

Senate Judiciary Committee

Jennifer Horgan 271-7875

HB 161, relative to the calculation of child support.

Hearing Date: May 3, 2021

Time Opened: 1:28 p.m.

Time Closed: 2:39 p.m.

Members of the Committee Present: Senators Carson, Gannon, French, Whitley and Kahn

Members of the Committee Absent : None

Bill Analysis: This bill revises the child support guideline percentages, increases the self-support reserve amount, defines a shared parenting plan, establishes a new formula for the calculation of child support in cases involving shared parenting plans; and permits the court to modify the presumptive child support amount as justice and the best interest of the child may require.

Sponsors:

Rep. Yokela
Rep. Abrami

Rep. Petrigno

Rep. Malloy

Who supports the bill: Representative Yokela; Honorable Skip Berrien; Shawn Desjardins

Who opposes the bill: Jay Markell; Pamela Keilig, New Hampshire Coalition Against Domestic and Sexual Violence; Honey Hastings; Bill Woodbury; Mary Krueger, New Hampshire Legal Assistance; Anthony Matrumalo; Erin Plante; John DeJoie, Waypoint; Dawn Needham; Pamela Dodge; Anna Cronin; Amanda Vachon; Ashley Rochelle; Darlene Gildersleeve; Andrew Caskey; Nicole Caskey; Ashley Stowers; Wendy Jensen; Paula Lesmerises; Linda Hallock; Veronica Dane; Leonard Campbell; Talia Walley; Alyssa O'Brien; Shaun O'Brien; Michelle Chapman; Elizabeth Stillman; Kim Destefano; Laurie McCray; Meghan Jenks; Cayleigh Dalrymple; Tina Smith; Tristan Wentworth; Adrian Coss; Marissa Chase, NH Association for Justice; Pamela Ierg

Who is neutral on the bill: Richard Head, Judicial Branch; Matthew Hayes, Bureau of Child Support Services

Summary of testimony presented in support:

Representative Yokela (provided written testimony)

- This bill will update the child support guidelines.

- Every four years, a study is done of the child support guidelines, as required by RSA, to make sure they are working as intended and not out of range of reasonableness.
- The last study was done in 2018, and this bill implements some of the recommendations.
- These recommendations include:
 - Raising the self-support reserve from 115% to 120% of the federal poverty line, so people are put less into poverty.
 - Updating the percentages based on the combined net income of the parents.
 - And, to include 'shared parenting' as a part of that calculation.
- Currently, deviations from the guidelines can happen when there is shared parenting.
- This bogs down the courts and is confusing because parents do not know what the decision is going to be because it deviates from the statute.
- The study recommended using a threshold of where a child overnights with each parent 30% or more of the time.
- The shared parenting guideline multiplies by 1.5% the amount of supporting of the child as calculated normally.
- This credits for the amount of time a child is spending with a parent.
- Senator Whitley asked if this new formula adequately takes into account what is in the best interest of the child.
 - Yes. The House added some language that said nothing in this paragraph shall preclude the court from modification of the order based on the best interest of the child. This is going to help people to not go in poverty and will help a child to get the benefits of both parents when they are capable.
- Senator Kahn asked if he has looked at SB16, as it covered much of the same area.
 - Serves on House Children and Family Law, which just heard SB16. SB16 is relative to alimony and this bill addresses child support. Child support is way more complicated. A flat percentage of 23% would not be appropriate here. This bill has a sliding scale based on the number of kids, how much money the parents make, and percentage of money that would be spent towards raising the child. If there are four kids the percentage would be different than for one kid. If a parent had more income that would also be impacted. The formulas in this bill were recommended by the study. The study cost \$500,000. The study will be done again in 2022 and we have not done anything with the 2018 recommendations. The formula has not been dramatically changed since 2013 and it is long overdue for an adjustment.

Shawn Desjardins

- Shared his personal experience with going through a divorce and his experience with child support and the challenges he faces.

- Women should have the responsibility of making money, as they are equal to men.
- Pays \$1100 a month in child support and does not see how it is doing his children any better by giving it to their mother.
- Works 42 hours a week and it is extremely hard to supplement his income.
- When supplementing his income, his ex-wife ends up gets more money anyway.
- Senator French asked if he has plugged in his numbers into the proposed formula.
 - Believes it would relieve his payments by about \$300 a month. Was able to figure it out because he does a lot of medical math.
- There should be a way for a parent to supplement their lost income without having to give it in child support.
- Is going to be forced out of his apartment and lose his vehicle under the current system.
- There needs to be a way for people to be able to move forward in life.

