

## House Proposal of Amendment

S. 203

An act relating to child support enforcement.

The House proposes to the Senate to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 4 V.S.A. § 466(f) is added to read:

(f) When an obligor is referred to an employment services program, the magistrate may require the program to file periodic written reports with the court regarding the obligor's progress and cooperation with the program requirements. Such reports shall be admissible in an enforcement or contempt proceeding without the appearance of a witness from the program unless there is a dispute with respect to the authenticity of the report or the obligor disputes the facts set forth in the report concerning the obligor's performance and the facts in dispute are relevant to the determination of the issues before the court.

Sec. 2. 15 V.S.A. § 603 is amended to read:

§ 603. CONTEMPT

~~(a) A person who disobeys a lawful order or decree of a court or judge, made under the provisions of this chapter, may be proceeded against for contempt as provided by 12 V.S.A. § 122. The department for children and families may institute such proceedings in all cases in which a party or dependent children of the parties are the recipients of financial assistance from the department~~ Nonfinancial obligations. If a person disobeys a lawful order of the family division made under the provisions of this chapter and the order does not relate to payment of a financial obligation, the person may be subject to proceedings for civil contempt as provided by 12 V.S.A. § 122.

~~(b) For contempt of an order or decree made under the provisions of this chapter, the court may:~~

- ~~(1) order restitution to the department;~~
- ~~(2) order payments be made to the department for distribution;~~
- ~~(3) order a party to serve not more than 30 days of preapproved furlough as provided in 28 V.S.A. § 808(a)(7); or~~
- ~~(4) make such other orders or conditions as it deems proper~~

Financial obligations. If a person disobeys a lawful order of the family division made under the provisions of this chapter and the order creates a financial obligation, including payment of child support, spousal maintenance, or a lump sum property settlement, the person may be subject to proceedings for civil contempt as provided by 12 V.S.A. § 122 and the provisions set forth herein.

(c) Parties. The office of child support may institute proceedings in all cases in which the office provides services under Title IV-D of the Social Security Act to either or both parties.

(d) Notice of hearing. The person against whom the contempt proceedings are brought shall be served with a notice of a hearing ordering the person to appear at the hearing to show cause why he or she should not be held in contempt. The notice shall inform the person that failure to appear at the hearing may result in the issuance of an arrest warrant directing a law enforcement officer to transport the person to court.

(e) Rebuttable presumption of ability to comply. A person who is subject to a court-ordered financial obligation and who has received notice of such obligation shall be presumed to have the ability to comply with the order. In a contempt proceeding, the noncomplying party may overcome the presumption by demonstrating that, due to circumstances beyond his or her control, he or she did not have the ability to comply with the court-ordered obligation.

(f) Finding of contempt. A person may be held in contempt of court if the court finds all of the following:

(1) The person knew or reasonably should have known that he or she was subject to a court-ordered obligation.

(2) The person has failed to comply with the court order. If the failure to comply involves a failure to pay child support or spousal maintenance, the person who brings the action has the burden to establish the total amount of the obligation, the amount unpaid, and any unpaid surcharges or penalties.

(3) The person has willfully violated the court order in that he or she had the ability to comply with the order and failed to do so.

(g) Findings of fact. The court shall make findings of fact on the record based on the evidence presented which may include direct or circumstantial evidence.

(h) Order upon finding of contempt. Upon a finding of contempt, the court shall determine appropriate sanctions to obtain compliance with the court order. The court may order any of the following:

(1) The person to perform a work search and report the results of his or her search to the court or to the office of child support, or both.

(2) The person to participate in an employment services program, which may provide referrals for employment, training, counseling, or other services, including those listed in section 658 of this title. Any report provided from such a program shall be presumed to be admissible without the appearance of a witness from the program in accordance with the provisions in 4 V.S.A. § 466(f).

(3) The person to appear before a reparative board. The person shall return to court for further orders if:

(A) the reparative board does not accept the case; or

(B) the person fails to complete the reparative board program to the satisfaction of the board in a time deemed reasonable by the board.

