- Authorizes a court that issues or modifies a spousal support order or grants or modifies a decree of dissolution of marriage incorporating a separation agreement that provides for spousal support to permit the obligor's direct payment of spousal support to the obligee, instead of payment through the Office of Child Support in the Department of Job and Family Services, if the obligor and obligee have no minor children born as a result of the marriage and the obligee has not assigned the support amounts to the Department under certain laws.
- Authorizes a court that permits the direct payment of spousal support to the obligee to rescind the permission upon the obligor's default in making any payment to the obligee and order the obligor to make to the Office of Child Support any payments that are in arrears and future spousal support payments.
- Specifies that the division of the court of common pleas of the county in which an original judgment or court order determining paternity or a child support order was issued or that has jurisdiction involving an

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*\* This analysis was prepared before the report of the Senate Judiciary on Civil Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

administrative determination or order that determines paternity or child support in certain cases has jurisdiction over a motion for relief from that judgment, court order, child support order, or administrative determination or order.

- Modifies the amount of a child support payment that is for arrearages by providing that a withholding or deduction notice or order to collect current support due under a support order and any arrearage owed by the obligor under a support order pertaining to the same child or spouse must be rebuttably presumed to provide that the arrearage amount collected with each payment of current support equal at least 20% of the current support payment.
- Permits a court or administrative hearing officer to consider evidence of household expenditures, income variables, extraordinary health care issues, and other reasons for a deviation from that 20% presumption.
- Limits to collecting any federal or state income tax refund owed to the obligor the action that a child support enforcement agency administering a child support withholding or deduction notice or order may take to collect any arrearage amount that has not yet been collected if the obligee and obligor agree in a writing signed by the obligee and obligor and approved by the court by journal entry that the actions be so limited.

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## CONTENT AND OPERATION

### Spousal support payments

#### Continuing law

Continuing law provides that when a court issues or modifies a *support order*, issues a withholding or deduction notice, or issues another enforcement order, it must require that the support payments be made to the Office of Child Support in the Ohio Department of Job and Family Services (ODJFS) as trustee for remittance to the person entitled to receive the payments. Support payments also may be ordered sent to the child support enforcement agency in certain cases, including those cases in which centralized collection is not in effect. (R.C. 3121.44--not in the bill.) A "support order" means either an administrative child support order or a court support order. A "court support order" means either a court child support order or an order for the support of a spouse issued pursuant to R.C. Chapter 3115. (Uniform Interstate Family Support Act), R.C. 3105.18 (spousal support in divorce or legal separation proceedings), R.C. 3113.31

(provision for support in domestic violence protection order or consent agreement), R.C. 3123.07 (reissuance of support order in certain cases of default), or former R.C. 3113.21(B) (withholding or deduction requirements to enforce support orders prior to its repeal by Am. Sub. S.B. 180 of the 123rd General Assembly). (R.C. 3119.01(B)(5) and (C)(3) and R.C. 3121.01(A)--not in the bill.)

### **Operation of the bill**

The bill provides that notwithstanding the provisions of certain laws (see **COMMENT 1**) providing for the Office of Child Support in the Department of Job and Family Services to collect, withhold, or deduct spousal support, when a court pursuant to R.C. 3105.18 or 3105.65 (see **COMMENT 2**) issues or modifies an order requiring an obligor to pay spousal support or grants or modifies a decree of dissolution of marriage incorporating a separation agreement that provides for spousal support, or at any time after the issuance, granting, or modification of an order or decree of that type, or decree of that type, the court may permit the obligor to make the spousal support payments directly to the obligee instead of to the Office if the obligee and the obligor have no minor children born as a result of their marriage and the obligee has not assigned the spousal support amounts to the Department pursuant to R.C. 5101.59 or R.C. 5107.20 (see **COMMENT 3** and paragraph (f) of **COMMENT 1**). (R.C. 3121.441(A).)

Under the bill, a court that permits an obligor to make spousal support payments directly to the obligee as described in the preceding paragraph must order the obligor to make the spousal support payments as a check, as a money order, or in any other form that establishes a clear record of payment (R.C. 3121.441(B)).

