

1 **CHILD SUPPORT OBLIGATIONS**

2 2005 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Eric K. Hutchings**

5

LONG TITLE

6 **General Description:**

7
8 This bill modifies child support provisions to take into account those obligors that may
9 be incarcerated or incapacitated in their ability to earn.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ adds the following definitions to Title 78, Chapter 45:
- 13 • community correctional center;
 - 14 • correctional facility;
 - 15 • employment potential;
 - 16 • residential treatment;
 - 17 • incarcerated obligor;
 - 18 • secure facility;
 - 19 • secure correctional facility; and
 - 20 • temporary;
- 21 ▶ clarifies a deviated order;
- 22 ▶ adds employment potential to the factors considered when determining whether a
23 substantial change in circumstances has occurred;
- 24 ▶ adds incarceration, institutionalization, and residential treatment as factors when
25 reviewing an order for modification;
- 26 ▶ enacts new language for determining child support obligations when a parent is
27 incarcerated, institutionalized, in residential treatment, or physically or mentally



28 disabled; and

29 ▶ allows use of low income table if parent's income is below a specified amount.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **78-45-2**, as last amended by Chapters 161 and 186, Laws of Utah 2000

37 **78-45-7.2**, as last amended by Chapter 176, Laws of Utah 2003

38 **78-45-7.5**, as last amended by Chapter 116, Laws of Utah 2001

39 **78-45-7.7**, as last amended by Chapter 255, Laws of Utah 2001

40 **78-45-7.10**, as last amended by Chapter 176, Laws of Utah 2003

41 **78-45-7.21**, as enacted by Chapter 118, Laws of Utah 1994

42 ENACTS:

43 **78-45-7.23**, Utah Code Annotated 1953



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

46 Section 1. Section **78-45-2** is amended to read:

47 **78-45-2. Definitions.**

48 As used in this chapter:

49 (1) "Adjusted gross income" means income calculated under Subsection 78-45-7.6(1).

50 (2) "Administrative agency" means the Office of Recovery Services or the Department
51 of Human Services.

52 (3) "Administrative order" means an order that has been issued by the Office of
53 Recovery Services, the Department of Human Services, or an administrative agency of another
54 state or other comparable jurisdiction with similar authority to that of the office.

55 (4) "Base child support award" means the award that may be ordered and is calculated
56 using the guidelines before additions for medical expenses and work-related child care costs.

57 (5) "Base combined child support obligation table," "child support table," "base child
58 support obligation table," "low income table," or "table" means the appropriate table in Section

59 78-45-7.14.

60 (6) "Child" means:

61 (a) a son or daughter under the age of 18 years who is not otherwise emancipated,
62 self-supporting, married, or a member of the armed forces of the United States;

63 (b) a son or daughter over the age of 18 years, while enrolled in high school during the
64 normal and expected year of graduation and not otherwise emancipated, self-supporting,
65 married, or a member of the armed forces of the United States; or

66 (c) a son or daughter of any age who is incapacitated from earning a living and, if able
67 to provide some financial resources to the family, is not able to support self by own means.

68 (7) "Child support" means a base child support award as defined in [~~Section 78-45-2~~]
69 Subsection (4), or a monthly financial award for uninsured medical expenses, ordered by a
70 tribunal for the support of a child, including current periodic payments, all arrearages which
71 accrue under an order for current periodic payments, and sum certain judgments awarded for
72 arrearages, medical expenses, and child care costs.

73 (8) "Child support order" or "support order" means a judgment, decree, or order of a
74 tribunal whether interlocutory or final, whether or not prospectively or retroactively modifiable,
75 whether incidental to a proceeding for divorce, judicial or legal separation, separate
76 maintenance, paternity, guardianship, civil protection, or otherwise which:

77 (a) establishes or modifies child support;

78 (b) reduces child support arrearages to judgment; or

79 (c) establishes child support or registers a child support order under Title 78, Chapter
80 45f, Uniform Interstate Family Support Act.

81 (9) "Child support services" or "IV-D child support services" means services provided
82 pursuant to Part D of Title IV of the Social Security Act, 42 U.S.C. Section 651 et seq.

83 (10) "Community correctional center" means a nonsecure correctional facility operated:

84 (a) by the Department of Corrections; or

85 (b) under a contract with the Department of Corrections.

86 (11) "Correctional facility" means any facility operated to house offenders, either in a
87 secure or nonsecure setting:

88 (a) by the Department of Corrections; or

89 (b) under a contract with the Department of Corrections.

