



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0410/P1
EAW:cdc&wlj

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to amend* 767.511 (1m) (hs) and 767.553 (4) (c) 2.; and *to create* 767.59
2 (1f) (b) 5. and 767.59 (1h) of the statutes; **relating to:** reduction of child support
3 payments during incarceration.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 **SECTION 1.** 767.511 (1m) (hs) of the statutes is amended to read:
5 767.511 (**1m**) (hs) The earning capacity of each parent, based on each parent's
6 education, training and work experience and the availability of work in or near the
7 parent's community. A court may not consider incarceration to be voluntary
8 unemployment for the purpose of determining earning capacity under this
9 paragraph.

1 **SECTION 2.** 767.553 (4) (c) 2. of the statutes is amended to read:

2 767.553 (4) (c) 2. The payer was seeking an adjustment and the payee
3 establishes that the payer voluntarily and unreasonably reduced his or her income
4 below his or her earning capacity. Incarceration may not be considered a voluntary
5 and unreasonable reduction of income below the payer's earning capacity.

6 **SECTION 3.** 767.59 (1f) (b) 5. of the statutes is created to read:

7 767.59 (1f) (b) 5. Incarceration if the requirements of sub. (1h) are met.

8 **SECTION 4.** 767.59 (1h) of the statutes is created to read:

9 767.59 (1h) SUPPORT: EFFECT OF INCARCERATION. (a) The court shall reduce a
10 child support order under sub. (1c) if the payer is sentenced to incarceration for a
11 period of 180 or more consecutive days and all of the following apply:

 ****NOTE: This section says "shall reduce," which leaves discretion to the court for
how much to reduce by, or to reduce to \$0. Is this consistent with your intent?

 ****NOTE: Is 180 days the correct length of time to be eligible for a reduction under
this section?

12 1. The payer will not have any source of income during the period of
13 incarceration.

 ****NOTE: Do you want this just to be income or do you want to include other assets?
Another option would be to word it as "The payer does not have the means to pay support
during the period of incarceration."

14 2. The payer is not allowed Huber law work privileges under s. 303.08.

15 3. Neither the child nor the payee is a victim of the crime for which the payer
16 is serving a sentence.

17 4. The payer is not incarcerated for nonpayment of child support under s.
18 948.22.

19 (b) A reduction under this subsection shall be in effect until 60 days after the
20 date on which the payer is no longer incarcerated or the date on which the payer is
21 eligible for Huber law work privileges under s. 303.08.

