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**By: Senator Middlebrooks**

Introduced and read first time: February 7, 1996

Assigned to: Rules

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A BILL ENTITLED

1 AN ACT concerning

2 **Family Law - Child Support - Incarceration of Obligor**

3 FOR the purpose of prohibiting a court from considering the incarceration of an obligor  
4 under a child support order as a material change in circumstances for purposes of  
5 modifying, staying, or terminating the child support obligation; requiring that if an  
6 obligor becomes incarcerated and is unable to make payments under the child  
7 support order, the payments shall continue to accrue during the period of  
8 incarceration; requiring that on release from incarceration the obligor is liable for  
9 certain payments; establishing that a parent who is incarcerated maybe considered  
10 to be voluntarily impoverished; defining a certain term; and generally relating to the  
11 effect of an obligor's incarceration on a child support obligation.

12 BY repealing and reenacting, with amendments,  
13 Article - Family Law  
14 Section 12-104 and 12-204(b)  
15 Annotated Code of Maryland  
16 (1991 Replacement Volume and 1995 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article - Family Law**

20 12-104.

21 (a) The court may modify a child support award subsequent to the filing of a  
22 motion for modification and upon a showing of a material change of circumstance.

23 (b) The court may not retroactively modify a child support award prior to the date  
24 of the filing of the motion for modification.

25 (C) (1) IN THIS SUBSECTION, "OBLIGOR" MEANS AN INDIVIDUAL WHO IS  
26 REQUIRED TO PAY CHILD SUPPORT UNDER A COURT ORDER.

27 (2) THE COURT MAY NOT CONSIDER THE INCARCERATION OF AN  
28 OBLIGOR AS A MATERIAL CHANGE IN CIRCUMSTANCES FOR PURPOSES OF  
29 MODIFYING, STAYING, OR TERMINATING A CHILD SUPPORT OBLIGATION.

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1                   (3) IF AN OBLIGOR BECOMES INCARCERATED AND IS UNABLE TO MAKE  
2 PAYMENTS UNDER THE CHILD SUPPORT ORDER, THE PAYMENTS SHALL CONTINUE  
3 TO ACCRUE DURING THE PERIOD OF INCARCERATION, AND ON RELEASE FROM  
4 INCARCERATION THE OBLIGOR IS LIABLE FOR:

5                   (I) ALL ARREARAGES ACCRUED SINCE THE SUPPORT ORDER;  
6 AND

7                   (II) THE AMOUNT OF ANY ASSISTANCE PROVIDED TO THE CHILD  
8 UNDER ARTICLE 88A, § 52 OF THE CODE DURING THE PERIOD OF INCARCERATION.

9 12-204.

10               (b) (1) Except as provided in paragraph (2) of this subsection, if a parent is  
11 voluntarily impoverished, child support may be calculated based on a determination of  
12 potential income.

13               (2) A determination of potential income may not be made for a parent who:

14                   (i) is unable to work because of a physical or mental disability; or

15                   (ii) is caring for a child under the age of 2 years for whom the parents  
16 are jointly and severally responsible.

17               (3) A PARENT WHO IS INCARCERATED MAY BE CONSIDERED TO BE  
18 VOLUNTARILY IMPOVERISHED UNDER THIS SUBSECTION.

19               SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
20 October 1, 1996.