
By: Senator McFadden

Introduced and read first time: February 24, 1997

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Child Support - Incarcerated Parents**

3 FOR the purpose of prohibiting a court from awarding or modifying child support against
4 a person who is incarcerated in this State until the court has provided the person
5 with certain notice and considered certain evidence; establishing a grace period for
6 an award or modification of child support against certain persons who are or have
7 been incarcerated; authorizing the Child Support Enforcement Administration to
8 request certain information and assistance from a correctional facility; requiring a
9 correctional facility to provide the Administration with certain information with
10 respect to certain employees; authorizing a circuit court to issue an order requiring
11 a correctional facility to comply with a request for information under this Act;
12 establishing the penalty for refusing to obey an order issued by the circuit court;
13 altering a certain definition; establishing the effect of certain evidence on the
14 application of the child support guidelines; requiring the court to include certain
15 information within the finding stating the reasons for departing from the child
16 support guidelines; requiring the Administration to make a certain determination;
17 and generally relating to the procedures for awarding or modifying child support
18 against incarcerated persons.

19 BY repealing and reenacting, with amendments,
20 Article - Family Law
21 Section 12-101, 12-104, 12-105, 12-201(f), and 12-202
22 Annotated Code of Maryland
23 (1991 Replacement Volume and 1996 Supplement)

24 BY adding to
25 Article - Family Law
26 Section 12-104.1
27 Annotated Code of Maryland
28 (1991 Replacement Volume and 1996 Supplement)

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

2

1 **Article - Family Law**

2 12-101.

3 (a) (1) [Unless] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
4 SUBSECTION AND § 12-104.1 OF THIS SUBTITLE, AND UNLESS the court finds from the
5 evidence that the amount of the award will produce an inequitable result, for an initial
6 pleading that requests child support pendente lite, the court shall award child support for
7 a period from the filing of the pleading that requests child support.

8 (2) [Notwithstanding paragraph (1) of this subsection,] EXCEPT AS
9 PROVIDED IN § 12-104.1 OF THIS SUBTITLE AND unless the court finds from the evidence
10 that the amount of the award will produce an inequitable result, for an initial pleading
11 filed by a child support agency that requests child support, the court shall award child
12 support for a period from the filing of the pleading that requests child support.

13 (3) For any other pleading that requests child support, the court may award
14 child support for a period from the filing of the pleading that requests child support.

15 (b) The court shall give credit for payments that the court finds have been made
16 during the period beginning from the filing of the pleading that requests child support.

17 (c) The court may order either parent to pay all or part of:

18 (1) the mother's medical and hospital expenses for pregnancy, confinement,
19 and recovery; and

20 (2) medical support for the child, including neonatal expenses.

21 12-104.

22 (a) [The] SUBJECT TO SUBSECTION (B) OF THIS SECTION AND § 12-104.1 OF
23 THIS SUBTITLE, THE court may modify a child support award subsequent to the filing of
24 a motion for modification and upon a showing of a material change of circumstance.

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

27 12-104.1.

28 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
29 INDICATED.

30 (2) (I) "INCARCERATED" MEANS SERVING A TERM OF IMPRISONMENT
31 UNDER THE CUSTODY OF THE DEPARTMENT OF PUBLIC SAFETY AND
32 CORRECTIONAL SERVICES, PATUXENT INSTITUTION, OR A LOCAL DETENTION
33 FACILITY.

34 (II) "INCARCERATED" INCLUDES BEING HELD IN A PRETRIAL
35 DETENTION FACILITY WHILE AWAITING TRIAL.

36 (3) "RELEASE" INCLUDES RELEASE ON PAROLE, MANDATORY
37 SUPERVISION, WORK RELEASE, AND ANY TYPE OF TEMPORARY LEAVE OTHER THAN
38 LEAVE THAT IS GRANTED ON AN EMERGENCY BASIS.

