

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 696

BY SENATORS HAMILTON AND LINDSAY

[Introduced March 22, 2021; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §48-8-103 of the Code of West Virginia, 1931, as amended; to
 2 amend and reenact §48-14-107 of said code; to amend and reenact §48-18-105, §48-18-
 3 117, §48-18-118, §48-18-118a, §48-18-121, §48-18-124, §48-18-201, §48-18-202, §48-
 4 18-203, §48-18-204, §48-18-205, and §48-18-206 of said code; and to amend and reenact
 5 §61-5-29 of said code, all relating to spousal support enforcement; providing that parties
 6 may apply to Bureau for Child Support enforcement to collect spousal support payments;
 7 requiring the court to direct that spousal support payments be directly paid to the Bureau
 8 for Child Support Enforcement upon application of party; authorizing the Bureau for Child
 9 Support Enforcement to collect spousal support from federal and state taxes; authorizing
 10 Bureau for Child Support Enforcement to obtain information from financial institution
 11 regarding spousal support obligations; allowing Bureau for Child Support Enforcement to
 12 assist parties in obtaining spousal support; allowing Bureau for Child Support Enforcement
 13 to bring action before the court to obtain modification to support order; providing process
 14 within family court for the presentation of a proposal to modify spousal support; and
 15 creating criminal penalties for the failure to pay spousal support.

Be it enacted by the Legislature of West Virginia:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 8. SPOUSAL SUPPORT.

§48-8-103. Payment of spousal support.

1 (a) Upon ordering a divorce or granting a decree of separate maintenance, the court may
 2 require either party to pay spousal support in the form of periodic installments, or a lump sum, or
 3 both, for the maintenance of the other party. Payments of spousal support are to be ordinarily
 4 made from a party's income, but when the income is not sufficient to adequately provide for those
 5 payments, the court may, upon specific findings set forth in the order, order the party required to
 6 make those payments to make them from the corpus of his or her separate estate. An award of

7 spousal support shall not be disproportionate to a party's ability to pay as disclosed by the
8 evidence before the court.

9 (b) At any time after the entry of an order pursuant to the provisions of this article, the court
10 may, upon motion of either party, revise or alter the order concerning the maintenance of the
11 parties, or either of them, and make a new order concerning the same, issuing it forthwith, as the
12 altered circumstances or needs of the parties may render necessary to meet the ends of justice.

13 (c) The court shall direct that all payments ordered for spousal support be made to the
14 Bureau for Child Support enforcement upon application for support collection services. The
15 bureau may act on behalf of other public authorities responsible for child support enforcement,
16 including the authority to represent the legal interests of or execute documents on behalf of the
17 other public authority in connection with the establishment, enforcement, and collection of support
18 or collection on judgments.

19 (d) After an order of support has been made, the party entitled to receive those payments
20 may file the appropriate documentation with the Bureau for Child Support Enforcement to collect
21 the support owed to the party. The court may from time to time, on motion of either of the parties,
22 a copy of which is served on the bureau if payments are made through it, or upon motion of the
23 Bureau for Child Support Enforcement, revise or alter the order concerning the maintenance and
24 the payment of it, and may make an order respecting these matters which it might have made in
25 the original proceeding. The Bureau for Child Support Enforcement may bring a motion for
26 contempt of court if the obligor is in arrears in support payments, which includes spousal support.

27 ~~(e)~~(e)(1) For the purposes of subsection (b) of this section, "altered circumstances"
28 includes evidence in the form of genetic testing that establishes that a child conceived during the
29 marriage of the parties is not the child of the former husband, or that a child was born to a woman
30 other than the former wife because of the adultery of the former husband.

31 (2) Prior to admitting evidence of genetic testing, the court shall preliminarily determine
32 whether genetic testing evidence should be admitted for the purpose of disproving or establishing

33 paternity. The facts that may be considered by the court at this hearing include the following:

34 (A) The length of time that has elapsed since the party was first placed on notice that a
35 child conceived during the marriage of the parties is not the child of the former husband, or that a
36 child was born to a woman other than the former wife because of the adultery of the former
37 husband;

38 (B) The length of time during which the individual desiring to challenge paternity assumed
39 the role of parent to the child;

40 (C) The facts surrounding the party's discovery of nonpaternity;

41 (D) The nature of the parent/child relationship;

42 (E) The age of the child;

43 (F) The harm which may result to the child if paternity were successfully disproved;

44 (G) The extent to which the passage of time reduced the chances of establishing paternity
45 in favor of the child; and

46 (H) All other factors which may affect the equities involved in the potential disruption of the
47 parent/child relationship or the chances of undeniable harm to the child.