(4) Incarceration of the person unless he or she complies with purge conditions established by the court. A court may order payment of all or a portion of the unpaid financial obligation as a purge condition, providing that the court finds that the person has the present ability to pay the amount ordered and sets a date certain for payment. If the purge conditions are not met by the date established by the court and the date set for payment is within 30 days of finding of ability to pay, the court may issue a mittimus placing the contemnor in the custody of the commissioner of corrections.

(A) As long as the person remains in the custody of the commissioner of corrections, the court shall schedule the case for a review hearing every 15 days.

(B) The commissioner shall immediately release such a person from custody upon the contemnor's compliance with the purge conditions ordered by the court.

(C) The commissioner may, in his or her sole discretion, place the contemnor on home confinement furlough or work crew furlough without prior approval of the court.

(5) Orders and conditions as the court deems appropriate.

(i) Finding of present ability to pay. A finding of present ability to pay a purge condition shall be effective for up to 30 days from the date of the finding. In determining present ability to pay for purposes of imposing necessary and appropriate coercive sanctions to bring the noncomplying person into compliance and purge the contempt, the court may consider:

(1) A person's reasonable ability to use or access available funds or other assets to make all or a portion of the amount due by a date certain set by the court.

(2) A person's reasonable ability to obtain sufficient funds necessary to pay all or a portion of the amount due by a date certain set by the court, as demonstrated by the person's prior payment history and ability to comply with previous contempt orders.

Sec. 3. 15 V.S.A. § 653 is amended to read:

#### § 653. DEFINITIONS

As used in this subchapter:

(1) "Available income" means gross income, less;

(A) the amount of spousal support or preexisting child support obligations, including any court-ordered periodic repayment toward arrearages, actually paid;

\* \* \*

(7) "Self-support reserve" means the needs standard established annually ~~by the commissioner for children and families which shall be an amount sufficient to provide a reasonable subsistence compatible with decency and health. The needs standard shall take into account the available income of the parent responsible for payment of child support, and calculated at~~ 120 percent of the United States Department of Health and Human Services poverty guideline per year for a single individual.

\* \* \*

Sec. 4. 15 V.S.A. § 658 is amended to read:

§ 658. SUPPORT

\* \* \*

(d) The court or magistrate may order ~~a parent who is in default of a child support order, an obligor or a parent who will become the obligor pending an anticipated child support order~~ to participate in employment, educational, or training-related activities if the court finds that participation in such activities would assist in providing support for a child, or in addressing the causes of the default. The court may also order the parent to participate in substance abuse or other counseling if the court finds that such counseling may assist the parent to achieve stable employment. Activities ordered under this section shall not be inconsistent consistent with, and may be more rigorous than, any requirements of a state or federal program in which the parent is participating. For the purpose of this subsection, "employment, educational, or training-related training-related activities" shall mean:

- (1) unsubsidized employment;
- (2) subsidized private sector employment;
- (3) subsidized public sector employment;
- (4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;
- (5) on-the-job training;
- (6) job search and job readiness assistance;
- (7) community service programs;

(8) vocational educational training (not to exceed 12 months with respect to any individual);

(9) job skills training directly related to employment;

(10) education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;

(11) satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate;

(12) the provision of child care services to an individual who is participating in a community service program; and

(13) an employment services program, which may provide referrals for employment, training, counseling, or other services. Any report provided from such a program shall be presumed to be admissible without the appearance of a witness from the program in accordance with the provisions in 4 V.S.A. § 466(f).

\* \* \*

Sec. 5. 15 V.S.A. § 660 is amended to read:

§ 660. MODIFICATION

(a)(1) On motion of either parent ~~or~~, the office of child support, any other person to whom support has previously been granted, or any person previously charged with support, and upon a showing of a real, substantial and unanticipated change of circumstances, the court may annul, vary, or modify a child support order, whether or not the order is based upon a stipulation or agreement. If the child support order has not been modified by the court for at least three years, the court may waive the requirement of a showing of a real, substantial, and unanticipated change of circumstances.