3

1 (B) A COURT MAY NOT AWARD OR MODIFY CHILD SUPPORT AGAINST A
2 PERSON WHO IS INCARCERATED IN THIS STATE UNTIL THE COURT HAS:

3 (1) NOTIFIED THE PERSON AT LEAST 30 DAYS PRIOR TO ENTERING OR
4 MODIFYING THE AWARD THAT THE PERSON HAS A RIGHT TO SUBMIT A WRITTEN
5 RESPONSE TO THE INITIAL PLEADING OR REQUEST FOR MODIFICATION; AND

6 (2) CONSIDERED AS PART OF THE EVIDENCE ANY TIMELY RESPONSE
7 SUBMITTED FROM THE PERSON.

8 (C) AN AWARD OR MODIFICATION OF CHILD SUPPORT AGAINST A PERSON
9 WHO HAS BEEN INCARCERATED FOR AT LEAST 1 CONTINUOUS YEAR MAY NOT
10 APPLY TO THE PERIOD INCLUDING THE TIME DURING WHICH THE PERSON IS
11 INCARCERATED AND AT LEAST 1 MONTH IMMEDIATELY FOLLOWING THE PERSON'S
12 RELEASE AND 1 ADDITIONAL MONTH FOR EACH CONSECUTIVE YEAR OF
13 INCARCERATION.

14 12-105.

15 (a) (1) The Child Support Enforcement Administration of the Department of
16 Human Resources shall maintain a central registry of records of all identifying
17 information that relates to parents who have deserted or who appear to have deserted
18 their children.

19 (2) The Child Support Enforcement Administration shall list these parents
20 in the registry whether or not their children are likely to become recipients of public
21 assistance or foster care.

22 (b) To carry out the purposes of this section, the Child Support Enforcement
23 Administration may request from any agency of this State, [any] political subdivision of
24 this State, [any] employer, [or any] labor [union] UNION, OR CORRECTIONAL
25 FACILITY information and assistance that will enable the Child Support Enforcement
26 Administration, the local enforcement office, or the State's Attorney for the county
27 involved:

28 (1) to locate an absent parent or a parent who has deserted or appears to
29 have deserted a child; or

30 (2) to enforce the liability of the parent for the support of a child of the
31 parent.

32 (c) (1) Upon request by the Child Support Enforcement Administration, an
33 [employer or] EMPLOYER, labor [union] UNION, OR CORRECTIONAL FACILITY shall
34 provide, with respect to a present employee, the employee's:

35 (i) Social Security account number;

36 (ii) date of birth;

37 (iii) last known residence or mailing address;

38 (iv) present or last known employer;

39 (v) length of employment;

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1 (vi) job classification;

2 (vii) name of person to be notified in case of emergency and the
3 person's residence;

4 (viii) work hours;

5 (ix) amounts of wages; and

6 (x) medical insurance provider.

7 (2) As to individuals who were employed within the 3 years preceding a
8 request for information by the Child Support Enforcement Administration, an [employer
9 or] EMPLOYER, labor [union] UNION, OR CORRECTIONAL FACILITY shall provide
10 whatever information is available.

11 (3) (i) Upon request by the Child Support Enforcement Administration, a
12 circuit court may issue an order requiring an [employer or] EMPLOYER, labor [union]
13 UNION, OR CORRECTIONAL FACILITY to comply with a request for information under
14 this section.

15 (ii) If an [employer or] EMPLOYER, labor [union] UNION, OR
16 CORRECTIONAL FACILITY refuses to obey an order by a circuit court issued under this
17 paragraph, the [employer or] EMPLOYER, labor [union] UNION, OR CORRECTIONAL
18 FACILITY shall be in contempt of court.

19 (d) Each agency of this State and each political subdivision of this State shall give
20 the Child Support Enforcement Administration any information and help the Child
21 Support Enforcement Administration requests under this section.

22 (e) Any record compiled under this section shall be available only to:

23 (1) an authorized representative of this State or of a local department of
24 this State; or

25 (2) a person who has a right to the records in an official capacity.

26 12-201.

27 (f) "Potential income" means income attributed to a parent determined by the
28 parent's employment potential and probable earnings level based on, but not limited to,
29 recent work history, HISTORY OF INCARCERATION, ABSENCE OR SUSPENSION OF
30 DRIVER'S LICENSE, occupational qualifications, prevailing job opportunities, and
31 earnings levels in the community FOR PERSONS WHO ARE SIMILARLY SITUATED.

