



STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON 25305

CECIL H. UNDERWOOD
GOVERNOR

April 16, 1999

The Honorable Earl Ray Tomblin, President
West Virginia Senate
State Capitol
Charleston, West Virginia 25305

Dear President Tomblin:

I wish to share with you my thoughts regarding H.B. 2678 and some of the concerns that have been expressed to my staff and me during the past few weeks. As I stated in my veto message, my primary concerns with the bill center on the delays it could place on our family court system and the adverse effect it could have on victims of domestic violence.

For the past two years, my office has received numerous complaints regarding the backlog of cases and the delays that parties are experiencing in having their divorces heard by family law masters. We have heard that cases in which the parties are in agreement are not being heard for months.

At least five provisions of the bill could substantially increase the burden on these courts. First, giving domestic violence jurisdiction and contempt powers to the family courts will add more than 15,000 new cases to the family law court. Second, thousands of additional cases could be imposed into that system by the one-year "window" that allows anyone who has a custody order in effect as of December 1999 to request a modification of that order during the next year without showing a substantial change in circumstances. Third, the addition and coordination of new staff and new programs in mediation and parent education are likely to consume, at least initially, some of the family court judges' time. Fourth, the shared parent concept, which requires a family court judge to explore carefully what will serve the children's best interests in each case, will require longer hearings because of the need for additional evidence. Finally, the election provision of the bill likely will result in the family court judges spending time next spring campaigning for the May 2000 primary. In this respect, the election provision will lead to a tremendous distraction for the family court judges and their important work.

The Honorable Earl Ray Tomblin, President
April 16, 1999
Page 2

I recognize that the bill creates thirty-one (31) family court judges¹ and sixteen (16) family case coordinators² and that all of these new cases and programs will not begin on July 1, 1999; however, I am concerned that the aforementioned issues will exacerbate an already overcrowded system and threaten federal funding.

West Virginia must attain final disposition in child support cases within six months of service of process in seventy-five percent (75%) of its cases and attain final disposition within twelve months of service of process in ninety percent (90%) of its cases to comply with federal regulations. Failure to comply could result in the state losing 100% of approximately \$21 million in federal funding for the child support programs and approximately \$800,000 for the family court judge system.

Because of the expected backlog impact of the legislation and the threat to our families and federal funding, I believe these factors alone created significant cause for revisiting this important issue.

Other concerns that we received that I believe are worthy of consideration are as follows:

Election of Judges

The election of family court judges prior to the passage of a constitutional amendment establishing a unified system of family courts with jurisdiction over family law and child welfare matters raises many concerns, not the least of which is the confusion that it is likely to cause with the public. The public may question the need for passage of the amendment and defeat it.

Child Support

H.B. 2678 provides a new table for calculating child support. I am advised that the new formula may have an adverse impact on children of low-income families. One example that has been shared with me is that of a mother who has sole custody of two children, has a part-time job paying \$400.00 per month, and has an ex-husband who is employed at an approximately minimum wage job paying \$750.00 per month. Under current law, the mother and two children would receive \$137.50 per month from the father. Under the bill, the support would be reduced to \$62.50 per month. This represents a 54% decrease in child support.

¹ Currently, there are fourteen (14) full-time and thirteen (13) part-time law masters. By statute, a part-time law master has a caseload equal to seventy-five percent (75%) of a full-time law master. I am advised that many of the part-time law masters work a caseload in excess of seventy-five percent (75%).

² The bill allows for the addition of caseworkers authorized by the Supreme Court.

The Honorable Earl Ray Tomblin, President
April 16, 1999
Page 3

Under the "Ability to Pay" calculation contained in the Worksheet in H.B. 2678, the father would get to keep \$687.50 and the mother and two children would get \$462.50 (\$400.00 from the mother's job and \$62.50 from the father) with which to live.

Cash or other forms of public assistance will not make up for this decrease in child support. In the case of WV WORKS cash assistance, eligibility takes into consideration the earnings and assets of a woman and her children. Earnings and child support income are not excluded from consideration in determining eligibility in West Virginia. The decrease in child support will not be replaced with a sufficient increase in the food coupons because a \$3.00 change in income results in a \$1.00 change in the foot stamp benefit. If the mother and children are living and preparing meals with another person who earns an income, the group preparing meals together could be completely ineligible for food stamp benefits.

Cash assistance is not a valid substitute for replacement of the decrease in child support because the child support received is counted as income on a dollar-for-dollar basis. Child support and earnings from employment could render a mother and her child ineligible for cash assistance.