(2) The office of child support may independently file a motion to modify child support or change payee if providing services under Title IV-D of the Social Security Act, if a party is or will be incarcerated for more than 90 days, if the family has reunited or is living together, if the child is no longer living with the payee, or if a party receives means-tested benefits.

(b) A child support order, including an order in effect prior to adoption of the support guideline, which varies more than ten percent from the amounts required to be paid under the support guideline, shall be considered a real, substantial, and unanticipated change of circumstances.

(c) ~~Receipt of workers' compensation, unemployment compensation or disability benefits~~ The following shall be considered a real, substantial, and unanticipated change of circumstances:

(1) Receipt of workers' compensation, disability benefits, or means-tested public assistance benefits.

(2) Unemployment compensation, unless the period of unemployment was considered when the child support order was established.

(3) Incarceration for more than 90 days, unless incarceration is for failure to pay child support.

(d) A motion to modify a support order under subsection (b) or (c) of this section shall be accompanied by an affidavit setting forth calculations demonstrating entitlement to modification and shall be served on other parties and filed with the court. Upon proof of service, and if the calculations demonstrate cause for modification, the ~~clerk of the court~~ magistrate shall enter an order modifying the support award in accordance with the calculations provided, unless within 15 days of service of, or receipt of, the request for modification, either party requests a hearing. The court shall conduct a hearing within 20 days of the request. No order shall be modified without a hearing if one is requested.

(e) An order may be modified only as to future support installments and installments which accrued subsequent to the date of notice of the motion to the other party or parties. The date the motion for modification is filed shall be deemed to be the date of notice to the opposing party or parties.

(f) Upon motion of the court or upon motion of the office of child support, the court may deem arrears judicially unenforceable in cases where there is no longer a duty of support, provided the court finds all of the following:

(1) The obligor is presently unable to pay through no fault of his or her own.

(2) The obligor currently has no known income or has only nominal assets.

(3) There is no reasonable prospect that the obligor will be able to pay in the foreseeable future.

(g) Upon motion of an obligee or the office of child support, the court may set aside a judgment that arrears are judicially unenforceable based on newly discovered evidence or a showing of a real, substantial, and unanticipated change in circumstances, provided the court finds any of the following:

(1) The obligor is presently able to pay.

(2) The obligor has income or has only nominal assets.

(3) There is a reasonable prospect that the obligor will be able to pay in the foreseeable future.

Sec. 6. 15 V.S.A. § 662 is amended to read:

§ 662. INCOME STATEMENTS

(a) A party to a proceeding under this subchapter shall file an affidavit of income and assets which shall be in a form prescribed by the court administrator. A party shall provide the affidavit of income and assets to the court and the opposing party on or before the date of the case management conference scheduled or, if no conference is scheduled, at least five business days before the date of the first scheduled hearing before the magistrate. Upon request of either party, or the court, the other party shall furnish information documenting the affidavit. The court may require a party who fails to comply with this section to pay an economic penalty to the other party.

(b) If a party fails to provide information as required under subsection (a) of this section, the court shall use the available evidence to estimate the noncomplying parent's income. Failure to provide the information required under subsection (a) of this section ~~shall~~ may create a presumption that the noncomplying parent's gross income is ~~the greater of:~~

~~(1) 150 percent of the most recently available annual average covered wage for all employment as calculated by the department of labor; or~~

~~(2) the gross income indicated by the evidence.~~

(c)(1) Upon a motion filed by either party or the office of child support, the court may relieve a party from a final judgment or child support order upon a showing that the income used in a default child support order was inaccurate by at least 10 percent. A showing that the court used incorrect financial information shall be considered a mistake for the purposes of Rule 60 of the Vermont Rules of Civil Procedure.

(2) The motion in subdivision (1) of this subsection shall be filed within one year of the date the contested order was issued.