90 ~~[(10)]~~ (12) "Court" means the district court or juvenile court.

91 (13) "Employment potential" means the person is qualified for jobs that are available in
92 the current job market.

93 ~~[(11)]~~ (14) "Guidelines" means the child support guidelines in Sections 78-45-7.2
94 through 78-45-7.21.

95 (15) "Incarcerated obligor" means a person who:

96 (a) is or may become subject to an order establishing or modifying child support; and

97 (b) is or is expected to be confined in a correctional, secure correctional facility, or

98 secure facility for at least 12 consecutive months from the date of initiation of an action to

99 establish a support order or from the date of a request to modify an existing order pursuant to

100 this section.

101 ~~[(12)]~~ (16) "Income" means earnings, compensation, or other payment due to an
102 individual, regardless of source, whether denominated as wages, salary, commission, bonus,
103 pay, allowances, contract payment, or otherwise, including severance pay, sick pay, and
104 incentive pay. "Income" includes:

105 (a) all gain derived from capital assets, labor, or both, including profit gained through
106 sale or conversion of capital assets;

107 (b) interest and dividends;

108 (c) periodic payments made under pension or retirement programs or insurance policies
109 of any type;

110 (d) unemployment compensation benefits;

111 (e) workers' compensation benefits; and

112 (f) disability benefits.

113 (17) "Institution" means a hospital, or a health facility licensed under the provisions of
114 Section 26-21-9.

115 ~~[(13)]~~ (18) "Joint physical custody" means the child stays with each parent overnight
116 for more than 30% of the year, and both parents contribute to the expenses of the child in
117 addition to paying child support.

118 ~~[(14)]~~ (19) "Medical expenses" means health and dental expenses and related insurance
119 costs.

120 ~~[(15)]~~ (20) "Obligee" means an individual, this state, another state, or another

121 comparable jurisdiction to whom child support is owed or who is entitled to reimbursement of
122 child support or public assistance.

123 ~~[(16)]~~ (21) "Obligor" means any person owing a duty of support.

124 ~~[(17)]~~ (22) "Office" means the Office of Recovery Services within the Department of
125 Human Services.

126 ~~[(18)]~~ (23) "Parent" includes a natural parent, or an adoptive parent.

127 (24) "Residential treatment" means a 24-hour group living environment for four or
128 more individuals unrelated to the owner or provider that offers room or board and specialized
129 treatment, rehabilitation, or habilitation services for persons with emotional, psychological,
130 developmental, or behavioral dysfunctions, impairments, or chemical dependencies. In
131 residential treatment, individuals are assisted in acquiring the social and behavioral skills
132 necessary for living independently in the community.

133 (25) "Secure correctional facility" means any prison, penitentiary, or other institution
134 operated by the Department of Corrections under contract for the confinement of offenders,
135 where force may be used to restrain them if they attempt to leave the institution without
136 authorization.

137 (26) "Secure facility" means any facility operated by or under contract with the
138 Division of Juvenile Justice Services that provides 24-hour supervision and confinement for
139 youth offenders committed to the division for custody and rehabilitation.

140 ~~[(19)]~~ (27) "Split custody" means that each parent has physical custody of at least one
141 of the children.

142 ~~[(20)]~~ (28) "State" includes any state, territory, possession of the United States, the
143 District of Columbia, the Commonwealth of Puerto Rico, Native American Tribe, or other
144 comparable domestic or foreign jurisdiction.

145 (29) "Temporary" means projected to be less than 12 months in duration.

146 ~~[(21)]~~ (30) "Third party" means an agency or a person other than the biological or
147 adoptive parent or a child who provides care, maintenance, and support to a child.

148 ~~[(22)]~~ (31) "Tribunal" means the district court, the Department of Human Services,
149 Office of Recovery Services, or court or administrative agency of any state, territory,
150 possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico,
151 Native American Tribe, or other comparable domestic or foreign jurisdiction.

152 ~~[(23)]~~ (32) "Work-related child care costs" means reasonable child care costs for up to
153 a full-time work week or training schedule as necessitated by the employment or training of a
154 parent under Section 78-45-7.17.

155 ~~[(24)]~~ (33) "Worksheets" means the forms used to aid in calculating the base child
156 support award.

157 Section 2. Section **78-45-7.2** is amended to read:

158 **78-45-7.2. Application of guidelines -- Rebuttal.**

159 (1) The guidelines apply to any judicial or administrative order establishing or
160 modifying an award of child support entered on or after July 1, 1989.