The federal welfare reform law mandates that families are only eligible to receive cash assistance 60 months in their lifetime, and the adults in the cash assistance benefit must work so the family becomes financially self-sufficient. A mother with young children would face many years of hardship raising her child with reduced child support. Even if the mother did not work, the family can receive only 60 months of cash assistance help. After these families have exhausted the federally funded cash assistance, the state would have to fund a cash assistance program with state dollars to eliminate the inequity caused by a reduction in child support.

I do not object to a reasonable and justified change in the child support formula, but I do object to these few large changes that could increase the number of West Virginia children living in poverty.

Modified Child Support

Another provision of the bill that has caused concern is the administrative procedure for modification of child support when an individual obligor experiences a substantial decrease in income as a result of being laid off or fired. Under the bill, the person who is laid off or fired (obligor) may file for a modification of support and send the new calculation to the support obligee by first-class mail. If the party does not object to the modification in fourteen days, the law judge enters an order to that effect.

Due process concerns and equality issues have been raised about this provision. A letter can take several days to be delivered, and the person to whom it is addressed may not be

at home at the time it is delivered, thereby denying the individual an opportunity to contest the order. While an administrative remedy is important, some additional safeguards should be included.

The equality issue arises because the obligee does not have an equal opportunity to have a child support order modified if the obligor receives an increase in pay or the obligee loses his or her job and the income from that job was used to calculate the amount of support. Under the bill, the obligee may use only the expedited process for support modification if the support obligor experiences a substantial increase in income as a result of re-employment or other cause and only "after a modification has been made through this expedited process." (H.B. 2678 § 48A-1B-11)

Disabled Children

H.B. 2678 lists several factors for determining the amount of alimony, child support or separate maintenance the court shall consider. One factor that is not included in the list is the disability of an adult or minor child. This often precludes a parent from entering the work force. (H.B. 2678 § 48-2-16(b))

Mediation

Parent mediation is one of the best provisions of this bill, however, I have a few concerns related to mediation. First, the screening of couples for domestic violence should be conducted by the case manager – not the mediator – to maintain the neutrality of the mediator. Secondly, the bill does not provide any standards for the qualifications and training of mediators, and, finally, the bill should be even more explicit that cases involving domestic violence should not be mediated.

Sexual Abuse

Sexual abuse of a minor should be added to the limiting factors in parenting plans. Otherwise, a judge could award custody or unsupervised visitation to a convicted child molester.

Relocation

Concern has been expressed regarding the provision relating to the out-of-state relocation of the custodial parent. Some believe it unfairly restricts the right of a custodial parent to move.

Page 55 of H.B. 2678 sets forth a section on relocation of a parent. This section does not contemplate that the feelings of a child are considered by the family court judge on the

The Honorable Earl Ray Tomblin, President
April 16, 1999
Page 5

OFFICE OF THE GOVERNOR

issue of relocation. Clearly, an infant cannot express his or her feelings yet many children are able to do so by school age.

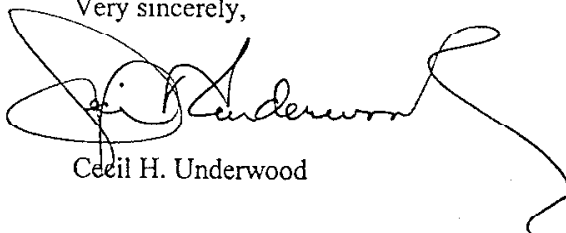
Cohabitation

The bill provides that alimony can be suspended or terminated if the payee has shared living quarters and cohabited for a certain period of time. I recognize the frustration that payees experience when they are financially supporting someone other than their ex-spouses. The Legislature was correct in addressing this issue; however, the wording of this section could encourage and sanction vindictive partners to stalk their ex-partners to monitor their activity in an attempt to present "proof" of cohabitation or shared living space.

Conclusion

My staff and I have received many more concerns and potential solutions, which I will be pleased to discuss with you. Please share with your members my deep respect for the work they have done in addressing domestic relation issues. It is apparent from the provisions of the bill relating to educating parents on the impact of divorce on children and the effort to involve noncustodial parents in the lives of their children that the Legislature is focusing on the best interests of children. Clearly, the interests of children must be paramount in our discussions and continued work on these issues. I hope we can maintain that focus and work together to bring the many positive aspects of H.B. 2678 into law.

Very sincerely,

A handwritten signature in black ink, appearing to read "Cecil H. Underwood", with a large, sweeping flourish extending to the right.