48 ~~(d)~~(f) For the purposes of subsection ~~(e)~~(e), genetic testing must be performed pursuant
49 to the following guidelines:

50 (1) The tests show that the inherited characteristics including, but not limited to, blood
51 types, have been determined by appropriate testing procedures at a hospital, independent
52 medical institution or independent medical laboratory duly licensed under the laws of this state,
53 or any other state, and an expert qualified as an examiner of genetic markers has analyzed,
54 interpreted and reported on the results; and

55 (2) The genetic test results exclude the former husband as the father of the child.

ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS.

§48-14-107. Modification of support order with the assistance of Bureau for Child Support Enforcement.

1 In addition to any other procedure which may exist by law, any party seeking the
2 recalculation of support and modification under a ~~child~~ support order due to a substantial change
3 in circumstances pursuant to the provisions of §48-14-106 and §48-6-301 of this code may seek
4 and obtain the assistance of the Bureau of Child Support Enforcement, pursuant to the
5 procedures established under the provisions of §48-18-201, §48-18-202, §48-18-203, §48-18-
6 204, §48-18-205, and §48-18-206 of this code, in the preparation, assessment and presentation
7 of an appropriate petition for modification of a support order, including the identification and
8 narrowing of issues associated with a requested recalculation of support prior to filing the petition,
9 and the preparation and presentation of an appropriate petition and proposed order for
10 modification for consideration by the family court.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-18-105. General duties and powers of the Bureau for Child Support enforcement.

1 In carrying out the policies and procedures for enforcing the provisions of this chapter, the
2 bureau shall have the following power and authority:

3 (1) To establish policies and procedures for obtaining and enforcing support orders, and
4 establishing paternity according to this chapter;

5 (2) To undertake directly, or by contract, activities to obtain and enforce support orders
6 and establish paternity;

7 (3) To undertake directly, or by contract, activities to establish paternity for minors for
8 whom paternity has not been acknowledged by the father or otherwise established by law;

9 (4) To undertake directly, or by contract, activities to collect and disburse support
10 payments;

11 (5) To contract for professional services with any person, firm, partnership, professional
12 corporation, association or other legal entity to provide representation for the bureau and the state
13 in administrative or judicial proceedings brought to obtain and enforce support orders and
14 establish paternity;

15 (6) To ensure that activities of a contractor under a contract for professional services are
16 carried out in a manner consistent with attorneys' professional responsibilities as established in
17 the rules of professional conduct as promulgated by the Supreme Court of Appeals;

18 (7) To contract for collection services with any person, firm, partnership, corporation,
19 association or other legal entity to collect and disburse amounts payable as support;

20 (8) To ensure the compliance of contractors and their employees with the provisions of
21 this chapter, and to terminate, after notice and hearing, the contractual relationship between the
22 bureau and a contractor who fails to comply;

23 (9) To require a contractor to take appropriate remedial or disciplinary action against any
24 employee who has violated or caused the contractor to violate the provisions of this chapter, in
25 accordance with procedures prescribed in legislative rules promulgated by the commission;

26 (10) To locate parents who owe a duty to pay child support;

27 (11) To cooperate with other agencies of this state and other states to search their records
28 to help locate parents;

29 (12) To cooperate with other states in establishing and enforcing support obligations;

30 (13) To exercise such other powers as may be necessary to effectuate the provisions of
31 this chapter;

32 (14) To establish and maintain procedures under which expedited processes,
33 administrative or judicial are in effect for obtaining and enforcing support orders and establishing
34 paternity according to this chapter;

35 (15) To promulgate all emergency and legislative rules pursuant to §29A-1-1 *et seq.* of
36 this code as are required by this chapter: *Provided, That* all rules which are in effect at the time
37 of the implementation of this section shall continue in full force and effect until the commissioner
38 of the Bureau for Child Support enforcement promulgates a rule or rules regarding the same
39 subject matter;

40 (16) To adopt standards for staffing, record-keeping, reporting, intergovernmental

41 cooperation, training, physical structures and time frames for case processing;

42 (17) To review the state plan for child and spousal support to determine its conformance
43 or nonconformance with the provisions of 42 U.S.C. §654;

44 (18) To cooperate with judicial organizations and the private bar to provide training to
45 persons involved in the establishment and enforcement of ~~child~~-support orders; and

46 (19) To promulgate legislative rules pursuant to §29A-1-1 *et seq.* of this code which may
47 aid the Bureau for Child Support enforcement in the establishment and enforcement of ~~child~~
48 support orders. In addition to the specific designation of such rules that constitute emergency
49 rules within the meaning of §29A-3-15 of this code, the commissioner may promulgate other rules
50 as emergency rules when such rule is necessary to ensure that the state is awarded federal funds
51 for the actions described in the rule or when the promulgation of such rule is necessary to prevent
52 substantial harm to the public interest by ensuring that ~~child~~ support is timely collected and
53 disbursed.

