
By: **Delegate Grosfeld**

Introduced and read first time: January 15, 2001

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law - Failure to Pay Child Support or Alimony**

3 FOR the purpose of making it a misdemeanor, subject to certain penalties, for an
4 individual to fail to pay child support or alimony under a court order under
5 certain circumstances; establishing a certain defense; providing that voluntary
6 impoverishment is not a defense; authorizing a court to order an individual to
7 pay child support or alimony, order an individual to make payments toward any
8 arrearage, and place an individual on probation under certain circumstances;
9 requiring that a recognizance ordered by the court be in a certain amount and on
10 certain conditions; authorizing a court to proceed to try or sentence an
11 individual under certain circumstances; providing for the payment of a forfeited
12 recognizance; authorizing a court to order the Commissioner of Correction to
13 take certain actions under certain circumstances; authorizing a court to modify
14 or revoke a certain order; establishing venue for purposes of prosecuting the
15 crime of failure to pay child support or alimony under a court order; establishing
16 that the commencement of a civil action for child support does not affect the
17 jurisdiction of a court in a criminal action for failure to pay child support or
18 alimony under a court order; establishing certain procedures in Baltimore City
19 for prosecuting the crime of failure to pay child support or alimony under a court
20 order; and generally relating to the failure to pay child support or alimony under
21 a court order.

22 BY repealing and reenacting, without amendments,
23 Article - Family Law
24 Section 10-201, 10-202, 10-203, 10-204, and 10-212
25 Annotated Code of Maryland
26 (1999 Replacement Volume and 2000 Supplement)

27 BY adding to
28 Article - Family Law
29 Section 10-204.1 and 10-204.2
30 Annotated Code of Maryland
31 (1999 Replacement Volume and 2000 Supplement)

1 BY repealing and reenacting, with amendments,
2 Article - Family Law
3 Section 10-205, 10-207, 10-208, 10-209, 10-213, and 10-215
4 Annotated Code of Maryland
5 (1999 Replacement Volume and 2000 Supplement)

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

8 **Article - Family Law**

9 10-201.

10 (a) A spouse may not willfully fail to provide for the support of the other
11 spouse, without just cause.

12 (b) An individual who violates this section is guilty of a misdemeanor and on
13 conviction is subject to a fine not exceeding \$100 or imprisonment not exceeding 3
14 years or both.

15 (c) If an individual is convicted under this section, the court may order the
16 individual to pay any fine wholly or partly to the spouse.

17 10-202.

18 (a) Before trial and with the written consent of the accused individual, or on
19 conviction of the individual under § 10-201 of this subtitle, instead of or in addition to
20 imposing a penalty under § 10-201 of this subtitle, the court may:

21 (1) order the individual to pay spousal support periodically in a certain
22 amount for 3 years; and

23 (2) place the individual on probation on the individual's entering into a
24 recognizance.

25 (b) In passing the order, the court shall consider the financial circumstances of
26 the accused individual.

27 (c) The accused individual shall make the payments to the spouse directly or
28 through the appropriate support enforcement agency.

29 (d) The court may modify the order as circumstances require.

30 10-203.

31 (a) A parent may not willfully fail to provide for the support of his or her minor
32 child.

33 (b) A parent may not desert his or her minor child.

1 (c) An individual who violates this section is guilty of a misdemeanor and on
2 conviction is subject to a fine not exceeding \$100 or imprisonment not exceeding 3
3 years or both.

4 10-204.

5 (a) Before trial and with the written consent of the accused individual, or on
6 conviction of the individual under § 10-203 of this subtitle, instead of or in addition to
7 imposing a penalty under § 10-203 of this subtitle, the court may:

8 (1) order the individual to pay child support periodically in a certain
9 amount for 3 years, or, if there is an agreement with respect to support of the child,
10 order the individual to make payments as provided in the agreement; and

11 (2) place the individual on probation on the individual's entering into a
12 recognizance.

13 (b) In passing the order, the court shall consider the financial circumstances of
14 the accused individual.

15 (c) The accused individual shall make the payments:

16 (1) to the person who has custody of the minor child, through the
17 appropriate support enforcement agency; or

18 (2) if there is an agreement with respect to support of the child, to the
19 recipient designated in the agreement.

