

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

Senate Bill 265 (Chairman, Judicial Proceedings Committee)
(Maryland Judicial Conference)

Judicial Proceedings

Judiciary

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

This bill establishes exclusive original jurisdiction in the circuit court over desertion of a minor child, willful nonsupport of a minor child, and constructive criminal contempt for violation of a child support order. For willful nonsupport and constructive criminal contempt, the bill establishes penalties and eliminates the right to a jury trial for first offenders, and establishes penalties for subsequent offenders convicted of these offenses.

The bill applies only to cases filed on or after the bill's October 1, 2003 effective date.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures due to the bill's penalty provision.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: None.

Analysis

Bill Summary: This bill establishes that the circuit court has exclusive original jurisdiction if an individual is charged with desertion of a minor child, willful nonsupport of a minor child, or constructive criminal contempt for a violation of a child support

order. The bill provides that a person who willfully fails to provide for the support of his or her minor child is guilty of a misdemeanor and, for a first offense, is subject to imprisonment not exceeding 60 days. For a subsequent offense, a violator is subject to a fine not exceeding \$100, or imprisonment not exceeding three years, or both. A person who commits constructive criminal contempt for a violation of a child support provision of a court order is guilty of a misdemeanor and is subject to imprisonment not exceeding 60 days for the first offense. For a subsequent offense, a violator is subject to any common law penalty. For either of the aforementioned offenses, the individual is not entitled to a jury trial unless the individual is being tried as a subsequent offender.

A court or prosecutor who intends to try an individual as a subsequent offender must give notice of that intent in the charging document, an amendment to the charging document, or notice served on the individual or defense counsel at least 15 days before trial. If the court sentences an individual who is convicted of willful nonsupport, desertion of the individual's minor child, or constructive criminal contempt to the Division of Correction (DOC), the court may order the Commissioner of Correction to deduct an amount from any earnings of the individual and to pay that amount at the intervals as provided for the specified offenses.

Current Law: Except as otherwise provided, the District Court does not have jurisdiction over an offense if: (1) the person is charged with another offense arising out of the same circumstances but not within the District Court's jurisdiction; or (2) the person is charged in circuit court with an offense arising out of the same circumstances and within the concurrent jurisdiction of the circuit court and District Court.

In a criminal case tried in a court of general jurisdiction, there is no right to a jury trial unless the crime charged is subject to a penalty of imprisonment or there is a constitutional right to a jury trial for the crime.

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. *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*.

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 State 552, 558 (2000); *see also Meyers v. State*, 23 Md. App. 275, 278-89 (1974).

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.

A person may not willfully fail to provide for the support of his or her minor child. A parent may not desert his or her minor child. An individual who violates these provisions is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$100, or imprisonment not exceeding three years, or both.

Before trial of an individual accused of nonsupport or desertion of his or her minor child, with the individual's consent or upon conviction, instead of or in addition to the specified penalty, the court may: (1) order the individual to pay child support periodically, for three years or, if there is a support agreement for the child, the court may order the individual to make payments in compliance with that agreement; and (2) place the individual on probation if the individual enters into a recognizance. In passing the order, the court must consider the financial condition of the accused. The court may order that a forfeited recognizance be paid wholly or partly, as appropriate.

The accused individual must make payments to the custodial parent through the appropriate support agency or to the recipient designated in a child support agreement. An order may be modified as required.

A court-ordered recognizance must be in the amount the court directs and conditioned on the compliance of the individual with any court summons within the three-year probationary period and the payment of support as ordered. If the person fails to pay support, the court may proceed to try or sentence the individual.

Background: This bill is derived from the work of the Child Support Subcommittee of the Family Law Committee of the Maryland Judicial Conference, which met during 2002. The subcommittee examined enforcement of child support statewide. As part of its work, the subcommittee developed a survey for child support judges, masters, and attorneys. Respondents cited enforcement of existing child support orders as an issue of concern. Most of the surveys indicated that civil contempt was no longer a meaningful remedy. Criminal contempt was very underutilized, or perhaps completely unused.

The Chief Judge of the Court of Appeals requested the Child Support Subcommittee to examine the use of civil contempt and its usefulness in child support cases. The subcommittee believes that criminal prosecution could help improve support enforcement, as it would include the use of probation before judgment, *nolo contendere*,

and violations of probation. A judge can attach conditions to probation before judgment that include finding and keeping a job, or enrollment in a high school completion class, for example. When probation is violated, appropriate sanctions can be imposed readily. Also, civil contempt requires a present ability to pay, while criminal contempt and violations of probation require the ability to pay support at some point in time, but not necessarily the present.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's incarceration penalty due to increased payments to counties for reimbursement of inmate costs and more people being committed to DOC facilities. The number of people convicted of this proposed crime is expected to be minimal.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2004 are estimated to range from \$14 to \$59 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in a DOC facility. Currently, the DOC average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$350 per month.

Local Revenues: Revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$28 to \$84 per inmate in fiscal 2004.

Additional Information

Prior Introductions: None.

Cross File: HB 283 (Chairman, Judiciary Committee) – Judiciary.

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

Fiscal Note History: First Reader - February 21, 2003
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