161 (2) (a) The child support guidelines shall be applied as a rebuttable presumption in
162 establishing or modifying the amount of temporary or permanent child support.

163 (b) The rebuttable presumption means the provisions and considerations required by
164 the guidelines, the award amounts resulting from the application of the guidelines, and the use
165 of worksheets consistent with these guidelines are presumed to be correct, unless rebutted
166 under the provisions of this section.

167 (3) A written finding or specific finding on the record supporting the conclusion that
168 complying with a provision of the guidelines or ordering an award amount resulting from use
169 of the guidelines would be unjust, inappropriate, or not in the best interest of a child in a
170 particular case is sufficient to rebut the presumption in that case. If an order rebuts the
171 presumption through findings, it is considered a deviated order.

172 (4) The following shall be considered deviations from the guidelines, if:

173 (a) the order includes a written finding that it is a ~~[nonguidelines]~~ deviation from the
174 guidelines order;

175 (b) the guidelines worksheet has the box checked for a deviation and has an
176 explanation as to the reason; or

177 (c) the deviation was made because there were more children than provided for in the
178 guidelines table.

179 (5) If the amount in the order and the amount on the guidelines worksheet differ~~[, but~~
180 ~~the difference is less than]~~ by \$10 or more, the order shall ~~[not]~~ be considered deviated and the
181 incomes listed on the worksheet may not be used in adjusting support for emancipation.

182 (6) (a) Natural or adoptive children of either parent who live in the home of that parent

183 and are not children in common to both parties may at the option of either party be taken into
184 account under the guidelines in setting or modifying a child support award, as provided in
185 Subsection (7). Credit may not be given if:

186 (i) by giving credit to the obligor, children for whom a prior support order exists would
187 have their child support reduced; or

188 (ii) by giving credit to the obligee for a present family, the obligation of the obligor
189 would increase.

190 (b) Additional worksheets shall be prepared that compute the obligations of the
191 respective parents for the additional children. The obligations shall then be subtracted from the
192 appropriate parent's income before determining the award in the instant case.

193 (7) In a proceeding to modify an existing award, consideration of natural or adoptive
194 children born after entry of the order and who are not in common to both parties may be
195 applied to mitigate an increase in the award but may not be applied:

196 (a) for the benefit of the obligee if the credit would increase the support obligation of
197 the obligor from the most recent order; or

198 (b) for the benefit of the obligor if the amount of support received by the obligee would
199 be decreased from the most recent order.

200 (8) (a) If a child support order has not been issued or modified within the previous
201 three years, a parent, legal guardian, or the office may petition the court to adjust the amount of
202 a child support order.

203 (b) Upon receiving a petition under Subsection (8)(a), the court shall, taking into
204 account the best interests of the child, determine whether there is a difference between the
205 amount ordered and the amount that would be required under the guidelines. If there is a
206 difference of 10% or more [~~and~~], the difference is not of a temporary nature, and the order does
207 not deviate from the guidelines, the court shall adjust the amount to that which is provided for
208 in the guidelines.

209 (c) A showing of a substantial change in circumstances is not necessary for an
210 adjustment under Subsection (8)(b).

211 (9) (a) A parent, legal guardian, or the office may at any time petition the court to
212 adjust the amount of a child support order if there has been a substantial change in
213 circumstances.

214 (b) For purposes of Subsection (9)(a), a substantial change in circumstances may
215 include:

- 216 (i) material changes in custody;
217 (ii) material changes in the relative wealth or assets of the parties;
218 (iii) material changes of 30% or more in the income of a parent;
219 (iv) material changes in the employment potential and ability of a parent to earn;
220 (v) material changes in the medical needs of the child; [~~and~~]
221 (vi) material changes in the legal responsibilities of either parent for the support of
222 others[-]; and
223 (vii) material changes in the incarceration, institutionalization, residential treatment
224 status, or physical or mental disability of a parent.

225 (c) Upon receiving a petition under Subsection (9)(a), the court shall, taking into
226 account the best interests of the child, determine whether a substantial change has occurred. If
227 it has, the court shall then determine whether the change results in a difference of 15% or more
228 between the amount of child support ordered and the amount that would be required under the
229 guidelines. If there is such a difference [~~and~~], the difference is not of a temporary nature, and
230 the order does not deviate from the guidelines, the court shall adjust the amount of child
231 support ordered to that which is provided for in the guidelines.