Representative Berrien

- There is a real need for this bill.
- Supports the suggestions from Ms. Hastings to develop a commission to work on this.
- Has heard from a number of people that are facing financial difficulty based upon their child support requirements.
- There have been a lot of changes in the way divorce cases are being handled.
- There are two cases out of the Supreme Court that question the concept of equal parenting. Will provide those cases to the Committee.
- Modifications are challenging when using the concept of shared parenting.
- This is a concept that needs to be put into statute.

Summary of testimony presented in opposition:

Honey Hastings (provided written testimony)

- This will makes substantial changes in how child support would be applied in at least 37% of divorce/parenting cases.
- The UNH study said, even then, there were deviations from the guidelines in 37% of cases.
- This bill has major substantive and technical problems.
- This adds a new definition to our parenting law for ‘shared parenting’, and adding that is problematic.
- Reached out to lawyers in the field and 90% of them opposed this, particularly the 30% overnights provision.
- This is going to incentivize people to look for more time with the child, even if they have not had the care of the child.
- Concerned that the definition doesn’t consider the child’s best interest as a result of parents fighting for and getting additional time.

- Under current law, cases with equal or approximately equal schedules may seek a guidelines adjustment through a three-part test.
- That test includes two provisions that are repealed by this bill.
- An overnight could be considered picking up the child after supper and dropping them at school in the morning, which does not involve a lot of the expense.
- The state has worked since 2004 to not connect parenting with time.
- All the parenting plans say now is the schedule.
- To add these time connected titles for people to fight over is a backwards step.
- Very concerned that when there is abuse or coercion there will be a push for a shared schedule to get reduced support.
- There is an addendum for the report stating that they made mistakes in the arithmetic.
- Does not see how self-represented parties will be able to use the formula.
- There is a lack of comprehensible supporting examples in the report.
- Is not sure if the formula will produce fair results, or if it is even correct.
- This bill doesn't make it clear who is paying for what such as, childcare, uninsured expenses, health insurance, etc.
- This bill needs a fiscal note, as the reduction in child support may result in an increase of parents seeking of aid.
- The informal group opposing this would be willing to work on this over the summer.

Mary Krueger (NH Legal Assistance)

- Echoes the testimony of Ms. Hastings and agrees with the concerns raised by Mr. Head and Mr. Hayes.
- There may need to be a change, but this change as written would not accomplish the broad policy goals of meeting a child's best interest.
- The report recommended that any legislation allows for exceptions 'when parenting time is addressed to ensure that appropriate safeguards are included in cases with intimate partner violence to guarantee safety for children and the abused parent.'
- Sometimes the children can be swept into the situation when there is coercive control and domestic abuse.
- The shared parenting could be utilized by an abuser to disadvantage the victim and the children.
- Reforms to the parental rights and responsibilities laws worked to get rid of terminology to embody that the children are at the center of these cases.
- It is huge jump to go down to 22% of the net income from the current formula that has a more of a stepped percentage starting at 25.6% for \$15,000 net income or less for one child. 22% for \$60,000 for one child.
- Is not sure how these new guidelines would be implemented.
- Vermont handles uncontested cases in parental rights and responsibilities in a separate hearing first, and then has another hearing to determine support.

- It is in the children's best interest to tease apart what the children's needs and meaningful contact are versus what the support will be.
- Tried running through the calculations and it is not totally clear as to what to do when there is equal parenting time.
- The parties can currently agree to make any variation to the guideline amount with the allowance of the court. Believes this bill removes a couple of the factors considered by the court in that allowance.

Pamela Keilig (NHCADSV)

- This bill shifts the focus from the best interests of the child to a financial incentive.
- Current guidelines do not consider how much time a child spends with each parent, instead it is purely income based calculated from the financial factors at play for each party.
- There should be no incentive for someone to ask for or try to get more time with the child for financial gain.
- This change would be particularly harmful to individuals in abusive relationships.
- One way that abusers are able to leverage power and control is to use economic abuse.
- Nearly all victims of domestic violence experience financial abuse in their relationships.
- This bill would grant abusers another tool to limit victim's abilities to be financially independent.
- Abusers typically use their children as a way to maintain power and control in their relationship.

Jay Markell

- The bill is overly complicated and doesn't deal with some key issues.
- There is an alternate way to deal with the disparities in income within the current statute.
- This bill does not reference the parenting rights statute that requires a court to use the available resources for the best interest of the children.
- 60-70% of people in these cases are pro se and they may not be able to understand this, resulting in the courts being inundated with modifications for refunds.
- Suggests the Committee refer to *Child Support Guidelines and Applications, Vol II* by Laura Morgan for guidance on structuring child support legislation.

