

**CHILD SUPPORT AMENDMENTS**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Katherine M. Bryson**

---

---

**LONG TITLE**

**General Description:**

This bill provides for income to be imputed for purposes of child support for incarcerated individuals.

**Highlighted Provisions:**

This bill:

- ▶ requires income to be imputed when a person is incarcerated for the commission of a criminal act at the greater of either the federal minimum wage or based on employment potential; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**78-45-7.5**, as last amended by Chapter 116, Laws of Utah 2001

---

---

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **78-45-7.5** is amended to read:

**78-45-7.5. Determination of gross income -- Imputed income.**

(1) As used in the guidelines, "gross income" includes:



28 (a) prospective income from any source, including nonearned sources, except under  
29 Subsection (3); and

30 (b) income from salaries, wages, commissions, royalties, bonuses, rents, gifts from  
31 anyone, prizes, dividends, severance pay, pensions, interest, trust income, alimony from  
32 previous marriages, annuities, capital gains, Social Security benefits, workers' compensation  
33 benefits, unemployment compensation, income replacement disability insurance benefits, and  
34 payments from "nonmeans-tested" government programs.

35 (2) Income from earned income sources is limited to the equivalent of one full-time  
36 40-hour job. However, if and only if during the time prior to the original support order, the  
37 parent normally and consistently worked more than 40 hours at [his] the parent's job, the court  
38 may consider this extra time as a pattern in calculating the parent's ability to provide child  
39 support.

40 (3) Specifically excluded from gross income are:

41 (a) cash assistance provided under Title 35A, Chapter 3, Part 3, Family Employment  
42 Program;

43 (b) benefits received under a housing subsidy program, the Job Training Partnership  
44 Act, Supplemental Security Income, Social Security Disability Insurance, Medicaid, Food  
45 Stamps, or General Assistance; and

46 (c) other similar means-tested welfare benefits received by a parent.

47 (4) (a) Gross income from self-employment or operation of a business shall be  
48 calculated by subtracting necessary expenses required for self-employment or business  
49 operation from gross receipts. The income and expenses from self-employment or operation of  
50 a business shall be reviewed to determine an appropriate level of gross income available to the  
51 parent to satisfy a child support award. Only those expenses necessary to allow the business to  
52 operate at a reasonable level may be deducted from gross receipts.

53 (b) Gross income determined under this Subsection (4) may differ from the amount of  
54 business income determined for tax purposes.

55 (5) (a) When possible, gross income should first be computed on an annual basis and  
56 then recalculated to determine the average gross monthly income.

57 (b) Each parent shall provide verification of current income. Each parent shall provide  
58 year-to-date pay stubs or employer statements and complete copies of tax returns from at least

59 the most recent year unless the court finds the verification is not reasonably available.  
60 Verification of income from records maintained by the Department of Workforce Services may  
61 be substituted for pay stubs, employer statements, and income tax returns.

62 (c) Historical and current earnings shall be used to determine whether an  
63 underemployment or overemployment situation exists.

64 (6) Gross income includes income imputed to the parent under Subsection (7).

65 (7) (a) Income may not be imputed to a parent unless the parent stipulates to the  
66 amount imputed, the party defaults, or, in contested cases, a hearing is held and a finding made  
67 that the parent is voluntarily unemployed or underemployed.

68 (b) If a parent is incarcerated for the commission of a criminal act, income is to be  
69 imputed at the greater of either the requirements of Subsection (7)(c) or (d).

70 [~~(b)~~] (c) If income is imputed to a parent, the income shall be based upon employment  
71 potential and probable earnings as derived from work history, occupation qualifications, and  
72 prevailing earnings for persons of similar backgrounds in the community, or the median  
73 earning for persons in the same occupation in the same geographical area as found in the  
74 statistics maintained by the Bureau of Labor Statistics.

75 [~~(c)~~] (d) If a parent has no recent work history or [~~their~~] the parent's occupation is  
76 unknown, income shall be imputed at least at the federal minimum wage for a 40-hour work  
77 week. To impute a greater income, the judge in a judicial proceeding or the presiding officer in  
78 an administrative proceeding shall enter specific findings of fact as to the evidentiary basis for  
79 the imputation.

80 [~~(d)~~] (e) Income may not be imputed if any of the following conditions exist:

81 (i) the reasonable costs of child care for the parents' minor children approach or equal  
82 the amount of income the custodial parent can earn;

83 (ii) a parent is physically or mentally disabled to the extent [~~he~~] the parent cannot earn  
84 minimum wage;

85 (iii) a parent is engaged in career or occupational training to establish basic job skills;  
86 or

87 (iv) unusual emotional or physical needs of a child require the custodial parent's  
88 presence in the home.

89 (8) (a) Gross income may not include the earnings of a minor child who is the subject

90 of a child support award nor benefits to a minor child in the child's own right such as  
91 Supplemental Security Income.

92 (b) Social Security benefits received by a child due to the earnings of a parent shall be  
93 credited as child support to the parent upon whose earning record it is based, by crediting the  
94 amount against the potential obligation of that parent. Other unearned income of a child may  
95 be considered as income to a parent depending upon the circumstances of each case.

---

---

**Legislative Review Note**  
**as of 2-16-04 10:43 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

**State Impact**

It is estimated that provisions of this bill can be implemented with existing resources.

---

**Individual and Business Impact**

No fiscal impact for individuals who abide by the laws of the state.

---

**Office of the Legislative Fiscal Analyst**