Sec. 7. 15 V.S.A. § 668 is amended to read:

§ 668. MODIFICATION OF ORDER

(a) On motion of either parent or any other person to whom custody or parental rights and responsibilities have previously been granted, and upon a showing of real, substantial and unanticipated change of circumstances, the court may annul, vary or modify an order made under this subchapter if it is in the best interests of the child, whether or not the order is based upon a stipulation or agreement.

(b) Whenever a judgment for physical responsibility is modified, the court shall order a child support modification hearing to be set and notice to be given to the parties. Unless good cause is shown to the contrary, the court shall simultaneously issue a temporary order pending the modification hearing, if

adjustments to those portions of any existing child support order or wage withholding order that pertain to any child affected by the modification are necessary to assure that support and wages are paid in amounts proportional to the modified allocation of responsibility between the parties.

Sec. 8. 28 V.S.A. § 2a(a) is amended to read:

(a) State policy. It is the policy of this state that principles of restorative justice be included in shaping how the criminal justice system responds to persons charged with or convicted of criminal offenses, and how the state responds to persons who are in contempt of child support orders. The policy goal is a community response to a person's wrongdoing at its earliest onset, and a type and intensity of sanction tailored to each instance of wrongdoing. Policy objectives are to:

(1) Resolve conflicts and disputes by means of a nonadversarial community process.

(2) Repair damage caused by criminal acts to communities in which they occur, and to address wrongs inflicted on individual victims.

(3) Reduce the risk of an offender committing a more serious crime in the future, that would require a more intensive and more costly sanction, such as incarceration.

Sec. 9. 28 V.S.A. § 3 is amended to read:

### § 3. GENERAL DEFINITIONS

Whenever used in this title:

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(8) "Offender" means any person convicted of a crime or offense under the laws of this state, and, for purposes of work crew, a person found in civil contempt under 15 V.S.A. § 603.

\* \* \*

Sec. 10. 28 V.S.A. § 352 is amended to read:

### § 352. SUPERVISED COMMUNITY SENTENCE

(a) At the request of the court, the commissioner of corrections shall prepare a preliminary assessment to determine whether an offender should be considered for a supervised community sentence.

(b) Upon adjudication of guilt, ~~or~~ a finding of violation of probation, or a finding of civil contempt, and only after the filing of a recommendation for supervised community sentence by the commissioner of corrections, the court may impose a sentence of imprisonment and order that all or part of the term of imprisonment be served in the community subject to the provisions of this



chapter. Such a sentence shall not limit the court's authority to place a person on probation and to establish conditions of probation.

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Sec. 11. 28 V.S.A. § 910 is amended to read:

§ 910. RESTORATIVE JUSTICE PROGRAM ~~FOR PROBATIONERS~~

This chapter establishes a program of restorative justice for use with offenders required to participate in such a program as a condition of a sentence of probation or as ordered for civil contempt of a child support order under 15 V.S.A. § 603. The program shall be carried out by community reparative boards under the supervision of the commissioner, as provided by this chapter.

Sec. 12. 28 V.S.A. § 910a is amended to read:

§ 910a. REPARATIVE BOARDS; FUNCTIONS

\* \* \*

(d) Each board shall conduct its meetings in a manner that promotes safe interactions among ~~a probationer~~ an offender, victim or victims, and community members, and shall:

(1) In collaboration with the department, municipalities, the courts, and other entities of the criminal justice system, implement the restorative justice program of seeking to obtain ~~probationer~~ offender accountability, repair harm and compensate a victim or victims and the community, increase a ~~probationer's~~ an offender's awareness of the effect of his or her behavior on a victim or victims and the community, and identify ways to help ~~a probationer~~ an offender comply with the law.

(2) Educate the public about, and promote community support for, the restorative justice program.

(e) Each board shall have access to the central file of any ~~probationer~~ offender required to participate with that board in the restorative justice program.

\* \* \*

Sec. 13. EFFECTIVE DATE

This act shall take effect on July 1, 2012