§48-18-117. Obtaining support from federal tax refunds.

1 The Commissioner shall, by legislative rule promulgated pursuant to chapter twenty-nine-
2 a of this code, place in effect procedures necessary for the Bureau for Child Support Enforcement
3 to obtain payment of past due child and spousal support from federal tax refunds from
4 overpayments made to the Secretary of the Treasury of the United States. The Bureau for Child
5 Support Enforcement shall take all steps necessary to implement and utilize such procedures.

§48-18-118. Obtaining support from state income tax refunds.

1 (a) The Tax Commissioner shall establish procedures necessary for the Bureau for Child
2 Support Enforcement to obtain payment of past-due support from state income tax refunds from
3 overpayment made to the Tax Commissioner pursuant to the provisions of article twenty-one,
4 chapter eleven of this code.

5 (b) The Commissioner for the Bureau for Child Support Enforcement shall establish
6 procedures necessary to enforce a support order through a notice to the Tax Commissioner which

7 will cause any refund of state income tax which would otherwise be payable to an obligor to be
8 reduced by the amount of overdue support owed by such obligor.

9 (1) The procedures shall, at a minimum, prescribe:

10 (A) The time or times at which the Bureau for Child Support Enforcement shall serve on
11 the obligor or submit to the Tax Commissioner notices of past-due support;

12 (B) The manner in which such notices shall be served on the obligor or submitted to the
13 Tax Commissioner;

14 (C) The necessary information which shall be contained in or accompany the notices;

15 (D) The amount of the fee to be paid to the Tax Commissioner for the full cost of applying
16 the procedure whereby past-due support is obtained from state income tax refunds; and

17 (E) Circumstances when the Bureau for Child Support Enforcement may deduct a \$25 fee
18 from the obligor's state income tax refund. This procedure may not require a deduction from the
19 state income tax refund of an applicant who is a recipient of assistance from the Bureau for
20 Children and Families in the form of temporary assistance for needy families.

21 (2) Withholding from state income tax refunds may not be pursued unless the Bureau for
22 Child Support Enforcement has examined the obligor's pattern of payment of support and the
23 obligee's likelihood of successfully pursuing other enforcement actions, and has determined that
24 the amount of past-due support which will be owed, at the time the withholding is to be made, will
25 be \$100 or more. In determining whether the amount of past-due support will be \$100 or more,
26 the Bureau for Child Support Enforcement shall consider the amount of all unpaid past-due
27 support, including that which may have accrued prior to the time that the Bureau for Child Support
28 Enforcement first agreed to enforce the support order.

29 (c) The Commissioner of the Bureau for Child Support Enforcement shall enter into
30 agreements with the Secretary of the Treasury and the Tax Commissioner, and other appropriate
31 governmental agencies, to secure information relating to the Social Security number or numbers
32 and the address or addresses of any obligor, and the name or names and address or addresses

33 of any employer or employers, in order to provide notice between such agencies to aid the Bureau
34 for Child Support Enforcement in requesting state income tax deductions and to aid the Tax
35 Commissioner in enforcing such deductions. In each such case, the Tax Commissioner, in
36 processing the state income tax deduction, shall notify the Bureau for Child Support Enforcement
37 of the obligor's home address and Social Security number or numbers. The Bureau for Child
38 Support Enforcement shall provide this information to any other state involved in processing the
39 support order;

40 (d) For the purposes of this section, "past-due support" means the amount of unpaid past-
41 due support owed under the terms of a support order to or on behalf of a child, or to or on behalf
42 of a minor child and the parent with whom the child is living, or to a spouse under an order of
43 spousal support; regardless of whether the amount has been reduced to a judgment or not.

44 (e) The Bureau for Child Support Enforcement may, under the provisions of this section,
45 enforce the collection of past-due support on behalf of a child who has reached the age of majority.

46 (f) The procedure shall, at a minimum, provide that prior to notifying the Tax Commissioner
47 of past-due support, a notice to the obligor as prescribed under subsection (a) of this section shall:

48 (1) Notify the obligor that a withholding will be made from any refund otherwise payable to
49 such obligor;

50 (2) Instruct the obligor of the steps which may be taken to contest the determination of the
51 Bureau for Child Support Enforcement that past-due support is owed or the amount of the past-
52 due support; and

53 (3) Provide information with respect to the procedures to be followed, in the case of a joint
54 return, to protect the share of the refund which may be payable to another person.

