

Department of Legislative Services  
Maryland General Assembly  
2004 Session

FISCAL AND POLICY NOTE

House Bill 366

(Delegate Jones, *et al.*)

Judiciary

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**Child Support - Incarcerated Obligor - Suspension of Payments and Accrual of Arrearages**

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This bill specifies that a child support payment is not past due and arrearages may not accrue during any period when the obligor is incarcerated, and continuing for 60 days after the obligor's release if: (1) the obligor was sentenced to a term of imprisonment for 12 consecutive months or more; (2) the obligor is not on work release and has insufficient finances to make child support payments; and (3) the obligor did not commit the crime with the intent of being incarcerated or otherwise becoming impoverished.

In any case where the Child Support Enforcement Administration (CSEA) is providing child support services, CSEA, without filing any motion with the court, may adjust the incarcerated obligor's account to reflect suspension of arrearage accrual. Before making such an adjustment, CSEA must send written notice of the proposed action to the obligee, including the obligee's right to object to the proposed action, along with an explanation of procedures for filing an objection.

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**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.

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## Analysis

**Current Law:** A court may modify a child support award subsequent to a motion for modification and a showing of a material change in circumstances. However, a court may not retroactively modify a child support award prior to the date that the motion for modification was filed. In *Wills v. Jones*, 340 Md. 480 (1995), the Court of Appeals has ruled that incarceration of an obligor parent may constitute a material change in circumstances that could justify a downward adjustment of the child support obligation if the effect on the prisoner's ability to pay child support is sufficiently reduced due to incarceration. Maryland's Court of Appeals 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.

**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, as noted above in *Wills v. Jones*, Maryland's Court of Appeals found that a prisoner's incarceration may constitute a material change in circumstances. 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. While this bill could result in a significant reduction in the arrearages owed, the impact on collections is expected 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 \$266,000 in fiscal 2005. The federal government reimburses CSEA for 66% of child support enforcement costs. Accordingly, general fund expenditures could increase \$90,440, and federal fund expenditures could increase \$175,560 in fiscal 2005 only. At this time, there is no single database that encompasses all incarcerated persons. An automated system would match incarcerated persons to those who have cases with CSEA, suspend the child support order, produce notices, track parole and release dates, and reinstate the support order amount after the obligor has been released for 60 days. 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.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 277 (Senator Lawlah, *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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