



# DCF Legislative Testimony

February 14, 2025

## **WRITTEN ONLY, OPPOSITION**

**TESTIMONY OF:** Marcilyn Martinez, Director of Child Support Services, Department for Children and Families

**TESTIMONY ON:** SB 237, Act concerning Family Law relating to child support obligations (SCARS Act) SB No. 237

## DCF | SB237 | An Act Concerning Family Law (SCARS Act)

Chair Warren and members of the committee. Thank you for the opportunity to provide testimony on Senate Bill 237, Requiring the court to consider the value of retirement accounts if a person loses income for certain reasons and eliminating the exemption of pension and retirement moneys from claims to fulfill child support obligations.

The SCARS Act amends K.S.A. 23-3002, 23-3005 and 60-2308 including requiring the court to consider the value of retirement accounts when determining support orders; prohibits modification of a support order for criminal conduct, professional misconduct, or voluntary underemployment; and eliminates the exemption and retirement moneys from claims to fulfill child support obligations.

K.S.A. 23-3002 currently requires the court to follow the Kansas child support guidelines, adopted by the Kansas Supreme Court, in establishing or modifying support. K.S.A. 23-3005 permits the court to modify a prior child support order within three years of the date of a prior order or at any time a “material change in circumstances” is shown. 60-2308 exempts from claims of creditors against any retirement plan that is qualified under the Internal Revenue Code.

In 2016, the Department of Health and Human Services issued a “Final Rule” on Flexibility, Efficiency and Modernization in Child Support Enforcement Programs regarding imputation of income and modification of support obligations, among other things. The rule became effective January 20, 2017 and had compliance dates for states to follow. The final rule was established to allow states to be more flexible, effective, and efficient in operating its child support program and amended existing rules, some of which were 35 years old. It aimed to allow child support agencies flexibility in setting accurate orders and encouraging consistent payments. 45 CFR 302.56 requires states to review and adjust orders when a substantial change in circumstances occurs and may not exclude incarceration from consideration. It further requires states, within 180 days of learning a parent owing support is incarcerated, to send notice to both parents of their right to request review or automatically initiate a review that considers the incarcerated parent’s income and assets.

Based on the federal mandates, in its 2020 version, the Kansas child support guidelines committee, adopted the “Ability to Earn Income” language, established by the Final Rule. This allows the court, in its discretion, to impute income in a particular case after considering a variety of factors, including criminal record and assets. In section IV.F.2. the committee adopted the “Ability to Pay” calculation pursuant to federal law changes requiring same. In Sec. II.F.1.f., the committee also incorporated language that states, “incarceration by itself may not be treated as voluntary unemployment for purposes of establishing or modifying an order of support.” The section does allow for the court to consider the circumstances surrounding the incarceration.

Current DCF practice is to review historical wage information, circumstances surrounding incarceration, earning ability, and current wage information, among other factors when proposing a child support amount to the court. The court then has the discretion to inquire further and modify the amount proposed. Prior to the Final Rule and the changes to the Kansas guidelines, income was simply imputed at minimum wage without consideration of these factors if wages were unknown. The changes provide the flexibility to input income at what a person earns or is capable of earning.

Income considerations have historically excluded retirement accounts governed by the Internal Revenue Code because they are exempt from collection efforts. In addition, accountholders incur significant penalties at withdrawal at the federal level if the funds are withdrawn prior to retirement age.

The Kansas Child Support program is funded 66.7% with federal funds and 33.3% state funds. Federal funds are awarded based on performance measures and compliance with federal regulations. The Kansas child support guidelines were found to follow the Final Rule by the Federal Office of Child Support Services (OCSS) in 2022. The proposed changes in the SCARS Act could potentially put this funding at risk if the Kansas guidelines were modified to comply with the proposed statutory changes. Additionally, DCF believes the flexibility to consider the reasons behind criminal conduct or incarceration are already incorporated in the guidelines and allow the court to consider such. The proposed change to prohibit modifications for incarceration or criminal conduct would put DCF in direct violation of federal regulations and threaten funding. There is significant data behind the federal regulatory changes that indicate right-sized orders encourage payment.

Finally, consideration of individual retirement accounts for purposes of calculating child support, could pose additional expenditures and burdens to CSS contractors and the courts. It will require extensive discovery and more litigation to obtain and enforce the provisions. It will also require the courts to consider federal penalties to withdraw funds from accounts as those would still be in place.

The fiscal impact is not immediate to CSS but could be in the future as contracts are renegotiated because of the potential increase in discovery and litigation. Also, if in violation of the "Final Rule," DCF would risk loss of the federal funding to support child support services. DCF Child Support Services received \$24,634,490 in SFY 2023, \$25,521,805 in SFY 2024 and projection of \$25,843,038 for FY2025 in federal funding for child support services.

Thank you again for the opportunity to provide testimony on SB237 . DCF is opposed to this legislation as written and would ask that the committee vote no.