232 (10) Notice of the opportunity to adjust a support order under Subsections (8) and (9)
233 shall be included in each child support order issued or modified after July 1, 1997.

234 Section 3. Section **78-45-7.5** is amended to read:

235 **78-45-7.5. Determination of gross income -- Imputed income.**

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

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

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

244 (2) Income from earned income sources is limited to the equivalent of one full-time

245 40-hour job. However, if and only if during the time prior to the original support order, the
246 parent normally and consistently worked more than 40 hours at his job, the court may consider
247 this extra time as a pattern in calculating the parent's ability to provide child support.

248 (3) Specifically excluded from gross income are:

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

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

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

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

261 (b) Gross income determined under this subsection may differ from the amount of
262 business income determined for tax purposes.

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

265 (b) Each parent shall provide verification of current income. Each parent shall provide
266 year-to-date pay stubs or employer statements and complete copies of tax returns from at least
267 the most recent year unless the court finds the verification is not reasonably available.

268 Verification of income from records maintained by the Department of Workforce Services may
269 be substituted for pay stubs, employer statements, and income tax returns.

270 ~~[(c) Historical and current earnings shall be used to determine whether an~~
271 ~~underemployment or overemployment situation exists.]~~

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

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

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

281 (c) If a parent has no recent work history or their occupation is unknown, income shall
282 be imputed at least at the federal minimum wage for a 40-hour work week. To impute a greater
283 income, the judge in a judicial proceeding or the presiding officer in an administrative
284 proceeding shall enter specific findings of fact as to the evidentiary basis for the imputation.

285 (d) Income may not be imputed if any of the following conditions exist:

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

288 (ii) a parent is incarcerated, institutionalized, in residential treatment, or is physically
289 or mentally disabled to the extent [he] that the parent cannot earn minimum wage;

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

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

294 (8) (a) Gross income may not include the earnings of a minor child who is the subject
295 of a child support award nor benefits to a minor child in the child's own right such as
296 Supplemental Security Income.

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

301 Section 4. Section **78-45-7.7** is amended to read:

302 **78-45-7.7. Calculation of obligations.**

303 (1) Each parent's child support obligation shall be established in proportion to their
304 adjusted gross incomes, unless the low income table is applicable. Except during periods of
305 court-ordered parent-time as set forth in Section 78-45-7.11, the parents are obligated to pay
306 their proportionate shares of the base combined child support obligation. If physical custody of

307 the child changes from that assumed in the original order, modification of the order is not
308 necessary, even if only one parent is specifically ordered to pay in the order.

309 (2) Except in cases of joint physical custody and split custody as defined in Section
310 78-45-2 and in cases where the obligor's adjusted gross income is \$1,050 or less monthly, the
311 base child support award shall be determined as follows:

312 (a) combine the adjusted gross incomes of the parents and determine the base
313 combined child support obligation using the base combined child support obligation table; and

314 (b) calculate each parent's proportionate share of the base combined child support
315 obligation by multiplying the combined child support obligation by each parent's percentage of
316 combined adjusted gross income.

317 (3) In the case of an incapacitated adult child, any amount that the incapacitated adult
318 child can contribute to his or her support may be considered in the determination of child
319 support and may be used to justify a reduction in the amount of support ordered, except that in
320 the case of orders involving multiple children, the reduction shall not be greater than the effect
321 of reducing the total number of children by one in the child support table calculation.

322 (4) In cases where the monthly adjusted gross income of ~~[the obligor]~~ either parent is
323 between \$650 and \$1,050, the base child support award shall be the lesser of the amount
324 calculated in accordance with Subsection (2) and the amount calculated using the low income
325 table. If the income and number of children is found in an area of the low income table in
326 which no amount is shown, the base combined child support obligation table is to be used.

327 (5) The base combined child support obligation table provides combined child support
328 obligations for up to six children. For more than six children, additional amounts may be
329 added to the base child support obligation shown. Unless rebutted by Subsection 78-45-7.2(3),
330 the amount ordered shall not be less than the amount which would be ordered for up to six
331 children.

332 (6) If the monthly adjusted gross income of ~~[the obligor]~~ either parent is \$649 or less,
333 the tribunal shall determine the amount of the child support obligation on a case-by-case basis,
334 but the base child support award shall not be less than \$20.

335 (7) The amount shown on the table is the support amount for the total number of
336 children, not an amount per child.