Bill Woodbury (NH Association for Justice)

- Echoes the opposition of previous testifiers.
- In his experience it is much easier to talk about parenting and parenting time solely in the context of the best interest of the child and not inject the issue of monetary gain.

Anthony Matrumalo

- Understands why some people believe there needs to be a change in the law because there is a grey area.
- This grey area does not clearly define what deviations are appropriate and how much those deviations can be.
- Agrees with the testimony in opposition.
- Challenges that premise that the grey area that currently exists needs to be remedied, as it creates a need for discussion and thoughtfulness when trying to develop a parenting schedule that is in the best interest of children.
- Does not believe there is a more difficult decision a person can make than to voluntarily give up time with their children because they believe it is in the best interest of the children.
- Currently the law says that even equal parenting time shall not in itself justify deviation from the guidelines, which creates this very open dialogue that needs to take place between the parents.
- There is currently an ability to deviate from the guidelines.
- This bill will take away the incentive for parents to stay at the table and work together to determine what is appropriate in terms of time and what amount of support is appropriate.
- If there are problems in the system with the grey areas, believes that can be addressed through training in how to use the grey areas rather than to eliminate it.

John Annapolis

- In looking at the \$176,000 combined income the percentages are 13%, 20%, 24%, and 26%, but for \$176,001 or more it is 12%, 18%, 21%, and 23%.
- This creates situations where someone is making more in income than another individual but is paying less in child support.
- If parties are earning combined income \$20,370 per month, the shared child support obligation under this would be \$1,907.
- If the parties are earning \$20,380 a month, the child support for one child is now \$1,750.
- There is a bias in the bill for families with one child.
- If parties make a combined income of \$15,000 annually, the current portion would be 25.6% of the net income. This legislation puts it at 22%.
- With \$25,000 annual income currently the percentage is 25%, while this bill puts it at 22%.
- There are scenarios that the study provided where the obligation was less than 0 and that is not addressed in the legislation. Currently, parties still have a \$50 obligation in those situations.

Neutral Information Presented:

Richard Head (Judicial Branch)

- Concerned because the bill has no applicability provision.

- Chapter 248 (2012), which last changed this formula, had a specific applicability provision, which said that it shall apply to child support orders issued on or after the effective date of the legislation.
- This bill creates significant changes to the schedule, and therefore under this bill, every currently active child support order could be the subject of a petition for an amendment.
- This gives rise to huge potential problems in terms of the court's management of its docket.
- Requests, at minimum, an applicability provision similar to the one in Chapter 248 (2012).
- This would allow for older orders to remain in effect until the next scheduled review hearing.
- The bill also has a provision to repeal RSA458-C:5, I(h)(2)(B), which is a consideration in adjustments as to whether the obligor parent has established equal or relatively equal residential responsibility that will result in a deduction of the fixed costs of child rearing incurred by the obligee parent.
- It is not clear what it means to strike this section.
- Under this bill co-parenting is at 30% or more level, and the fixed costs could be a consideration in that.
- By striking RSA458-C:5, I(h)(2)(B), that something that could no longer be considered by the court in evaluating adjustments.
- This bill will result in significantly different orders than those under the current schedule.
- Takes no position on the policy of the bill.
- Senator French asked if there is anywhere in statute where it reads 'or any other amount agreeable to both parties.'
 - Would defer that to a child support expert.
- Senator French asked how the judges will figure out this math.
 - They will figure that out.
- Senator Kahn asked if this would result in a rush to have orders modified.
 - Yes. Asking for a controlled review and modification of the statute as opposed to everyone filing a petition on the effective date.

Matthew Hayes (Bureau of Child Support Services-DHHS)

- Echoes the testimony of the Judicial Branch.
- Title 4-D requires all states follow rules and regulations when establishing and enforcing child support orders.
- Under Title 4-D the Bureau provides services to periodically review and possibly bring forward to the court, parties' child support orders when either party requests a review pursuant to RSA45-C:7.
- Orders are subject to review and modification either three years from its effective date or upon a petitioning of the court based on an alleged substantial change in circumstances.

- This bill as drafted does not address whether the proposed changes could constitute as a substantial change to circumstances for orders currently in effect.
- If this language applies as a substantial change in circumstances to parties, then the modification requests could significantly tax the Department's resources and increase caseloads.
- Senator Kahn asked when the Department will move forward with the next review.
 - Will get back to the Committee on that.

Representative DeSimone

- When parties go to court to talk about parenting plans and child support, RSA461-A (the parenting plan) is what comes first with the court taking into consideration what is in the best interest of the child first.
- Then RSA458-C (child support) comes after.
- Hopes that if this bill passes, the court continues to take into consideration RSA461-A.

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Date Hearing Report completed: May 7, 2021