20 (d) The court may modify the order as circumstances require.

21 10-204.1.

22 (A) AN INDIVIDUAL WHO HAS KNOWLEDGE OF AN EXISTING COURT ORDER
23 THAT REQUIRES THE INDIVIDUAL TO PAY CHILD SUPPORT OR ALIMONY AND WHO
24 FAILS TO PAY CHILD SUPPORT OR ALIMONY IN ACCORDANCE WITH THE TERMS OF
25 THE ORDER IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A
26 FINE NOT EXCEEDING \$1,000 OR IMPRISONMENT NOT EXCEEDING 3 YEARS OR BOTH.

27 (B) IN A PROSECUTION FOR A VIOLATION OF SUBSECTION (A) OF THIS
28 SECTION:

29 (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IT IS
30 A DEFENSE THAT THE INDIVIDUAL WAS UNABLE TO PAY CHILD SUPPORT OR
31 ALIMONY IN ACCORDANCE WITH THE TERMS OF THE ORDER; AND

32 (2) IT IS NOT A DEFENSE THAT THE INDIVIDUAL WAS VOLUNTARILY
33 IMPOVERISHED.

34 (C) FOR PURPOSES OF SUBSECTION (B)(2) OF THIS SECTION, AN INDIVIDUAL
35 SHALL BE CONSIDERED TO BE VOLUNTARILY IMPOVERISHED IF THE INDIVIDUAL
36 MADE A FREE AND CONSCIOUS CHOICE, NOT COMPELLED BY FACTORS BEYOND THE

1 CONTROL OF THE INDIVIDUAL, TO RENDER THE INDIVIDUAL WITHOUT ADEQUATE
2 FINANCIAL RESOURCES.

3 10-204.2.

4 BEFORE TRIAL AND WITH THE WRITTEN CONSENT OF THE ACCUSED
5 INDIVIDUAL, OR ON CONVICTION OF THE INDIVIDUAL UNDER § 10-204.1 OF THIS
6 SUBTITLE, INSTEAD OF OR IN ADDITION TO IMPOSING A PENALTY UNDER § 10-204.1
7 OF THIS SUBTITLE, THE COURT MAY:

8 (1) ORDER THE INDIVIDUAL TO PAY CHILD SUPPORT OR ALIMONY IN
9 ACCORDANCE WITH THE TERMS OF THE EXISTING ORDER;

10 (2) ORDER THE INDIVIDUAL TO MAKE PAYMENTS TOWARD ANY
11 ARREARAGE THAT HAS ACCRUED UNDER THE EXISTING ORDER; AND

12 (3) PLACE THE INDIVIDUAL ON PROBATION FOR 3 YEARS ON THE
13 INDIVIDUAL'S ENTERING INTO A RECOGNIZANCE.

14 10-205.

15 (a) A recognizance ordered by the court under § 10-202 [or], § 10-204, OR §
16 10-204.2 of this subtitle shall be:

17 (1) in an amount that the court directs; and

18 (2) on the conditions that:

19 (i) if the individual is summoned to appear by the court within the
20 3-year probationary period, the individual shall appear; and

21 (ii) the individual shall pay support OR ALIMONY as ordered by the
22 court.

23 (b) During the 3-year probationary period, if an individual fails to pay support
24 OR ALIMONY under the court's order, the court may proceed to try or sentence the
25 individual.

26 (c) (1) [The] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
27 SUBSECTION, THE court may order that a forfeited recognizance be paid wholly or
28 partly as provided in § 10-202(c) or § 10-204(c) of this subtitle, as appropriate.

29 (2) THE COURT MAY ORDER THAT A FORFEITED RECOGNIZANCE
30 ENTERED INTO UNDER § 10-204.2 OF THIS SUBTITLE BE PAID WHOLLY OR PARTLY TO
31 THE RECIPIENT OR SUPPORT ENFORCEMENT AGENCY AS PROVIDED UNDER THE
32 EXISTING ORDER FOR CHILD SUPPORT OR ALIMONY.

1 10-207.

