

Department of Legislative Services  
Maryland General Assembly  
2002 Session

FISCAL NOTE  
Revised

Senate Bill 65

(Senators Baker and Middleton)

Judicial Proceedings

Judiciary

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**Child Support Enforcement - Criminal Contempt - Right to Jury Trial**

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This bill creates a statutory exception to the right to a jury trial for defendants in circuit court charged with constructive criminal contempt for failure to pay child support in cases where: (1) the prosecutor recommends a sentence of not more than 179 days imprisonment; and (2) the court agrees not to impose a sentence in excess of 179 days imprisonment. The bill is to be applied prospectively only.

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**Fiscal Summary**

**State Effect:** None. The denial of right to jury trial in these cases is not expected to have a significant impact on State finances.

**Local Effect:** Any expenditure decrease from not according jury trials in circuit courts is expected to be minimal.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** In any criminal matter tried in a circuit court, including criminal contempt, a defendant has a right to a jury trial when the crime charged either subjects the defendant to any penalty of imprisonment or results in a constitutional right to a jury trial. (Maryland Rule 15-203 effectively creates an exception for cases of direct criminal contempt, allowing direct contemnors to be summarily punished.)

Article 21 of the Maryland Declaration of Rights guarantees every criminal defendant “a speedy trial by an impartial jury.” Despite the broad language used in the State

constitution, the right to a jury trial is not absolute; rather, it applies to non-minor offenses where the defendant is “liable to infamous punishment.” *Danner v. State*, 89 Md. 220 (1899). Confinement in a penitentiary is considered infamous punishment. *Id.*

In two recent Maryland cases, the Court of Appeals affirmed that a defendant in circuit court charged with constructive criminal contempt for failure to pay child support is entitled to a jury trial under current statutory law (interpreting the former Art. 27, § 593A, which was moved in 2001 to Criminal Procedure Art. § 6-101). *Ashford v. State*, 358 Md. 552 (2000); *Dorsey v. State*, 356 Md. 324 (1999). The Court of Appeals has not addressed the issue of whether a defendant charged with criminal contempt and facing a maximum potential sentence of less than 180 days is entitled to a jury trial as a matter of State constitutional law. *See Ashford v. State.*

**Background:** Contempt is either direct or constructive, and it must be willful or intentional to constitute criminal contempt (as opposed to civil contempt). Direct contempt occurs in the presence of the court or directly interferes with the court’s functioning. Constructive contempt occurs outside the presence of the court. Failure to pay child support is considered constructive contempt.

Direct criminal contempt generally may result in summary punishment; that is, the court may order that the contemnor be immediately punished or jailed based solely on what the court has just observed or heard. Thus, ordinarily there is no right to a jury trial for direct criminal contempt. However, for constructive criminal contempt, the judge does not have personal knowledge of the contemptuous conduct; thus, constructive criminal contempt cannot be handled summarily.

Under federal law, a defendant charged with criminal contempt only has a right to a jury trial when the sentence could be incarceration for 180 days or more. *Ashford v. State*, 358 Md. 552, 558 (2000); *see also Meyers v. State*, 23 Md. App. 275, 278-89 (1974).

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Human Resources, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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