Cecil H. Underwood

CHU/kjy

PARENTAL EDUCATION FUND REMITTANCES THROUGH MARCH 31, 1999										
COUNTY	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	JANUARY	FEBRUARY	MARCH	TOTAL
REGION 1										
BROOKE	\$0.00	\$0.00	\$0.00	\$0.00	\$75.00	\$225.00	\$125.00	\$25.00	\$175.00	\$625.00
HANCOCK	\$0.00	\$0.00	\$0.00	\$0.00	\$50.00	\$325.00	\$225.00	\$125.00	\$25.00	\$750.00
MARSHALL	\$0.00	\$0.00	\$0.00	\$0.00	\$25.00	\$275.00	\$275.00	\$75.00	\$300.00	\$950.00
OHIO	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$225.00	\$150.00	\$125.00	\$250.00	\$750.00
TYLER	\$0.00	\$0.00	\$0.00	\$95.00	\$0.00	\$155.00	\$50.00	\$0.00	\$25.00	\$325.00
WETZEL	\$0.00	\$25.00	\$0.00	\$0.00	\$0.00	\$200.00	\$25.00	\$25.00	\$175.00	\$450.00
	\$0.00	\$25.00	\$0.00	\$95.00	\$150.00	\$1,405.00	\$850.00	\$375.00	\$950.00	\$3,850.00
REGION 2										
No funds collected for region 2.										
REGION 3										
CALHOUN	\$75.00	\$125.00	\$75.00	\$50.00	\$50.00	\$25.00	\$50.00	\$0.00	\$25.00	\$475.00
JACKSON	\$300.00	\$625.00	\$475.00	\$250.00	\$275.00	\$400.00	\$300.00	\$225.00	\$475.00	\$3,325.00
ROANE	\$300.00	\$225.00	\$225.00	\$150.00	\$100.00	\$175.00	\$100.00	\$250.00	\$150.00	\$1,775.00
	\$675.00	\$975.00	\$875.00	\$450.00	\$425.00	\$350.00	\$450.00	\$475.00	\$650.00	\$5,575.00
REGION 4										
MASON	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$25.00	\$150.00	\$150.00	\$425.00	\$750.00
PUTNAM	\$0.00	\$0.00	\$0.00	\$0.00	\$125.00	\$650.00	\$650.00	\$550.00	\$800.00	\$2,775.00
	\$0.00	\$0.00	\$0.00	\$0.00	\$125.00	\$675.00	\$800.00	\$700.00	\$1,225.00	\$3,525.00
REGION 5										
KANAWHA	\$0.00	\$0.00	\$0.00	\$125.00	\$375.00	\$525.00	\$445.00	\$800.00	\$1,225.00	\$3,495.00
REGION 6										
CABELL	\$0.00	\$0.00	\$1,000.00	\$750.00	\$975.00	\$800.00	\$750.00	\$775.00	\$650.00	\$5,700.00
WAYNE	\$0.00	\$0.00	\$325.00	\$625.00	\$525.00	\$425.00	\$350.00	\$150.00	\$300.00	\$2,700.00
	\$0.00	\$0.00	\$1,325.00	\$1,375.00	\$1,500.00	\$1,225.00	\$1,100.00	\$925.00	\$950.00	\$8,400.00
REGION 7										
No funds collected for region 7.										
REGION 8										
MERCER	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$125.00	\$400.00	\$525.00
REGION 9										
No funds collected for region 9.										
REGION 10										
No funds collected for region 10.										
REGION 11										
No funds collected for region 11.										
REGION 12										
No funds collected for region 12.										
REGION 13										
No funds collected for region 13.										
REGION 14										
No funds collected for region 14.										
REGION 15										
No funds collected for region 15.										
REGION 16										
GRANT	\$0.00	\$0.00	\$0.00	\$0.00	\$150.00	\$75.00	\$50.00	\$75.00	\$150.00	\$500.00
HAMPSHIRE	\$0.00	\$0.00	\$0.00	\$0.00	\$175.00	\$25.00	\$300.00	\$25.00	\$175.00	\$700.00
MAKOT	\$0.00	\$0.00	\$25.00	\$0.00	\$150.00	\$275.00	\$125.00	\$75.00	\$275.00	\$925.00
MINERAL	\$0.00	\$0.00	\$0.00	\$0.00	\$75.00	\$25.00	\$100.00	\$250.00	\$100.00	\$550.00
PENDLETON	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$200.00	\$25.00	\$125.00	\$350.00
	\$0.00	\$0.00	\$25.00	\$0.00	\$550.00	\$400.00	\$775.00	\$450.00	\$825.00	\$3,025.00
REGION 17										
BERKELEY	\$0.00	\$0.00	\$25.00	\$525.00	\$1,200.00	\$1,250.00	\$450.00	\$1,450.00		\$4,900.00
JEFFERSON	\$0.00	\$0.00	\$25.00	\$375.00	\$775.00	\$700.00	\$800.00	\$1,075.00	\$150.00	\$3,900.00
MORGAN	\$0.00	\$0.00	\$0.00	\$100.00	\$200.00	\$200.00	\$275.00	\$225.00	\$175.00	\$1,175.00
	\$0.00	\$0.00	\$50.00	\$1,000.00	\$2,175.00	\$2,150.00	\$1,525.00	\$2,750.00	\$325.00	\$9,975.00
TOTAL										\$38,370.00

