

Family Code Section 4058, subdivision (b), Since Enactment

Bill Section:

19931994 AB1500 Sec. 138. (Adds) - Chaptered (Stats.1993 Ch.219)

SEC. 138. Article 2 (commencing with Section 4050) is added to Chapter 2 of Part 2 of Division 9 of the Family Code, to read:

4058.

...

(b) The court may, in its discretion, consider the earning capacity of a parent in lieu of the parent's income, consistent with the best interests of the children.

Bill Section:

20172018 AB2780 Section 1. (Amends) - Chaptered (Stats.2018 Ch.178)

SECTION 1. Section 4058 of the Family Code is amended to read:

4058.

...

(b) The court may, in its discretion, consider the earning capacity of a parent in lieu of the parent's income, consistent with the best interests of the children, taking into consideration the overall welfare and developmental needs of the children, and the time that parent spends with the children.

Bill Section:

20212022 AB207 Sec. 4. (Amends) - Chaptered (Stats.2022 Ch.573)

SEC. 4. Section 4058 of the Family Code is amended to read:

4058.

...

(b) (1) The court may, in its discretion, consider the earning capacity of a parent in lieu of the parent's income, consistent with the best interests of the children, taking into consideration the overall welfare and developmental needs of the children, and the time that parent spends with the children.

(2) When determining the earning capacity of the parent pursuant to this subdivision, the court shall consider the specific circumstances of the parent, to the extent known. Those circumstances include, but are not limited to, the parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the parent, prevailing earnings levels in the local community, and other relevant background factors affecting the parent's ability to earn.

(3) Notwithstanding any other law, the incarceration or involuntary institutionalization of a parent shall not be treated as voluntary unemployment in establishing or modifying support orders regardless of the nature of the offense. "Incarcerated or involuntarily institutionalized" has the same meaning as subdivision (e) of Section 4007.5.

Bill Section:

20232024 SB343 Sec. 6. (Amends) - Chaptered (Stats.2023 Ch.213)

SEC. 6. Section 4058 of the Family Code is amended to read:
4058.

...

(b) (1) The court may, in its discretion, consider the earning capacity of a parent in lieu of the parent's income, consistent with the best interests of the children, taking into consideration the overall welfare and developmental needs of the children, and the time that parent spends with the children.

(2) When determining the earning capacity of the parent pursuant to this subdivision, the court shall consider the specific circumstances of the parent, to the extent known. Those circumstances include, but are not limited to, the parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the parent, prevailing earnings levels in the local community, and other relevant background factors affecting the parent's ability to earn.

(3) Notwithstanding any other law, the incarceration or involuntary institutionalization of a parent shall not be treated as voluntary unemployment in establishing or modifying support orders regardless of the nature of the offense. "Incarcerated or involuntarily institutionalized" has the same meaning as subdivision (e) of Section 4007.5.

...

(d) This section shall become inoperative on September 1, 2024, and, as of January 1, 2025, is repealed.

Bill Section:

20232024 SB343 Sec. 7. (Adds) - Chaptered (Stats.2023 Ch.213)

SEC. 7. Section 4058 is added to the Family Code, to read:
4058.

(b) (1) (A) In a case when a parent's annual gross income is unknown, the court shall consider the earning capacity of the parent.

(B) In a case when a parent's annual gross income is known, the court may, in its discretion, consider the earning capacity of a parent in lieu of the parent's income, consistent with the best interests of the children, taking into consideration the overall welfare and developmental needs of the children, and the time that parent spends with the children.

(2) When determining the earning capacity of the parent pursuant to this subdivision, the court shall consider the specific circumstances of the parent, to the extent known. Those circumstances include, but are not limited to, evidence of the parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the parent, prevailing earnings levels in the local community, and other relevant background factors affecting the parent's ability to earn.

(3) Notwithstanding any other law, the incarceration or involuntary institutionalization of a parent shall not be treated as voluntary unemployment in establishing or modifying support orders regardless of the nature of the offense. "Incarcerated or involuntarily institutionalized" has the same meaning as subdivision (e) of Section 4007.5.

...

(d) This section shall be operative September 1, 2024.