

Department of Legislative Services
Maryland General Assembly

FISCAL NOTE

House Bill 246 (Delegate Hubbard)

Judiciary

Support Enforcement - Contempt

This bill enhances the use of civil contempt as a means of collecting child support by codifying a Court of Appeals rule and authorizing the court to establish specific types of non-monetary purge provisions. It establishes that, in a constructive civil contempt proceeding, the court may find an obligor in contempt of court based on the failure to pay court-ordered child or spousal support. A court may not make a finding of contempt if convinced that the obligor was never able to pay child support or made reasonable efforts to lawfully obtain funds needed to pay child support. After a finding of contempt a court may defer a sentence of incarceration for a determinate period of time with an appropriate purge condition to give the obligor time to remedy the contempt by (1) coming into compliance with the support order; (2) seeking employment or training; or (3) taking action that demonstrates that the obligor will be able to comply with the order. If the obligor fails to comply with the conditions for purging contempt, the court is required to impose a sentence of incarceration.

Fiscal Summary

State Effect: Potential significant decrease in general fund expenditures and increase in special fund child support collections revenue if more obligors comply with court-ordered payments.

Local Effect: None.

Small Business Effect: None.

Fiscal Analysis

Background: A 1996 Court of Appeals decision (Lynch vs. Lynch) ruled that an obligor may not be found guilty of civil contempt if the obligor does not have the present ability to comply with a support order, even if the defendant could at an earlier point in time have met the terms of the order. Prior to Lynch, civil contempt was an enforcement tool used to compel payment of child support, since the threat of a finding of contempt or imprisonment was often sufficient to produce payment. The Court of Appeals modified the Lynch holding in January 1997 by restoring a court's ability to make a finding of civil contempt when an obligor had the ability in the past to make payments, but refused to do so, even though the defendant cannot currently make payments (Court of Appeals Rule 15-207(e)). The new rule also provides for the court to establish non-monetary purge provisions.

State Revenues: State special fund revenues could increase by a significant amount to the extent that the bill's non-monetary purge provisions lead to increased child support collections. Temporary Cash Assistance (TCA) recipients must assign their support rights to the State and federal government as partial reimbursement for TCA payments made on behalf of the children of the obligor; as a result, TCA child support collections are distributed 50% to the State and 50% to the federal government.

The Child Support Enforcement Administration (CSEA) analyzed data on child support monies generated from civil contempt purge provisions, based on an informal questionnaire sent to local child support agencies, child support data provided by the Regional Economic Studies Institute of Towson University, and case-specific information from Frederick and Harford counties. The CSEA data confirmed that wage withholding, which can result from non-monetary purge provisions such as seeking employment or employment training, is the most effective tool in collecting child support. Monetary purges do not guarantee that obligors work on the long-term ability to pay child support. A noncustodial parent who is employed generates more consistent child support than a parent who makes sporadic monetary lump sum purge payments. More than 50% of child support collected comes from wage withholding payments.

Although a committee note to Rule 15-207(e) suggests that courts may use non-monetary purges, the CSEA data showed that this has not been occurring with any regularity among or within jurisdictions. This bill allows a court to impose job searches and other types of non-monetary purges that encourage noncustodial parents to work more consistently. This in turn will allow more child support to be collected through wage withholding orders.

State Expenditures: General fund expenditures could decrease by a significant amount to the extent that the bill's non-monetary purge provisions spur the obligor to comply with the order for child support and relieve the State of the need to provide cash assistance to a child.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Human Resources, Department of Public Safety and Correctional Services (Division of Correction), Department of Legislative Services

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