PARENTAL EDUCATION FUND REMITTANCES THROUGH MARCH 31, 1998										
COUNTY	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	JANUARY	FEBRUARY	MARCH	TOTAL
BERKELEY	\$0.00	\$0.00	\$25.00	\$525.00	\$1,200.00	\$1,250.00	\$450.00	\$1,450.00		\$4,900.00
BROOKE	\$0.00	\$0.00	\$0.00	\$0.00	\$75.00	\$225.00	\$125.00	\$25.00	\$175.00	\$625.00
CABELL	\$0.00	\$0.00	\$1,000.00	\$750.00	\$975.00	\$800.00	\$750.00	\$775.00	\$650.00	\$5,700.00
CAI HO LIN	\$75.00	\$125.00	\$75.00	\$50.00	\$50.00	\$25.00	\$50.00	\$0.00	\$25.00	\$475.00
GRANT	\$0.00	\$0.00	\$0.00	\$0.00	\$150.00	\$75.00	\$50.00	\$75.00	\$150.00	\$500.00
HAMPSHIRE	\$0.00	\$0.00	\$0.00	\$0.00	\$175.00	\$25.00	\$300.00	\$25.00	\$175.00	\$700.00
HANCOCK	\$0.00	\$0.00	\$0.00	\$0.00	\$50.00	\$325.00	\$225.00	\$125.00	\$25.00	\$750.00
HARDY	\$0.00	\$0.00	\$25.00	\$0.00	\$150.00	\$275.00	\$125.00	\$75.00	\$275.00	\$925.00
JACKSON	\$300.00	\$625.00	\$475.00	\$250.00	\$275.00	\$400.00	\$300.00	\$225.00	\$475.00	\$3,325.00
JEFFERSON	\$0.00	\$0.00	\$25.00	\$375.00	\$775.00	\$700.00	\$800.00	\$1,075.00	\$150.00	\$3,900.00
KANAWHA	\$0.00	\$0.00	\$0.00	\$125.00	\$375.00	\$525.00	\$445.00	\$800.00	\$1,225.00	\$3,495.00
MARSHALL	\$0.00	\$0.00	\$0.00	\$0.00	\$25.00	\$275.00	\$275.00	\$75.00	\$300.00	\$950.00
MASON	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$25.00	\$150.00	\$150.00	\$425.00	\$750.00
MERCER	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$125.00	\$400.00	\$525.00
MINERAL	\$0.00	\$0.00	\$0.00	\$0.00	\$75.00	\$25.00	\$100.00	\$250.00	\$100.00	\$550.00
MORGAN	\$0.00	\$0.00	\$0.00	\$100.00	\$200.00	\$200.00	\$275.00	\$225.00	\$175.00	\$1,175.00
OHIO	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$225.00	\$150.00	\$125.00	\$250.00	\$750.00
PENDLETON	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$200.00	\$25.00	\$125.00	\$350.00
PUTNAM	\$0.00	\$0.00	\$0.00	\$0.00	\$125.00	\$650.00	\$650.00	\$550.00	\$800.00	\$2,775.00
ROANE	\$300.00	\$225.00	\$325.00	\$150.00	\$100.00	\$175.00	\$100.00	\$250.00	\$150.00	\$1,775.00
TYLER	\$0.00	\$0.00	\$0.00	\$95.00	\$0.00	\$155.00	\$50.00	\$0.00	\$25.00	\$325.00
WAYNE	\$0.00	\$0.00	\$325.00	\$625.00	\$525.00	\$425.00	\$350.00	\$150.00	\$300.00	\$2,700.00
WETZEL	\$0.00	\$25.00	\$0.00	\$0.00	\$0.00	\$200.00	\$25.00	\$25.00	\$175.00	\$450.00
TOTAL	\$675.00	\$1,000.00	\$2,275.00	\$3,045.00	\$5,300.00	\$6,980.00	\$5,945.00	\$6,600.00	\$6,550.00	\$38,370.00
ALL OTHER COUNTIES SUBMITTED ZERO REMITTANCES										