55 (g) If the Bureau for Child Support Enforcement is notified by the Tax Commissioner that
56 the refund from which withholding is proposed to be made is based upon a joint return, and if the
57 past-due support which is involved has not been assigned to the Department of Health and
58 Human Resources, the Bureau for Child Support Enforcement may delay distribution of the

59 amount withheld until such time as the Tax Commissioner notifies the Bureau for Child Support
60 Enforcement that the other person filing the joint return has received his or her proper share of
61 the refund, but such delay shall not exceed six months.

62 (h) In any case in which an amount is withheld by the Tax Commissioner under the
63 provisions of this section and paid to the Bureau for Child Support Enforcement, if the Bureau for
64 Child Support Enforcement subsequently determines that the amount certified as past due was
65 in excess of the amount actually owed at the time the amount withheld is to be distributed, the
66 agency shall pay the excess amount withheld to the obligor thought to have owed the past due
67 support or, in the case of amounts withheld on the basis of a joint return, jointly to the parties filing
68 the return.

69 (i) The amounts received by the Bureau for Child Support Enforcement shall be distributed
70 in accordance with the provisions for distribution set forth in 42 U.S.C. §657.

§48-18-118a. Obtaining refunds of overpaid support from state income tax refunds.

1 (a) Definitions.

2 (1) "Obligee" means the same as that term is defined in section two hundred thirty-four,
3 article one of this chapter.

4 (2) "Obligor" means the same as that term is defined in section two hundred thirty-five,
5 article one of this chapter.

6 (3) "Overpaid support" means the same as that term is defined in section two hundred
7 thirty-five, article one of this chapter.

8 (b) The Tax Commissioner shall cooperate with the Commissioner of the Bureau for Child
9 Support Enforcement in establishing and implementing procedures for the collection of overpaid
10 child and spousal support from state income tax refunds that are payable to obligees. The Tax
11 Commissioner shall collect the refunds and send the amounts to the Bureau for Child Support
12 Enforcement for distribution to obligors who made the overpayment.

§48-18-121. Providing information to consumer reporting agencies; requesting consumer

credit reports for child support purposes.

1 (a) For purposes of this section, the term “consumer reporting agency” means any person
2 who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages, in whole or
3 in part, in the practice of assembling or evaluating consumer credit information or other
4 information on consumers for the purpose of furnishing consumer reports to third parties.

5 (b) The Commissioner shall establish procedures whereby information regarding the
6 amount of overdue support owed by an obligor will be reported periodically by the Bureau for
7 Child Support Enforcement to any consumer reporting agency, after a request by the consumer
8 reporting agency that it be provided with the periodic reports.

9 (1) The procedures shall provide that any information with respect to an obligor shall be
10 made available only after notice has been sent to the obligor of the proposed action, and such
11 obligor has been given a reasonable opportunity to contest the accuracy of the information.

12 (2) The procedures shall afford the obligor with procedural due process prior to making
13 information available with respect to the obligor.

14 (c) The information made available to a consumer reporting agency regarding overdue
15 support may only be made available to an entity that has furnished evidence satisfactory to the
16 Bureau that the entity is a consumer reporting agency as defined in subsection (a) of this section.

17 (d) The Bureau for Child Support Enforcement may impose a fee for furnishing such
18 information, not to exceed the actual cost thereof.

19 (e) The Commissioner of the Bureau for Child Support Enforcement, or her or his or her
20 designee, may request a consumer reporting agency to prepare and furnish to the Bureau for
21 Child Support Enforcement a consumer report for purposes relating to ~~child~~-support, by certifying
22 to the consumer reporting agency that:

23 (1) The consumer report is needed for the purpose of establishing an individual's capacity
24 to make ~~child~~-support payments or determining the appropriate level of payments in order to set
25 an initial or modified ~~child~~ support award;

26 (2) The paternity of the child of the individual has been established or acknowledged by
27 the individual in accordance with state law;

28 (3) The individual whose report is being requested has been given at least ten days' prior
29 notice of the request by certified mail to his or her last known address that such report is being
30 requested; and

31 (4) The consumer report will be kept confidential, will be used solely for a purpose
32 described in subdivision (1) of this subsection and will not be used in connection with any other
33 civil, administrative or criminal proceeding or for any other purpose.