If a court permits an obligor to make spousal support payments directly to an obligee and the obligor is in default in making any spousal support payment to the obligee, the court, upon motion of the obligee or on its own motion, may rescind the permission granted by it. After the rescission, the court must determine the amount of arrearages in the spousal support payments and order the obligor to make to the Office of Child Support in ODJFS any spousal support payments that are in arrears and any future spousal support payments. Upon the issuance of the court's order, the provisions of the laws described in **COMMENT 1** apply with respect to the collection, withholding, or deduction of the obligor's spousal support payments that are the subject of that court order. (R.C. 3121.441(C).)

## **Relief from paternity determination or support order**

### **Existing law**

Under current law, notwithstanding the provisions to the contrary in Civil Rule 60(B) and in accordance with the law's procedures, a person may file a motion for relief from a final judgment, court order, or administrative determination or order that determines that the person or a male minor for whom the person is paying child support is the father of a child or from a child support order under which the person or the male minor is the obligor. The person must file the motion in the *juvenile court or other court with jurisdiction under R.C. 2101.022 or R.C. 2301.03* (see **COMMENT 4**) of the county in which the original judgment, court order, administrative determination or order, or child support order was made. If the determination of paternity is an acknowledgment of paternity that has become final under R.C. 2151.232, 3111.25, or 3111.821 or former R.C. 3111.211 or 5101.314, the person must file the motion in the juvenile court or other court with jurisdiction of the county in which the person or the child who is the subject of the acknowledgment resides. (R.C. 3119.961(A).)

### **Operation of the bill**

Under the bill, a person who files a motion for relief as described under "**Existing law**," above, must file the motion in the *division of the court of common pleas of the county in which the original judgment, court order, or child support order was made or issued or in the division of the court of common pleas of the county that has jurisdiction involving the administrative determination or order*, instead of the juvenile court or other court with jurisdiction under R.C. 2101.022 or 2301.03. The bill retains the exception in current law with respect to the filing of a motion for relief from a determination of paternity that is an acknowledgement of paternity as described in the preceding paragraph. (R.C. 3119.961(A).) (See **COMMENT 5**.)

## **Amount of child support payment for arrearages**

### **Existing law**

Under existing law, a withholding or deduction notice or an order to collect current support due under a support order and any arrearage owed by the obligor under a support order pertaining to the same child or spouse must require that the arrearage amount collected with each payment of current support equal at least 20% of the current support payment, unless, for good cause shown, a lesser arrearage amount is required to be collected.

Existing law defines "good cause" as a change in the obligor's circumstances that would make payment of current support and payment of the arrearage in an amount equal to at least 20% of the current payment a hardship on the obligor. "Good cause" exists if the amount of each current support payment and arrearage amount would exceed the maximum amount permitted to be withheld from the obligor under section 303(b) of the "Consumer Credit Protection Act." (R.C. 3123.21).

### **Operation of the bill**

The bill modifies the amount of a child support payment that is for arrearages by providing that a withholding or deduction notice or order to collect current support due under a support order and any arrearage owed by the obligor under a support order pertaining to the same child or spouse must *be rebuttably presumed to provide* (instead of require) that the arrearage amount collected with each payment of current support equal at least 20% of the current support payment.

The bill removes the provision that good cause must be shown for a lesser arrearage amount to be collected and instead permits a court or administrative hearing officer to consider evidence of household expenditures, income variables, extraordinary health care issues, and other reasons for a deviation from the 20% presumption. (R.C. 3123.21.)

### **Procedures a child support enforcement agency may take to collect an arrearage**

#### **Existing law**

Existing law provides that, generally, if an obligor is paying off an arrearage owed under a support order pursuant to a withholding or deduction notice or order, a support order newly issued or modified, or any other order issued to collect the arrearage, the child support enforcement agency administering the notice or order may also do the following to collect any arrearage amount that has not yet been collected under the notice or order:

- (A) Issue one or more withholding or deduction notices;
- (B) Collect a lump sum payment owed to the obligor;
- (C) Collect any federal or state income tax refund owed to the obligor;
- (D) Issue a withdrawal directive;
- (E) Obtain administrative offset.

