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No. 581

H.P. 444

House of Representatives, February 11, 2003

An Act Requiring Payment of Child Support by Incarcerated Individuals

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. Mac Jarland

MILLICENT M. MacFARLAND Clerk

Presented by Representative TRAHAN of Waldoboro. Cosponsored by Representative: DUNLAP of Old Town, Senator: HALL of Lincoln.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 19-A MRSA §2001, sub-§5, ¶D, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

6 Gross income may include the difference between the D. amount a party is earning and that party's earning capacity 8 when the party voluntarily becomes or remains unemployed or underemployed, if sufficient evidence is introduced 10 concerning a party's current earning capacity. In the absence of evidence in the record to the contrary, a party that is personally providing primary care for a child under 12 the age of 3 years is deemed not available for employment. 14 The court shall consider anticipated child care and other work-related expenses in determining whether to impute income, or how much income to impute, to a party providing 16 primary care to a child between the ages of 3 and 12 years. 18 A Except as provided in section 2006, subsection 5 and section 2009, subsection 9, a party who is incarcerated in a correctional or penal institution is deemed available only 20 for employment that is available through such institutions.

Sec. 2. 19-A MRSA §2006, sub-§5, ¶F is enacted to read:

F. If one of the parties is incarcerated in a correctional or penal institution for committing a crime against the other party or the child for whom a support order is being sought, the reduction in the incarcerated party's gross income because of the incarceration may not be taken into account in determining child support.

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Sec. 3. 19-A MRSA §2009, sub-§9 is enacted to read:

34 9. Incarceration for crime against child or party. Incarceration in a correctional or penal institution for a crime 36 committed against the obligee or the child that may result in a change in the obligor's gross income does not qualify as a 38 substantial change of circumstances under this section and may not be used as a factor to reduce the child support obligation of 40 the obligor.

SUMMARY

This bill addresses the issue of child support after a 46 person commits a crime against the child or the person to whom the child support is paid on behalf of the child. This bill 48 amends the child support laws to ensure that the appropriate

child support obligation is established and continues. If the 2 child support obligor commits such a crime and is incarcerated, the fact that the incarceration results in a reduction in the 4 obligor's gross income does not lead to a reduction in the child support obligation as initially established or when sought to be modified. This bill provides that the incarceration and resulting decrease in income do not qualify as a substantial 6 modified. change in circumstances necessary to modify an existing child 8 support order. Incarceration may not be used as a factor to reduce child support when the incarceration is based on a crime 10 committed against the obligee or the child.