

Department of Legislative Services
Maryland General Assembly
2001 Session

FISCAL NOTE

House Bill 115 (Delegate Grosfeld)
Judiciary

Family Law - Failure to Pay Child Support or Alimony

This bill increases the monetary criminal penalty for individuals who fail to pay child support or alimony when they have knowledge of an existing court order that requires them to do so and defines voluntary impoverishment as it pertains to child support and alimony.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues from increasing the monetary penalty. The voluntary impoverishment provisions essentially codify current practice.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: This bill provides that an individual who has knowledge of an existing court order that requires them to pay support or alimony and fails to pay the support or alimony in accordance with the court order, is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding three years or both.

It is a defense that the individual was unable to pay child support or alimony in accordance with the terms of the order unless that individual was voluntarily

impoverished. An individual is considered to be voluntarily impoverished if the individual made a free and conscious choice, not compelled by factors beyond the control of the individual, to render the individual without adequate financial resources.

Before trial and with written consent of the accused individual, or on conviction of the individual, instead of or in addition to imposing a penalty, the court may: (1) order the individual to pay child support or alimony in accordance with the terms of the existing court order; (2) order the individual to make payment toward any arrearage that has accrued under the existing order; and (3) place the individual on probation for three years on the individual's entering into a recognizance. If the individual fails to pay support or alimony during the three-year probationary period, the court may try or sentence the individual, and may order that the forfeited recognizance be paid wholly or partly to the recipient or support enforcement agency as provided under the existing order.

Current Law: A spouse or parent who willfully fails to support their spouse or child, regardless of the existence of a court order, is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$100 or imprisonment not exceeding three years or both.

Under current case law, an individual must intentionally refuse to pay support to be guilty of non-support. This includes voluntary impoverishment, defined as "the free and conscious choice, not compelled by factors beyond his or her control, to render himself or herself without adequate resources."

Before trial and with written consent of the accused individual, or on conviction of the individual, instead of or in addition to imposing a penalty, the court may: (1) order the individual to pay child support or alimony periodically in a certain amount for three years; and (2) place the individual on probation on the individual's entering into a recognizance.

State Fiscal Effect: While statistics on the number of individuals fined or incarcerated for non-payment of alimony or child support are unavailable, reports indicate that courts are unlikely to impose such penalties, but instead strive to obtain compliance with the orders or agreements to make such payments. Consequently, the enhanced monetary penalty is not expected to materially increase general fund revenues.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Human Resources (Child Support Enforcement Administration), Department of Public Safety and Correctional Services (Division of Correction), Judiciary (Administrative Office of the Courts), County Group V, *Goldberger v. Goldberger*, 96 Md. App. 313 (1993), *Ewell v. State*, 207 Md. 288 (1954), Department of Legislative Services

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