**§48-18-124. Liability for financial institutions providing financial records to the Bureau for
Child Support enforcement; agreements for data match system; encumbrance or
surrender of assets.**

1 (a) Notwithstanding any other provision of this code, a financial institution shall not be
2 liable under the law of this state to any person for:

3 (1) Disclosing any financial record of an individual to the Bureau for Child Support
4 enforcement in response to a subpoena issued by the bureau pursuant to §48-18-123 of this
5 code;

6 (2) Disclosing any financial record of an individual to the Bureau for Child Support
7 enforcement pursuant to the terms of an agreement with such financial institution pursuant to
8 subsection (f) of this section;

9 (3) Encumbering or surrendering assets held by such financial institution in response to a
10 notice of lien or levy issued by the Bureau for Child Support enforcement as provided in
11 subsection (g) of this section; or

12 (4) For any other action taken in good faith to comply with the requirements of this section.

13 (b) The Bureau for Child Support enforcement, after obtaining a financial record of an
14 individual from a financial institution, may disclose such financial record only for the purpose of,
15 and to the extent necessary in, establishing, modifying or enforcing a child support obligation of

16 such individual.

17 (c) The civil liability of a person who knowingly, or by reason of negligence, discloses a
18 financial record of an individual in violation of subsection (b) of this section is governed by the
19 provisions of federal law as set forth in 42 U.S.C. §669A.

20 (d) For purposes of this section, the term “financial institution” means:

21 (1) Any bank or savings association;

22 (2) A person who is an institution-affiliated party, as that term is defined in the Federal
23 Deposit Insurance Act, 12 U.S.C. §1813(u);

24 (3) Any federal credit union or state-chartered credit union, including an institution-
25 affiliated party of a credit union; and

26 (4) Any benefit association, insurance company, safe deposit company, money-market
27 mutual fund, or similar entity authorized to do business in this state.

28 (e) For purposes of this section, the term “financial record” means an original of, a copy
29 of, or information known to have been derived from, any record held by a financial institution
30 pertaining to a customer’s relationship with the financial institution.

31 (f) Notwithstanding any provision of this code to the contrary, the Bureau for Child Support
32 enforcement shall enter into agreements with financial institutions doing business in the state to
33 develop and operate, in coordination with such financial institutions, a data match system, using
34 automated data exchanges, to the maximum extent feasible, in which each financial institution is
35 required to provide for each calendar quarter the name, record address, social security number
36 or other taxpayer identification number, and other identifying information for each obligor, as
37 defined in §48-1-235 of this code, who maintains an account at such institution and who owes
38 past due support. The Bureau for Child Support enforcement will identify to the financial institution
39 an obligor who owes past due support by his or her name and social security number or other
40 taxpayer identification number. The Bureau for Child Support enforcement, upon written request
41 and proof of actual costs incurred, shall pay a reasonable fee to a financial institution for

42 conducting the data matching services not to exceed the actual costs incurred by such financial
43 institution or \$100 per institution per quarter, whichever is less.

44 (g) The financial institution, in response to a notice of a lien or levy, shall encumber or
45 surrender, as the case may be, assets held by such institution on behalf of any noncustodial
46 parent who is subject to a lien for ~~child~~ support.

**§48-18-201. General Provisions related to requests for assistance, recalculation of support
amounts, preparation of petition and proposed orders.**

1 (a) An obligor or an obligee under a ~~child~~ support order may seek and obtain the
2 assistance of the Bureau for Child Support Enforcement to perform a recalculation of the support
3 amount and prepare and present a petition seeking modification of a child support order and the
4 presentation of a proposed order modifying support to the family court. An obligor or an obligee
5 under a spousal support order may seek and obtain the assistance of the Bureau for Child Support
6 Enforcement to prepare and present a petition seeking modification of a spousal support order
7 and the presentation of a proposed order modifying support to the family court.

8 (b) A request for services authorized by this section shall constitute an application for
9 services from the Bureau for Child Support Enforcement.

10 (c) The duties and actions directed or authorized when a request is made pursuant to this
11 section shall be exercised by the employees and agents of the Bureau for Child Support
12 Enforcement under the supervision and direction of Bureau for Child Support Enforcement
13 attorneys as part of, and in addition to, their duties as set out in §48-19-103 of this code.

14 (d) In performing its duties under this section, the Bureau for Child Support Enforcement
15 is authorized to issue subpoenas and subpoenas duces tecum, pursuant to the provisions of §48-
16 18-123 of this code, to require an obligor or obligee to produce and permit inspection and copying
17 of designated books, papers, documents or tangible things pursuant to Rule 45 of the Rules of
18 Civil Procedure or §48-18-123 of this code.

