

SENATE BILL 265

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2003 Regular Session
3lr0757
CF 3lr0756

By: **Chairman, Judicial Proceedings Committee (Maryland Judicial Conference)**

Introduced and read first time: January 31, 2003

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law - Desertion and Nonsupport of Child - Jurisdiction,**
3 **Enforcement, and Penalties**

4 FOR the purpose of granting a circuit court exclusive original jurisdiction over
5 desertion of a minor child, willful nonsupport of a minor child, and constructive
6 criminal contempt for a violation of a child support provision of a court order;
7 eliminating the right to a jury trial under certain circumstances; altering
8 certain penalties for willful nonsupport of a minor child; requiring certain notice
9 of an intent to prosecute an individual as a subsequent offender; specifying
10 certain penalties for constructive criminal contempt for a violation of a child
11 support provision of a court order; making certain provisions relating to the
12 authority of a court to place an individual on probation under certain
13 circumstances and provisions relating to the collection of support during
14 incarceration applicable to certain constructive criminal contempt cases;
15 providing for the application of this Act; and generally relating to child support
16 and desertion.

17 BY renumbering

18 Article - Family Law
19 Section 10-204, 10-205, 10-206, 10-207, 10-208, and 10-209, respectively
20 to be Section 10-205, 10-206, 10-207, 10-208, 10-209, and 10-210, respectively
21 Annotated Code of Maryland
22 (1999 Replacement Volume and 2002 Supplement)

23 BY repealing and reenacting, with amendments,

24 Article - Courts and Judicial Proceedings
25 Section 4-302(f)
26 Annotated Code of Maryland
27 (2002 Replacement Volume)

28 BY repealing and reenacting, with amendments,

29 Article - Criminal Procedure
30 Section 6-101

1 Annotated Code of Maryland
2 (2001 Volume and 2002 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article - Family Law
5 Section 10-203 and 10-215(b)
6 Annotated Code of Maryland
7 (1999 Replacement Volume and 2002 Supplement)

8 BY repealing and reenacting, with amendments,
9 Article - Family Law
10 Section 10-205, 10-206, and 10-208
11 Annotated Code of Maryland
12 (1999 Replacement Volume and 2002 Supplement)
13 (As enacted by Section 1 of this Act)

14 BY adding to
15 Article - Family Law
16 Section 10-204
17 Annotated Code of Maryland
18 (1999 Replacement Volume and 2002 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
20 MARYLAND, That Section(s) 10-204, 10-205, 10-206, 10-207, 10-208, and 10-209,
21 respectively of Article - Family Law of the Annotated Code of Maryland be
22 renumbered to be Section(s) 10-205, 10-206, 10-207, 10-208, 10-209, and 10-210,
23 respectively.

24 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
25 read as follows:

26 **Article - Courts and Judicial Proceedings**

27 4-302.

28 (f) (1) Except as provided in Title 4, Subtitle 5 of the Family Law Article,
29 the District Court does not have jurisdiction of an offense otherwise within the
30 District Court's jurisdiction if a person is charged:

31 (i) With another offense arising out of the same circumstances but
32 not within the District Court's jurisdiction; [or]

33 (ii) In the circuit court with an offense arising out of the same
34 circumstances and within the concurrent jurisdictions of the District Court and the
35 circuit court described under subsection (d) of this section; OR

36 (III) UNDER § 10-203 OR § 10-204 OF THE FAMILY LAW ARTICLE.

1 (2) In the cases described under paragraph (1) of this subsection, the
2 circuit court for the county has exclusive original jurisdiction over all the offenses.

3 **Article - Criminal Procedure**

4 6-101.

5 (A) In a criminal case tried in a court of general jurisdiction, there is [no] A
6 right to a jury trial [unless] ONLY IF:

7 (1) the crime charged is subject to a penalty of imprisonment; or

8 (2) there is a constitutional right to a jury trial for the crime.

9 (B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, THERE IS NO
10 RIGHT TO A JURY TRIAL IF A PERSON IS CHARGED UNDER § 10-203(A) OR § 10-204(A)
11 OF THE FAMILY LAW ARTICLE FOR A FIRST OFFENSE.

12 **Article - Family Law**

13 10-203.

14 (a) (1) A parent may not willfully fail to provide for the support of his or her
15 minor child.

16 (2) A PARENT WHO VIOLATES THIS SUBSECTION IS GUILTY OF A
17 MISDEMEANOR AND ON CONVICTION IS SUBJECT:

18 (I) FOR A FIRST OFFENSE, TO IMPRISONMENT NOT EXCEEDING 60
19 DAYS; AND

20 (II) FOR A SUBSEQUENT OFFENSE, TO A FINE NOT EXCEEDING \$100
21 OR IMPRISONMENT NOT EXCEEDING 3 YEARS OR BOTH.

