

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 402
Judiciary

(Delegate Dumais)

Child Support - Arrearages - Notice to the Motor Vehicle Administration

This bill prohibits the Child Support Enforcement Administration (CSEA) from providing any information about a child support obligor to the Motor Vehicle Administration (MVA) if the obligor is incarcerated and the child support arrearage began and accumulated during the period of incarceration. CSEA is also prohibited from sending information about an obligor to the MVA if the obligor was incarcerated when the child support arrearage began and accumulated, the obligor was subsequently released from incarceration, and within 180 days after release the obligor reaches an agreement with CSEA regarding a scheduled payment of the arrearage; or a court issues an order for a scheduled payment of the arrearage and the obligor is complying with the agreement or order.

Fiscal Summary

State Effect: Potential significant increase in computing costs in CSEA for FY 2005 only. Potential minimal reduction in special fund revenues to the extent that the bill reduces collection of child support.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Generally, CSEA is required to notify the MVA of any child support obligor who is 60 days or more out of compliance with the most recent court order

requiring child support payments if CSEA has accepted a support assignment or the recipient of support payments has filed an application for support enforcement services. Upon notification by CSEA, the MVA must suspend the obligor's license or privilege to drive in the State and may issue a work-restricted license or privilege.

Before supplying any information to the MVA, CSEA must send written notice of the proposed action to the obligor and inform the obligor of the right to contest the accuracy of the reported arrearage by requesting an investigation. CSEA must provide a reasonable opportunity for the obligor to contest the accuracy of the information. Upon receipt of a request for investigation, the MVA must notify the obligor of the investigation results and the obligor's right to appeal the results to the Office of Administrative Hearings (OAH). An appeal must be made in writing and must be received by OAH within 20 days after notice to the obligor of the investigation results. If after investigation or an appeal to OAH, CSEA finds that its proposed action was in error, then CSEA is prohibited from sending any information about the obligor to the MVA.

In addition, CSEA may not send any information about an obligor to the MVA if CSEA reaches an agreement with the obligor regarding a scheduled payment of the obligor's arrearage or the court issues an order for a scheduled payment of the arrearage and the obligor is complying with the agreement or court order. If the obligor's arrearage was paid in full after information was supplied to the MVA or the obligor has demonstrated good faith by paying an ordered amount for six consecutive months, CSEA must notify the MVA to reinstate the obligor's license or privilege to drive. The Secretary of Human Resources, in cooperation with the Secretary of Transportation and OAH, must adopt regulations for implementation of these provisions.

Background: According to the Center for Law and Social Policy (CLASP), there are about 1.5 million children in the U.S. who have incarcerated parents. More than 10 million children have had parents who were imprisoned at some point during the children's lives. In state prisons, about 65% of women are mothers and about 55% of men are fathers. While women account for less than 7% of the total inmate population, they are the fastest growing subgroup of prisoners. About 25% of inmates throughout the U.S. have open child support cases. The average incarcerated noncustodial parent owes between \$225 and \$313 per month in child support. At the time an incarcerated parent enters prison, he or she is likely to owe about \$10,000 in arrearages. By the time an incarcerated parent leaves prison, he or she is likely to owe \$23,000 or more in arrearages.

Generally, modifications in child support orders are not granted by state courts unless there is a material change in circumstances. While few would dispute that becoming incarcerated qualifies as a change in circumstances, state court rulings differ on whether

the incarceration event was sufficient to justify a downward adjustment of an obligor's child support obligations. According to the Office of Child Support Enforcement in the U.S. Department of Health and Human Services, many states do not regard incarceration, in and of itself, as a basis for modification. Part of the rationale for this result is that courts have ruled that when imprisonment is the result of an intentional criminal act, the consequential incarceration and the loss of income are voluntary acts. As a result, the child should not suffer a diminution of his or her standard of living because an obligor parent chose to commit a criminal act.

On the other hand, in *Wills v. Jones*, 340 Md. 480 (1995) Maryland's Court of Appeals found that a prisoner's incarceration may constitute a material change in circumstances if the effect on the prisoner's ability to pay child support is sufficiently reduced due to incarceration. The court also found that a prisoner is not "voluntarily impoverished" unless he or she committed a crime with the intent of going to prison or otherwise becoming impoverished. State courts in Pennsylvania and Iowa have ruled that a reduction or even forgiveness of the child support obligation may be justified when the parent is incarcerated. However, a state court in Wisconsin found that while incarceration met the criteria for a material change in circumstances, a review of all relevant factors is required, including the length of incarceration. As a result, the totality of circumstances may not justify modification of the child support obligation.

State Revenues: Special fund revenues could be reduced to the extent that the bill reduces child support collections. Temporary cash assistance (TCA) recipients must assign their support rights to the State and federal government as partial reimbursement for TCA payments made on behalf of the children of the obligor; as a result, TCA child support collections are distributed 50% to the State and 50% to the federal government. Accordingly, the State and federal governments would share equally in any reduction in collection revenues. Any such reduction cannot be quantified at this time due to the unavailability of data, but is assumed to be minimal.

State Expenditures: CSEA advises that a computer interface with the Department of Public Safety and Correctional Services would need to be created to meet the bill's requirements at a one-time cost of \$713,000 in fiscal 2005. The federal government reimburses CSEA for 66% of child support enforcement costs. Accordingly, general fund expenditures could increase \$242,420, and federal fund expenditures could increase \$470,580 in fiscal 2005 only. At this time, there is no single database that encompasses all incarcerated persons. Also, CSEA does not have the ability to track child support arrears that accrue while the obligor is incarcerated. An automated system would need to differentiate between support arrears owed prior to incarceration and arrears that accrue while the obligor is incarcerated. However, the Department of Legislative Services (DLS) advises that if other legislation is passed requiring computer programming

changes, economies of scale could be realized. This would reduce the computer programming costs associated with this bill and other legislation affecting CSEA. Further, DLS advises that the increased computer expenditure is an estimate and CSEA may be able to handle the changes at a lower cost than currently projected.

Additional Information

Prior Introductions: None.

Cross File: SB 249 (Senator Grosfeld, *et al.*) – Judicial Proceedings.

Information Source(s): Center for Law and Social Policy, U.S. Department of Health and Human Services (Office of Child Support Enforcement), Department of Legislative Services

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