19 (e) When the Bureau for Child Support Enforcement is authorized or required by this

20 section to notify or give notice to a party, the notice shall be given in the same manner as required
21 for service of a petition for modification of support filed with the family court.

22 (f) The procedures and forms used shall provide that one party may request that their
23 residential address and the address and identity of the employer not be revealed to another party.

24 (g) The Bureau for Child Support Enforcement may refuse to accept a request or take
25 action on a request for assistance if it determines there are existing ongoing proceedings which
26 would create a conflict, or if it determines that the request was not in good faith based on the
27 allegations made, a history of multiple such requests or other information. If the Bureau for Child
28 Support Enforcement makes a determination to refuse the request for assistance, it shall notify
29 the party making the request for assistance and if the responding party has already been notified
30 of the request, the responding party.

31 (h) The Bureau for Child Support Enforcement shall prepare an explanation of the process
32 and procedures it will use to process the request for assistance under this section. The
33 explanation shall be made available generally to the public, given to every person who makes a
34 request and included with the notice to the responding party.

§48-18-202. Request for assistance by party.

35 (a) To make a request for assistance under this article, a party shall submit the request in
36 writing to the Bureau for Child Support Enforcement on a form provided by the bureau. The written
37 request form shall include all of the requesting party's information known to the party that is
38 relevant to determine the child support or spousal support amount. The request shall be
39 accompanied by:

40 (1) A copy of the order being modified or, in the discretion of the bureau, information
41 sufficient to permit the bureau to retrieve or identify the order;

42 (2) A form containing a statement of all of the requesting party's information known to the
43 party that is relevant to determining the amount of child support, including a general statement or
44 argument advancing the reason the request is being made;

45 (3) Copies of documentation reasonably available to the requesting party setting forth all
46 of the requesting party's information that is relevant to determine the amount of child support;

47 (4) A statement setting forth the relevant information pertaining to the responding party's
48 earnings and ~~child~~-support that is known or believed to be true by the requesting party;

49 (5) Copies of any relevant documentation which the requesting party may have in its
50 possession which would be relevant to determining the responding party's ~~child~~-support
51 obligations; and

52 (6) A statement of all other known proceedings, pending court proceedings or other
53 pending requests for assistance involving the parties or related to the child or children or spouse
54 whose support is being reevaluated.

55 (b) Upon receipt of notification that an obligor is incarcerated in a regional jail or a state or
56 federal correctional facility, the Bureau for Child Support Enforcement shall determine whether
57 the expected incarceration will exceed six months. If the incarceration will exceed six months, the
58 bureau shall file a petition to modify child support.

§48-18-203. Bureau processing of request for assistance or recalculation.

1 (a) Upon receipt of a request from a party pursuant to §48-18-202 of this code, the Bureau
2 for Child Support Enforcement shall notify the responding party that a request for assistance in
3 the recalculation of the support amount and the related preparation and presentation of a petition
4 or proposed order to modify an existing ~~child~~-support order has been submitted to the Bureau for
5 Child Support Enforcement.

6 (b) As a part of the notification provided under subsection (a) of this section, notification
7 provided by the Bureau for Child Support Enforcement to the responding party shall include the
8 following:

9 (1) A blank information statement form, and an explanation of the form;

10 (2) A statement advising the responding party that if the responding party does not fill out
11 and return the information statement with accompanying documentation, that the information

12 contained on the requesting party's information statement and any attached documentation may
13 be used to prepare a petition and proposed order to modify the parties' existing ~~child~~-support
14 obligations and filed with the family court, if the submitted information shows a substantial change
15 in the parties' circumstances;

16 (3) A copy of the information statement supplied by the requesting party in support of its
17 request;

18 (4) A request that the responding party submit a statement and supply a copy of any
19 information or documentation which the responding party may have which would challenge,
20 contradict or supplement the information which has been previously submitted by the requesting
21 party, to allow the Bureau for Child Support Enforcement to more accurately recalculate any
22 modified ~~child~~-support obligations of the parties;

23 (5) An explanation that the Bureau for Child Support Enforcement may refuse to accept a
24 request or take action on a request if it determines there are existing ongoing proceedings which
25 would create a conflict;

26 (6) A request that the responding party provide a list of all other known proceedings
27 pending court proceedings or other requests for recalculation or modification of the parties'
28 respective ~~child~~-support obligations; and

29 (7) An explanation of the process to be followed by the Bureau for Child Support
30 Enforcement in providing the requested assistance, recalculation of the parties' modified ~~child~~
31 support obligations, including the preparation of a petition, and proposed order to modify the
32 parties' existing ~~child~~ support obligations, when appropriate.