22 (3) UNLESS A PARENT IS BEING TRIED UNDER THIS SUBSECTION AS A
23 SUBSEQUENT OFFENDER, THE PARENT IS NOT ENTITLED TO A JURY TRIAL.

24 (4) A PROSECUTOR WHO INTENDS TO TRY A PARENT UNDER THIS
25 SUBSECTION AS A SUBSEQUENT OFFENDER SHALL GIVE NOTICE OF THAT INTENT IN:

26 (I) THE CHARGING DOCUMENT;

27 (II) AN AMENDMENT TO THE CHARGING DOCUMENT; OR

28 (III) A NOTICE SERVED ON THE PARENT OR THE PARENT'S COUNSEL
29 AT LEAST 15 DAYS BEFORE TRIAL.

30 (b) (1) A parent may not desert his or her minor child.

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

4 10-204.

5 (A) AN INDIVIDUAL WHO COMMITS CONSTRUCTIVE CRIMINAL CONTEMPT, AS
6 DESCRIBED IN THE MARYLAND RULES, FOR A VIOLATION OF A CHILD SUPPORT
7 PROVISION OF A COURT ORDER, IS GUILTY OF A MISDEMEANOR AND ON CONVICTION
8 IS SUBJECT:

9 (1) FOR A FIRST OFFENSE, TO IMPRISONMENT NOT EXCEEDING 60 DAYS;
10 AND

11 (2) FOR A SUBSEQUENT OFFENSE, TO ANY COMMON LAW PENALTY.

12 (B) UNLESS AN INDIVIDUAL IS BEING TRIED UNDER THIS SECTION AS A
13 SUBSEQUENT OFFENDER, THE INDIVIDUAL IS NOT ENTITLED TO A JURY TRIAL.

14 (C) A COURT OR PROSECUTOR WHO INTENDS TO TRY AN INDIVIDUAL UNDER
15 THIS SECTION AS A SUBSEQUENT OFFENDER SHALL GIVE NOTICE OF THAT INTENT
16 IN:

17 (1) THE CHARGING DOCUMENT;

18 (2) AN AMENDMENT TO THE CHARGING DOCUMENT; OR

19 (3) A NOTICE SERVED ON THE INDIVIDUAL OR DEFENSE COUNSEL AT
20 LEAST 15 DAYS BEFORE TRIAL.

21 10-205.

22 (a) Before trial and with the written consent of the accused individual, or on
23 conviction of the individual under § 10-203 OR § 10-204 of this subtitle, instead of or in
24 addition to imposing a penalty under § 10-203 OR § 10-204 of this subtitle, the court
25 may:

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

29 (2) place the individual on probation on the individual's entering into a
30 recognizance.

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

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

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

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

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

4 10-206.

5 (a) A recognizance ordered by the court under § 10-202 or [§ 10-204] § 10-205
6 of this subtitle shall be:

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

8 (2) on the conditions that:

9 (i) if the individual is summoned to appear by the court within the
10 3-year probationary period, the individual shall appear; and

11 (ii) the individual shall pay support as ordered by the court.

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

14 (c) The court may order that a forfeited recognizance be paid wholly or partly
15 as provided in § 10-202(c) or [§ 10-204(c)] § 10-205(C) of this subtitle, as appropriate.
16 10-208.

17 (a) If the court sentences an individual who is convicted under § 10-201 [or],
18 § 10-203, OR § 10-204 of this subtitle to the jurisdiction of the Division of Correction,
19 the court may order the Commissioner of Correction:

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

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

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

24 (ii) as provided in [§ 10-204(c)] § 10-205(C) of this subtitle, if the
25 individual is convicted [of nonsupport or desertion of the individual's minor child]:

26 1. under § 10-203 of this subtitle, OF NONSUPPORT OR
27 DESERTION OF THE INDIVIDUAL'S MINOR CHILD; OR

28 2. UNDER § 10-204 OF THIS SUBTITLE, OF CONSTRUCTIVE
29 CRIMINAL CONTEMPT.

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

1 10-215.

2 (b) After an information is filed and before trial, the court, with the written
3 consent of the accused individual, may pass an order under § 10-202 or [§ 10-204] §
4 10-205 of this subtitle.

5 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall apply only
6 to cases filed on or after the effective date of this Act.

7 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2003.