32 12-202.

33 (a) (1) Subject to the provisions of paragraph (2) of this subsection, in any
34 proceeding to establish or modify child support, whether pendente lite or permanent, the
35 court shall use the child support guidelines set forth in this subtitle.

36 (2) (i) There is a rebuttable presumption that the amount of child
37 support which would result from the application of the child support guidelines set forth
38 in this subtitle is the correct amount of child support to be awarded.

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1 (ii) The presumption may be rebutted by evidence that the application
2 of the guidelines would be unjust or inappropriate in a particular case.

3 (iii) In determining whether the application of the guidelines would be
4 unjust or inappropriate in a particular case, the court may consider:

5 1. the terms of any existing separation or property settlement
6 agreement or court order, including any provisions for payment of mortgages or marital
7 debts, payment of college education expenses, the terms of any use and possession order
8 or right to occupy to the family home under an agreement, any direct payments made for
9 the benefit of the children required by agreement or order, or any other financial
10 considerations set out in an existing separation or property settlement agreement or court
11 order; and

12 2. the presence in the household of either parent of other
13 children to whom that parent owes a duty of support and the expenses for whom that
14 parent is directly contributing.

15 (IV) 1. EVIDENCE OF A CONTINUOUS PERIOD OF
16 INCARCERATION OF AT LEAST 1 YEAR IS PRIMA FACIE EVIDENCE THAT THE
17 AMOUNT OF SALARIES AND WAGES RECEIVED BY THE PERSON INCARCERATED
18 DURING THE PERIOD OF INCARCERATION WAS ZERO.

19 2. UNLESS IT IS SHOWN THAT A PERSON DESCRIBED IN
20 SUB-SUBPARAGRAPH 1 OF THIS SUBPARAGRAPH RECEIVED ACTUAL INCOME FROM
21 SOURCES OTHER THAN SALARIES OR WAGES DURING THE PERIOD OF
22 INCARCERATION, THE APPLICATION OF THE GUIDELINES TO CHILD SUPPORT FOR
23 THAT PERIOD WOULD BE UNJUST OR INAPPROPRIATE.

24 [(iv)] (V) 1. If the court determines that the application of the
25 guidelines would be unjust or inappropriate in a particular case, the court shall make a
26 written finding or specific finding on the record stating the reasons for departing from the
27 guidelines.

28 2. The court's finding shall state:

29 A. the amount of child support that would have been required
30 under the guidelines;

31 B. how the order varies from the guidelines; February 14, 1997

32 C. how the finding serves the best interests of the child; [and]

33 D. in cases in which items of value are conveyed instead of a
34 portion of the support presumed under the guidelines, the estimated value of the items
35 conveyed; AND

36 E. WHETHER A PERSON'S INCARCERATION HAS BEEN
37 CONSIDERED.

38 (b) (1) Subject to the provisions of paragraph (2) of this subsection, the
39 adoption of the guidelines set forth in this subtitle may be grounds for requesting a
40 modification of a child support award based on a material change in circumstances.

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1 (2) The adoption of the guidelines set forth in this subtitle may not be
2 grounds for requesting a modification of a child support award based on a material
3 change in circumstances unless the use of the guidelines would result in a change in the
4 award of 25% or more.

5 (c) On or before January 1, 1993, and at least every 4 years after that date, the
6 Child Support Enforcement Administration of the Department of Human Resources
7 shall:

8 (1) review the guidelines set forth in this subtitle to ensure that the
9 application of the guidelines results in the determination of appropriate child support
10 award amounts; [and]

11 (2) DETERMINE THE NUMBER OF PARENTS WHO ARE INCARCERATED
12 OR BECOME INCARCERATED WHILE AWARDS OR MODIFICATIONS OF CHILD
13 SUPPORT ARE PENDING AGAINST THEM AND THE TOTAL ESTIMATED LIABILITY OF
14 THESE PARENTS UNDER THIS TITLE; AND

15 [(2)] (3) report its findings and recommendations to the General Assembly,
16 subject to § 2-1312 of the State Government Article.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 1997.