33 (c) The Bureau for Child Support Enforcement may issue a subpoena or subpoena duces
34 tecum, pursuant to the provisions of §48-18-103 of this code, to require the responding party to
35 produce and permit inspection and copying of designated books, papers, documents or tangible
36 things which are relevant to determine ~~child~~ support.

37 (d) The Bureau for Child Support Enforcement may issue a subpoena, pursuant to the

38 provisions of §48-18-103 of this code, to produce and permit inspection and copying of designated
39 books, papers, documents or tangible things, relevant to the determination of ~~child~~ support to
40 persons other than the parties to the support order.

41 (e) The Bureau for Child Support Enforcement may use other information and other
42 communications or procedures available to the Bureau for Child Support Enforcement to gather
43 information relevant to the determination of ~~child~~ support.

§48-18-204. Request for meeting with the Bureau.

1 (a) Either party may ask for an in-person meeting with the Bureau, prior to the preparation
2 or presentation of any petition to seek a modification of a support order or any proposed
3 modification order to the family court. As a part of the initial contact and notice to the parties after
4 its receipt of an assistance request under this article, the Bureau for Child Support Enforcement
5 shall inform the parties of their right to meet with the Bureau for Child Support Enforcement to
6 discuss the circumstances and any relevant factors pertaining to the parties' ~~child~~ support
7 obligations. If either party asks for a meeting, the responding party shall be notified that a meeting
8 has been requested. The parties shall not meet with the Bureau at the same time except as
9 allowed in the discretion of the Bureau. No party may be required to meet with the Bureau.

10 (b) A party may modify an information statement or provide additional documents at the
11 meeting or at any time before the Bureau sends its proposed order to the family court.

§48-18-205. Bureau action on request of recalculation and presentation of proposed order.

1 (a) If the bureau determines that no credible information exists to establish finding of a
2 substantial change in circumstances as required by §48-11-105 of this code, the Bureau for Child
3 Support Enforcement shall notify the parties of that fact and notify the parties that the Bureau for
4 Child Support Enforcement will not be preparing a petition of proposed order seeking modification
5 of the parties' ~~child~~ support obligation. Under those circumstances, if the parties disagree with the
6 Bureau for Child Support Enforcement's assessment and wish to independently file a petition for
7 modification, the parties may still seek modification of ~~child~~-support by filing a petition for

8 modification of an order for support with the family court under the provisions of §48-11-105 or
9 §48-11-106 of this code or under the provisions of §48-14-106 of this code.

10 (b) If the Bureau for Child Support Enforcement determines that there has been a
11 substantial change of circumstances as required by §48-11-105 of this chapter or by §48-14-106
12 of this code, then the Bureau for Child Support Enforcement shall prepare a petition and proposed
13 order modifying the child support order to be filed with the clerk of the family court.

14 (c) Any such petition filed by the Bureau for Child Support Enforcement filed pursuant to
15 this article shall include the following:

16 (1) A copy of the proposed order;

17 (2) A print-out of the child support guidelines calculations for child support obligations;

18 (3) A notice of the bureau's action;

19 (4) The documents and statements relied upon;

20 (5) Any statement of findings or justification the bureau is required or determines to
21 include; and

22 (6) A form and instructions for filing an objection to the proposed order, should a party
23 wish to do so, which form shall require a statement of the ground or grounds for filing the objection.

24 (d) The Bureau for Child Support Enforcement's proposed order shall be based on the
25 child support guidelines: *Provided, That* the bureau may disregard the child support guidelines or
26 adjust the amount as allowed by §48-13-702 of this code in the following instances:

27 (1) When the previous child support order disregarded the child support guidelines, the
28 grounds for the disregarding or adjusting the guidelines are stated in the worksheet or previous
29 order or are agreed upon by the parties, or are otherwise clear, and those grounds continue to
30 exist and can be applied to the current circumstances; or

31 (2) If new grounds for the disregard or adjustment are fully explained in the proposed
32 order.

33 (e) The Bureau for Child Support Enforcement's proposed order for spousal support shall

34 be based on the prior order's calculation of support and the facts relied upon for the determination
35 in that order.

36 ~~(e)~~ (f) Within six months of the time that a ~~child~~ support obligation becomes \$1,000 in
37 arrears the Bureau for Child Support Enforcement shall notify the obligor that he or she may be
38 in violation of §61-5-29 of this code, felony nonsupport, should the arrearage increase to \$8,000.
39 The notice shall also advise the obligor of the availability of ~~child~~-support modification, the amnesty
40 program established in §48-1-302 of this code and the possibility of establishing a payment plan
41 with the bureau: *Provided, That* where the monthly ~~child~~-support obligation is greater than \$1,000,
42 the notice shall be sent when the arrearage equals to or greater than three months ~~child~~ support
43 obligation.

