

HOUSE BILL REPORT

HB 2683

As Passed House:

February 8, 1996

Title: An act relating to the inclusion of overtime in income used to calculate child support.

Brief Description: Including mandatory overtime wages, but excluding voluntary overtime wages in the determination of income for child support.

Sponsors: Representatives Lambert, Wolfe, Carrell, Morris, Mitchell, Patterson, Sheahan, Cooke and Scott.

Brief History:

Committee Activity:

Law & Justice: 1/30/96 [DP].

Floor Activity:

Passed House: 2/8/96, 78-16.

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass. Signed by 13 members: Representatives Sheahan, Vice Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Dellwo, Ranking Minority Member; Campbell; Carrell; Chappell; Lambert; McMahan; Morris; Robertson; Smith and Sterk.

Minority Report: Do not pass. Signed by 3 members: Representatives Costa, Assistant Ranking Minority Member; Cody and Murray.

Staff: Edie Adams (786-7180).

Background: Washington's child support schedule contains an economic table. The economic table establishes a presumptive basic child support amount based on the combined monthly net income of the parents and the number and ages of the children. Each parent's share of the presumptive amount is based on each parent's share of the combined monthly net income.

Each parent's monthly net income is determined by subtracting specified expenses (such as taxes, mandatory pension payments, and mandatory union or professional dues) from the parent's monthly gross income. Monthly gross income includes

income from any source, such as salaries, wages, commissions, overtime, income from second jobs, benefits, dividends and interest, bonuses, and worker's compensation and retirement benefits.

If the court determines that a particular source of income included in the calculation of the basic support obligation is not a recurring source of income, such as overtime, bonuses, or income from second jobs, the court may deviate from the standard support calculation.

Summary of Bill: Mandatory income required as a condition of employment is included in a parent's gross income for purposes of calculating the child support obligation. Voluntary overtime not required as a condition of employment is not included in income used to calculate support. All overtime is presumed to be mandatory overtime, and the burden is on the party seeking to exclude the overtime to prove that the overtime is voluntary and not required as a condition of employment.

In determining whether overtime is mandatory or voluntary, the court must consider all evidence, including the employment contract and pay stubs, number of hours worked, how the employer classifies the hours worked, and the standard industry practice. The fact that the employee's employment contract or employment manual does not explicitly require mandatory overtime for the party's employment position is not by itself proof that the overtime is voluntary. The fact that the employer has supplied a written statement that the disputed income is voluntary overtime is not by itself proof that the overtime is voluntary.

The court may not exclude overtime income if to do so would result in the inclusion of income of less than that of a 40-hour work week or the industry standard work week for the party's type of employment.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This is a good step in making the child support schedule fairer. Parents should not be forced to work more than a 40-hour work week. Allowing overtime to be excluded from the parents' income does not violate federal law.

Testimony Against: Current law provides a reasonable basis for deviating for nonrecurring overtime income. Voluntary income can fluctuate or be very stable. All income needs to be reviewed by the judge on a case-by-case basis. The bill does not provide a clear distinction between voluntary and mandatory overtime. A

definition of voluntary overtime should be included to give judges criteria to follow. This will make the hearing more difficult and increase disputes between the parents.

Testified: Representative Lambert, prime sponsor; Michele Delo, Washington Families for Noncustodial Rights (pro); Martha Harden, Superior Court Judges Association (con); Judy Turpin, Northwest Women's Law Center (con); and Mike Ricchio, Department of Social and Health Services (with concerns).