

STATE OF NEW YORK

9505

IN ASSEMBLY

March 15, 2024

Introduced by M. of A. McMAHON -- read once and referred to the Committee on Judiciary

AN ACT to amend the family court act and the domestic relations law, in relation to establishment and modification of child support orders

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Clause (iv) of subparagraph 5 of paragraph (b) of subdivision
2 sion 1 of section 413 of the family court act, as amended by chapter 567
3 of the laws of 1989, is amended to read as follows:

4 (iv) at the discretion of the court, the court may attribute or impute
5 income from[7] such other resources as may be available to the parent,
6 including, but not limited to:

7 (A) non-income producing assets,

8 (B) meals, lodging, memberships, automobiles or other perquisites that
9 are provided as part of compensation for employment to the extent that
10 such perquisites constitute expenditures for personal use, or which
11 expenditures directly or [~~indirectly~~] indirectly confer personal economic
12 benefits,

13 (C) fringe benefits provided as part of compensation for employment,
14 and

15 (D) money, goods, or services provided by relatives and friends;

16 In determining the amount of income that may be attributed or imputed,
17 the court shall consider the specific circumstances of the parent, to
18 the extent known, including such factors as the parent's assets, resi-
19 dence, employment and earning history, job skills, educational attain-
20 ment, literacy, age, health, criminal record and other employment barri-
21 ers, record of seeking work, the local job market, the availability of
22 employers willing to hire the parent, prevailing earnings level in the
23 local community, and other relevant background factors such as the age,
24 number, needs, and care of the children covered by the child support
25 order. Attribution or imputation of income shall be accompanied by
26 specific written findings identifying the basis or bases for such deter-
27 mination utilizing factors required or permitted to be considered pursu-
28 ant to this clause;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 § 2. Clause (iv) of subparagraph 5 of paragraph (b) of subdivision 1-b
2 of section 240 of the domestic relations law, as added by chapter 567 of
3 the laws of 1989, is amended to read as follows:

4 (iv) at the discretion of the court, the court may attribute or impute
5 income from[~~r~~] such other resources as may be available to the parent,
6 including, but not limited to:

7 (A) non-income producing assets,

8 (B) meals, lodging, memberships, automobiles or other perquisites that
9 are provided as part of compensation for employment to the extent that
10 such perquisites constitute expenditures for personal use, or which
11 expenditures directly or [~~indireely~~] indirectly confer personal economic
12 benefits,

13 (C) fringe benefits provided as part of compensation for employment,
14 and

15 (D) money, goods, or services provided by relatives and friends;

16 In determining the amount of income that may be attributed or imputed,
17 the court shall consider the specific circumstances of the parent, to
18 the extent known, including such factors as the parent's assets, resi-
19 dence, employment and earning history, job skills, educational attain-
20 ment, literacy, age, health, criminal record and other employment barri-
21 ers, record of seeking work, the local job market, the availability of
22 employers willing to hire the parent, prevailing earnings level in the
23 local community, and other relevant background factors such as the age,
24 number, needs, and care of the children covered by the child support
25 order. Attribution or imputation of income shall be accompanied by
26 specific written findings identifying the basis or bases for such deter-
27 mination utilizing factors required or permitted to be considered pursu-
28 ant to this clause;

29 § 3. Paragraph (k) of subdivision 1 of section 413 of the family court
30 act, as amended by chapter 567 of the laws of 1989, is amended to read
31 as follows:

32 (k) When a party has defaulted and/or the court is otherwise presented
33 with insufficient evidence to determine gross income, [~~the court shall~~
34 ~~order child support based upon the needs or standard of living of the~~
35 ~~child, whichever is greater~~] the support obligation shall be based on
36 available information about the specific circumstances of the parent, in
37 accordance with clause (iv) of subparagraph five of paragraph (b) of
38 this subdivision. Such order may be retroactively modified upward, with-
39 out a showing of change in circumstances.

40 § 4. Paragraph (k) of subdivision 1-b of section 240 of the domestic
41 relations law, as added by chapter 567 of the laws of 1989, is amended
42 to read as follows:

43 (k) When a party has defaulted and/or the court is otherwise presented
44 with insufficient evidence to determine gross income, [~~the court shall~~
45 ~~order child support based upon the needs or standard of living of the~~
46 ~~child, whichever is greater~~] the support obligation shall be based on
47 available information about the specific circumstances of the parent, in
48 accordance with clause (iv) of subparagraph five of paragraph (b) of
49 this subdivision. Such order may be retroactively modified upward, with-
50 out a showing of change in circumstances.

51 § 5. Clause (v) of subparagraph 5 of paragraph (b) of subdivision 1 of
52 section 413 of the family court act, as amended by chapter 313 of the
53 laws of 2019, is amended to read as follows:

54 (v) an amount imputed as income based upon the parent's former
55 resources or income, if the court determines that a parent has reduced
56 resources or income in order to reduce or avoid the parent's obligation

1 for child support; provided that incarceration shall not be considered
2 voluntary unemployment [~~, unless such incarceration is the result of~~
3 ~~non-payment of a child support order, or an offense against the custo-~~
4 ~~dial parent or child who is the subject of the order or judgment~~];

5 § 6. Clause (v) of subparagraph 5 of paragraph (b) of subdivision 1-b
6 of section 240 of the domestic relations law, as amended by chapter 313
7 of the laws of 2019, is amended to read as follows:

8 (v) an amount imputed as income based upon the parent's former
9 resources or income, if the court determines that a parent has reduced
10 resources or income in order to reduce or avoid the parent's obligation
11 for child support; provided that incarceration shall not be considered
12 voluntary unemployment [~~, unless such incarceration is the result of~~
13 ~~non-payment of a child support order, or an offense against the custo-~~
14 ~~dial parent or child who is the subject of the order or judgment~~];

15 § 7. Paragraph (a) of subdivision 3 of section 451 of the family court
16 act, as amended by chapter 313 of the laws of 2019, is amended to read
17 as follows:

18 (a) The court may modify an order of child support, including an order
19 incorporating without merging an agreement or stipulation of the
20 parties, upon a showing of a substantial change in circumstances.
21 Incarceration shall not be considered voluntary unemployment and shall
22 not be a bar to finding a substantial change in circumstances [~~provided~~
23 ~~such incarceration is not the result of non-payment of a child support~~
24 ~~order, or an offense against the custodial parent or child who is the~~
25 ~~subject of the order or judgment~~].

26 § 8. Clause (i) of subparagraph 2 of paragraph b of subdivision 9 of
27 part B of section 236 of the domestic relations law, as amended by chap-
28 ter 313 of the laws of 2019, is amended to read as follows:

29 (i) The court may modify an order of child support, including an order
30 incorporating without merging an agreement or stipulation of the
31 parties, upon a showing of a substantial change in circumstances.
32 Incarceration shall not be considered voluntary unemployment and shall
33 not be a bar to finding a substantial change in circumstances [~~provided~~
34 ~~such incarceration is not the result of non-payment of a child support~~
35 ~~order, or an offense against the custodial parent or child who is the~~
36 ~~subject of the order or judgment~~].

37 § 9. This act shall take effect immediately, and shall apply to any
38 action or proceeding pending upon or commenced on or after such effec-
39 tive date.