Existing law also provides that the above provisions apply only to support orders issued on or after the effective date of the above provisions under which arrearages have arisen on or after that date. (R.C. 3123.22.)

### **Operation of the bill**

The bill continues to permit the child support enforcement agency administering a withholding or deduction notice or order to utilize any of the actions described above in (A) through (E), but creates an exception to the agency's authority to take such action. Under the bill, the agency can take any such action unless the obligee and the obligor agree in a writing signed by the obligee and obligor and approved by the court by journal entry that the additional actions of the agency be limited to collecting any federal or state income tax refund owed to the obligor. (R.C. 3123.22.)

The bill also removes the existing limitation on the above provision that restricts its application only to support orders issued on or after the effective date of the provisions under which arrearages have arisen on or after that date. Therefore, the above provisions apply to any support order regardless of when issued. (R.C. 3123.22.)

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## **COMMENT**

1. These provisions of law are the following:

(a) R.C. Chapter 3119. dealing with the calculation of child support orders;

(b) R.C. Chapter 3121. dealing with the collection and disbursement of support payments and including the provisions described above in "**Continuing law**";

(c) R.C. Chapter 3123. dealing with default under support orders;

(d) R.C. Chapter 3125. dealing with child support enforcement;

(e) R.C. 3770.071, which prescribes certain requirements and procedures if a winner of a lottery prize award worth \$600 or more is in default under a "support order" (defined as described above in "**Continuing law**"). The procedures include a hearing in the court that issued the support order to determine if the person is in default under the support order. If the court so determines, the court must issue an order to the Director at the Lottery Commission headquarters requiring the Director or the Director's designee to deduct from any unpaid prize award or annual installment payment of a prize award, a specified amount for child support

or spousal support in satisfaction of the support order. The Director must pay the amount specified in the court order to the Office of Child Support in ODJFS.

(f) R.C. 5107.20, which provides that participation in Ohio Works First constitutes an assignment to ODJFS of any rights that members of an assistance group have to "support" (defined as child support, spousal support, and support for a spouse or former spouse) from any other person, excluding medical support assigned pursuant to R.C. 5101.59 (see **COMMENT 3**, below). The Office of Child Support in ODJFS must collect and distribute support payments owed to Ohio Works First participants, whether assigned to ODJFS or unassigned, in accordance with certain federal statutes and regulations, state statutes, and rules adopted under the Ohio Works First Law.

2. (a) Under R.C. 3105.18, not in the bill, in *divorce and legal separation proceedings*, upon the request of either party and after the court determines the division and disbursement of property, the court of common pleas may award reasonable spousal support to either party. "Spousal support" means any payment or payments to be made to a spouse or former spouse, or to a third party for the benefit of a spouse or a former spouse, that is both for sustenance and for support of the spouse or former spouse. "Spousal support" does not include any payment made to a spouse or former spouse, or to a third party for the benefit of a spouse or former spouse, that is made as part of a division or distribution of property or a distributive award under R.C. 3105.171. An award of spousal support may be allowed in real or personal property, or both, or by decreeing a sum of money, payable either in gross or by installments, from future income or otherwise, as the court considers equitable. (R.C. 3105.18(A) and (B).)

In an action brought solely for an order for legal separation under R.C. 3105.17, any continuing order for periodic payments of money entered pursuant to R.C. 3105.18 is subject to further order of the court upon changed circumstances of either party (R.C. 3105.18(D)). If a continuing order for periodic payments of money as alimony is entered in a divorce or dissolution of marriage action that is determined on or after May 2, 1986, and before January 1, 1991, or if a continuing order for periodic payments of money as spousal support is entered in a divorce or dissolution of marriage action that is determined on or after January 1, 1991, the court that enters the decree of divorce or dissolution of marriage does not have jurisdiction to *modify* the amount or terms of the alimony or spousal support unless the court determines that the circumstances of either party have changed and unless one of the following applies (R.C. 3105.18(E)):

(i) In the case of a divorce, the decree or a separation agreement of the parties to the divorce that is incorporated into the decree contains a provision specifically authorizing the court to modify the amount or terms of alimony or spousal support.

