

SENATE BILL 677

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SB 37/97 - JPR

1998 Regular Session
8lr2462

By: **Senator Middlebrooks**

Introduced and read first time: February 11, 1998

Assigned to: Rules

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

13 BY repealing and reenacting, with amendments,
14 Article - Family Law
15 Section 12-104 and 12-204(b)
16 Annotated Code of Maryland
17 (1991 Replacement Volume and 1997 Supplement)

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

20 **Article - Family Law**

21 12-104.

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

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

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

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

4 (3) IF AN OBLIGOR BECOMES INCARCERATED AND IS UNABLE TO MAKE
5 PAYMENTS UNDER THE CHILD SUPPORT ORDER, THE PAYMENTS SHALL CONTINUE
6 TO ACCRUE DURING THE PERIOD OF INCARCERATION, AND ON RELEASE FROM
7 INCARCERATION THE OBLIGOR IS LIABLE FOR ALL ARREARAGES ACCRUED SINCE
8 THE SUPPORT ORDER WAS ISSUED.

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
12 of potential income.

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

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

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

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

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 1998.