44 (1) If the obligor fails to respond within 30 days, the Bureau for Child Support Enforcement
45 shall file a petition for contempt pursuant to §48-14-503 of this code.

46 (2) If the obligor responds within 30 days, the Bureau for Child Support Enforcement shall
47 review the response and file appropriate pleadings which may include a motion for modification
48 of child support.

49 (3) The Bureau for Child Support Enforcement will have one year from the amendment
50 and reenactment of this section during the two thousand eight legislative session to notify obligors
51 who currently owe \$1,000 or more in ~~child~~-support arrearages or, where the monthly ~~child~~ support
52 obligation is greater than \$1,000, the arrearage is equal to or greater than three months ~~child~~
53 ~~support~~ obligation, of the ~~child~~ support modification options available to them.

**§48-18-206. Family court action on petition and proposed order prepared by Bureau for
Child Support Enforcement.**

1 (a) Upon receipt of petition for modification and proposed order prepared by the Bureau
2 for Child Support Enforcement in accordance with the provisions of this article, the circuit clerk
3 shall serve a copy of the petition and the proposed order upon all parties to the proceeding by
4 personal service or by United States certified mail, return receipt requested, and direct the parties

5 to file any objections to the proposed modified ~~child~~ support order within 20 days of the date of
6 receiving such notice.

7 (b) Within five days of the filing of a petition for modification and proposed order, the circuit
8 clerk shall notify the family court.

9 (c) If no party files timely objection to the proposed order or timely requests a hearing on
10 the petition after receiving such notice, then the family court shall proceed to review the petition
11 and proposed order sua sponte, and shall issue the proposed order. If the family court receives
12 no objection, but the family court concludes that the proposed order should not be entered or
13 should be changed, it shall set the matter for hearing.

14 (d) If the family court receives an objection to the petition or proposed order, the family
15 court shall set a date and time for hearing.

16 (e) At any hearing on the proposed order, the family court shall treat the proposed order
17 as a motion for modification made by the party requesting the bureau to initiate the modification.
18 The actions of the family court at a hearing shall be de novo and shall not be an appeal from the
19 bureau's recommended order. The family court shall notify the parties of the hearing and of the
20 parties' rights and the procedures to be followed.

21 (f) The fees to be assessed for filing and service of the petition and the disbursement of
22 the fee for petitions filed pursuant to this section shall be the same as the fee charged by the clerk
23 for petitioning for an expedited modification of a ~~child~~ support order, as set forth in §59-1-11 of
24 this code.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-29. Failure to meet an obligation to pay child and spousal support ~~to a minor~~; penalties.

1 (1) A person who: (a) Repeatedly and willfully fails to pay his or her court-ordered ~~child~~

2 support which he or she can reasonably provide and which he or she knows he or she has a duty
3 to provide ~~to a minor~~; and (b) is subject to court order to pay any amount of child or spousal
4 support ~~for the support of a minor child or~~ and is delinquent in meeting the full obligation
5 established by the order and has been delinquent for a period of at least six months' duration is
6 guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more
7 than \$1,000, or confined in jail for not more than one year, or both fined and confined.

8 (2) A person who repeatedly and willfully fails to pay his or her court-ordered support which
9 he or she can reasonably provide and which he or she knows he or she has a duty to provide ~~to~~
10 ~~a minor~~ by virtue of a court or administrative order and the failure results in twelve months without
11 payment of support that remains unpaid is guilty of a felony and, upon conviction thereof, shall be
12 fined not less than \$100 nor more than \$1,000, or imprisoned for not less than one year nor more
13 than three years, or both fined and imprisoned.

NOTE: The purpose of this bill is to provide that parties may apply to Bureau for Child Support enforcement to collect spousal support payments; require the court to direct that spousal support payments be directly paid to the Bureau for Child Support Enforcement upon application of party; authorize the Bureau for Child Support Enforcement to collect spousal support from federal and state taxes; authorize Bureau for Child Support Enforcement to obtain information from financial institution regarding spousal support obligations; allow Bureau for Child Support Enforcement to assist parties in obtaining spousal support; allow Bureau for Child Support Enforcement to bring action before the court to obtain modification to support order; provide process within family court for the presentation of a proposal to modify spousal support; and to create criminal penalties for the failure to pay spousal support.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.