337 Section 5. Section **78-45-7.10** is amended to read:

338 **78-45-7.10. Adjustment when child becomes emancipated.**

339 (1) When a child becomes 18 years of age, [or] has graduated from high school during
340 the child's normal and expected year of graduation, whichever occurs later, dies, marries, is a
341 member of the armed forces of the United States, or is emancipated by court order, the base
342 child support award is automatically adjusted to [reflect] the base combined child support
343 obligation [~~shown in the table~~] for the remaining number of children due child support, shown
344 in the table that was used to establish the most recent order, using the incomes of the parties as
345 specified in that order or the worksheets, unless otherwise provided in the child support order.

346 (2) The award may not be reduced by a per child amount derived from the base child
347 support award originally ordered.

348 (3) If the incomes of the parties are not specified in the [~~last~~] most recent order or the
349 worksheets, the information regarding the incomes is not consistent, or the order deviates from
350 the guidelines, automatic adjustment of the order does not apply and the order will continue
351 until modified by the issuing tribunal. If the order is deviated and the parties subsequently
352 obtain a judicial order that adjusts the support back to the date of the emancipation of the child,
353 the Office of Recovery Services [~~may~~] is not [~~be~~] required to repay any difference in the
354 support collected during the interim.

355 Section 6. Section **78-45-7.21** is amended to read:

356 **78-45-7.21. Award of tax exemption for dependent children.**

357 (1) No presumption exists as to which parent should be awarded the right to claim a
358 child or children as exemptions for federal and state income tax purposes. Unless the parties
359 otherwise stipulate in writing, the court [~~or administrative agency~~] shall award in any final
360 order the exemption on a case-by-case basis.

361 (2) In awarding the exemption, the court [~~or administrative agency~~] shall consider:

362 (a) as the primary factor, the relative contribution of each parent to the cost of raising
363 the child; and

364 (b) among other factors, the relative tax benefit to each parent.

365 (3) Notwithstanding Subsection (2), the court [~~or administrative agency~~] may not
366 award any exemption to the noncustodial parent if that parent is not current in his child support
367 obligation, in which case the court [~~or administrative agency~~] may award an exemption to the
368 custodial parent.

369 (4) An exemption may not be awarded to a parent unless the award will result in a tax
370 benefit to that parent.

371 Section 7. Section **78-45-7.23** is enacted to read:

372 **78-45-7.23. Special circumstances affecting ability to earn.**

373 (1) Except as provided in Subsection (8), this section shall apply when determining the
374 child support obligation of a parent who is incarcerated, institutionalized, in residential
375 treatment, or is physically or mentally disabled to the extent that the parent cannot earn
376 minimum wage.

377 (2) The parent's actual income and assets are presumed available to the parent, unless
378 the income or assets are specifically restricted, assigned, or otherwise inaccessible under state
379 or federal laws, rules, or regulations regarding the income and assets of the individual.

380 (3) The parent's actual income and assets shall be used to calculate the support award
381 in effect during the period of incarceration, institutionalization, residential treatment, or
382 physical or mental disability. Income may not be imputed.

383 (4) If the monthly adjusted gross income of the parent is \$649 or less, the tribunal shall
384 determine the amount of the child support obligation on a case-by-case basis, but the child
385 support award may not be less than \$20.

386 (5) A child support award entered pursuant to Subsections (3) and (4) is effective only
387 during the period of incarceration, institutionalization, residential treatment, or physical or
388 mental disability, and for six months after the parent's release or termination of the disability.

389 (6) An order entered in accordance with this section that establishes or modifies a child
390 support order may automatically adjust prospective support to a specified amount, based on
391 minimum wage or other projected income using the best available information, to take effect
392 without further notice to the parent on the first day of the month following six months after the
393 parent's release or termination of disability.

394 (7) Nothing in this section precludes a parent from requesting a modification based on
395 a change in circumstances pursuant to Subsection 78-45-7.2(7).

396 (8) This section does not apply to a parent who is incarcerated because of:

397 (a) nonpayment of child support;

398 (b) child abuse or neglect; or

399 (c) domestic violence.

Legislative Review Note

as of 1-17-05 6:33 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0248

Child Support Obligations

04-Feb-05

10:56 AM

State Impact

No state or local government fiscal impact.

Individual and Business Impact

Provisions of this bill could affect the amount of child support paid and received. The amount will depend on the circumstances of each individual case.

Office of the Legislative Fiscal Analyst