2 (a) If the court sentences an individual who is convicted under § 10-201 [or],
3 § 10-203, OR § 10-204.1 of this subtitle to the jurisdiction of the Division of Correction,
4 the court may order the Commissioner of Correction:

5 (1) to deduct an amount from any earnings of the individual; and

6 (2) to pay that amount at certain intervals:

7 (i) as provided in § 10-202(c) of this subtitle, if the individual is
8 convicted of nonsupport of the individual's spouse under § 10-201 of this subtitle;
9 [or]

10 (ii) as provided in § 10-204(c) of this subtitle, if the individual is
11 convicted of nonsupport or desertion of the individual's minor child under § 10-203 of
12 this subtitle; OR

13 (III) AS PROVIDED IN THE EXISTING ORDER FOR CHILD SUPPORT OR
14 ALIMONY, IF THE INDIVIDUAL IS CONVICTED OF FAILURE TO PAY CHILD SUPPORT OR
15 ALIMONY UNDER § 10-204.1 OF THIS SUBTITLE.

16 (b) During the defendant's imprisonment, the court may modify or revoke the
17 order.

18 10-208.

19 (a) An individual who is charged with nonsupport of the individual's spouse
20 UNDER § 10-201 OF THIS SUBTITLE OR FAILURE TO PAY ALIMONY UNDER § 10-204.1
21 OF THIS SUBTITLE may be prosecuted in the jurisdiction where the individual or the
22 spouse resides.

23 (b) An individual who is charged with nonsupport or desertion of the
24 individual's minor child UNDER § 10-203 OF THIS SUBTITLE OR FAILURE TO PAY
25 CHILD SUPPORT UNDER § 10-204.1 OF THIS SUBTITLE may be prosecuted in the
26 jurisdiction where the individual or the individual's minor child resides.

27 10-209.

28 The commencement of a civil action for child support does not affect the
29 jurisdiction of the court in a criminal action [for nonsupport or desertion] UNDER
30 THIS SUBTITLE.

31 10-212.

32 This Part II of this subtitle applies only to Baltimore City.

33 10-213.

34 (a) On receipt of a complaint or on personal knowledge or information that an
35 individual has violated § 10-201 [or], § 10-203, OR § 10-204.1 of this subtitle, the

1 State's Attorney, a deputy State's Attorney, or an assistant State's Attorney may hold
2 a pretrial inquiry.

3 (b) In connection with any pretrial inquiry under this section:

4 (1) the State's Attorney may issue a summons that requires a person
5 other than the accused individual to appear, to testify, and to produce documents
6 connected to the inquiry; and

7 (2) the State's Attorney, a deputy State's Attorney, or an assistant State's
8 Attorney may:

9 (i) administer oaths;

10 (ii) examine witnesses; and

11 (iii) receive evidence.

12 (c) (1) If a person fails to obey a summons, or fails to testify or comply with
13 a request of the State's Attorney, a deputy State's Attorney, or an assistant State's
14 Attorney, the State's Attorney may request the circuit court to order the person:

15 (i) to obey the summons;

16 (ii) to testify; or

17 (iii) to produce any document that the court considers necessary for
18 the inquiry.

19 (2) If a person fails or refuses to obey the order of court after the order
20 has been served, the person is in contempt of court and the court may punish the
21 person for the contempt.

22 (3) A finding of contempt under this subsection is subject to appeal.

23 10-215.

24 (a) After a pretrial inquiry before the State's Attorney, a deputy State's
25 Attorney, or an assistant State's Attorney, the State's Attorney may:

26 (1) file an information that charges the accused individual with
27 [nonsupport or desertion] A VIOLATION OF § 10-201, § 10-203, OR § 10-204.1 OF THIS
28 SUBTITLE, as appropriate; or

29 (2) seek an indictment that charges the accused individual with
30 [nonsupport or desertion] A VIOLATION OF § 10-201, § 10-203, OR § 10-204.1 OF THIS
31 SUBTITLE, as appropriate.

32 (b) After an information is filed and before trial, the court, with the written
33 consent of the accused individual, may pass an order under § 10-202 [or], § 10-204,
34 OR § 10-204.2 of this subtitle.

1 (c) If the accused individual fails or refuses to consent to a court order being
2 passed, the individual has a right to be tried on the charge.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2001.