(ii) In the case of a dissolution of marriage, the separation agreement that is approved by the court and incorporated into the decree contains a provision specifically authorizing the court to modify the amount or terms of alimony or spousal support.

For purposes of R.C. 3105.18(D) and (E), as described above, a change in the circumstances of a party includes, but is not limited to, any increase or involuntary decrease in the party's wages, salary, bonuses, living expenses, or medical expenses (R.C. 3105.18(F)).

(b) Under R.C. 3105.63(A)(1), not in the bill, a petition for dissolution of marriage must be signed by both spouses and have attached and incorporated a separation agreement agreed to by both spouses. The separation agreement must provide for a division of all property; *spousal support*; if there are minor children of the marriage, the allocation of parental rights and responsibilities for the care of the minor children, the designation of a residential parent and legal custodian of the minor children, child support, and parenting time rights; and, *if the spouses so desire, an authorization for the court to modify the amount or terms of spousal support provided in the separation agreement.*

R.C. 3105.65, not in the bill but referred to in the bill, provides that if, upon review of the testimony of both spouses and of the report of the investigator pursuant to the Rules of Civil Procedure, the court approves the separation agreement and any amendments to it agreed upon by the parties, it must grant a decree of dissolution of marriage that incorporates the separation agreement. The court, only in accordance with R.C. 3105.18(E)(2) (see (a)(ii), above), may modify the amount or terms of spousal support. (R.C. 3105.65(B).)

3. Under R.C. 5101.59, the application for or acceptance of public assistance constitutes an automatic assignment of certain rights to ODJFS. The public assistance applicant, recipient, or participant assigns to ODJFS any rights to medical support available to the applicant, recipient, or participant or for other members of the assistance group under an order of a court or administrative agency, and any rights to payments from any third party liable to pay for the cost of medical care and services arising out of injury, disease, or disability of the applicant, recipient, participant, or other members of the assistance group. The rights of assignment given to ODJFS under R.C. 5101.59 do not include rights to support assigned under R.C. 5107.20 (see paragraph (f) in **COMMENT 1**, above).

4. R.C. 2101.022, not in the bill, generally pertains to the concurrent jurisdiction of the judge of the probate division of the Court of Common Pleas of Marion County with the judge of the domestic relations-juvenile-probate division of that Court over all matters that are within the jurisdiction of the probate division

of that Court and all matters that are within the jurisdiction of the domestic relations-juvenile-probate division of that Court.

R.C. 2301.03, not in the bill, generally establishes in the courts of common pleas of specified counties domestic relations divisions (referred to occasionally as domestic relations courts), juvenile divisions (referred to occasionally as juvenile courts), "combined" juvenile and domestic relations divisions, and the domestic relations-juvenile-probate division of the Court of Common Pleas of Marion County.

5. Am. Sub. H.B. 242 of the 123rd General Assembly enacted R.C. 3113.2111 generally pertaining to the granting of relief, based on genetic testing, from a paternity determination or child support order. Under division (A)(1) of that section, a person who files a motion for relief from a final judgment, court order, or administrative determination or order that determines that the person or a male minor for whom the person is paying child support is the father of a child or that requires the person or male minor to pay child support must file the motion in the *court of common pleas of the county in which the original judgment, court order, or administrative determination or order was made*.

Am. Sub. S.B. 180 of the 123rd General Assembly renumbered R.C. 3111.2111, as enacted by Am. Sub. H.B. 242, into separate sections in R.C. Chapter 3119. Am. Sub. S.B. 180 amended the above provision, which currently is found in R.C. 3119.961, to provide that the person must file the motion for relief in the *juvenile court or other court with jurisdiction under R.C. 2101.022 or 2301.03* in the county in which the original judgment, court order, administrative determination or order, or child support order was made. Am. Sub. S.B. 180 also added the exception in R.C. 3119.961 pertaining to a motion for relief from a determination of paternity in an acknowledgement of paternity.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-05-01	p. 297
Reported, H. Civil and Commercial Law	06-13-01	pp. 658-659
Passed House (99-0)	06-20-01	pp. 689-690
Reported, S. Judiciary on Civil Justice	---	---

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