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By: **Delegate Holmes**

Introduced and read first time: February 11, 2005

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Family Law - Failure to Pay Child Support**

3 FOR the purpose of making it a misdemeanor, subject to certain penalties, for an  
4 individual to fail to pay child support under a court order under certain  
5 circumstances; establishing a certain defense; providing that voluntary  
6 impoverishment is not a defense; authorizing a court to order an individual to  
7 pay child support, order an individual to make payments toward any arrearage,  
8 and place an individual on probation under certain circumstances; requiring  
9 that a recognizance ordered by the court be in a certain amount and on certain  
10 conditions; authorizing a court to proceed to try or sentence an individual under  
11 certain circumstances; providing for the payment of a forfeited recognizance;  
12 authorizing a court to order the Commissioner of Correction to take certain  
13 actions under certain circumstances; authorizing a court to modify or revoke a  
14 certain order; establishing venue for purposes of prosecuting the crime of failure  
15 to pay child support under a court order; establishing that the commencement of  
16 a civil action for child support does not affect the jurisdiction of a court in a  
17 criminal action for failure to pay child support under a court order; establishing  
18 certain procedures in Baltimore City for prosecuting the crime of failure to pay  
19 child support under a court order; establishing that the District Court does not  
20 have jurisdiction over the failure to pay child support under a court order; and  
21 generally relating to the crime of failure to pay child support under a court  
22 order.

23 BY adding to

24 Article - Family Law  
25 Section 10-204.1 and 10-204.2  
26 Annotated Code of Maryland  
27 (2004 Replacement Volume)

28 BY repealing and reenacting, with amendments,

29 Article - Family Law  
30 Section 10-205, 10-207, 10-208, 10-209, 10-213(a), and 10-215  
31 Annotated Code of Maryland  
32 (2004 Replacement Volume)

1 BY repealing and reenacting, without amendments,  
2 Article - Family Law  
3 Section 10-212  
4 Annotated Code of Maryland  
5 (2004 Replacement Volume)

6 BY repealing and reenacting, with amendments,  
7 Article - Courts and Judicial Proceedings  
8 Section 4-302(f)(1)  
9 Annotated Code of Maryland  
10 (2002 Replacement Volume and 2004 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
12 MARYLAND, That the Laws of Maryland read as follows:

13 **Article - Family Law**

14 10-204.1.

15 (A) AN INDIVIDUAL WHO HAS KNOWLEDGE OF AN EXISTING COURT ORDER  
16 THAT REQUIRES THE INDIVIDUAL TO PAY CHILD SUPPORT AND WHO FAILS TO PAY  
17 CHILD SUPPORT IN ACCORDANCE WITH THE TERMS OF THE ORDER FOR AT LEAST 1  
18 YEAR IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE  
19 NOT EXCEEDING \$5,000 OR IMPRISONMENT NOT EXCEEDING 3 YEARS OR BOTH.

20 (B) IN A PROSECUTION FOR A VIOLATION OF SUBSECTION (A) OF THIS  
21 SECTION:

22 (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IT IS  
23 A DEFENSE THAT THE INDIVIDUAL WAS UNABLE TO PAY CHILD SUPPORT IN  
24 ACCORDANCE WITH THE TERMS OF THE ORDER; AND

25 (2) IT IS NOT A DEFENSE THAT THE INDIVIDUAL WAS VOLUNTARILY  
26 IMPOVERISHED.

27 (C) FOR PURPOSES OF SUBSECTION (B)(2) OF THIS SECTION, AN INDIVIDUAL  
28 SHALL BE CONSIDERED TO BE VOLUNTARILY IMPOVERISHED IF THE INDIVIDUAL  
29 MADE A FREE AND CONSCIOUS CHOICE, NOT COMPELLED BY FACTORS BEYOND THE  
30 CONTROL OF THE INDIVIDUAL, TO RENDER THE INDIVIDUAL WITHOUT ADEQUATE  
31 FINANCIAL RESOURCES.

32 10-204.2.

33 BEFORE TRIAL AND WITH THE WRITTEN CONSENT OF THE ACCUSED  
34 INDIVIDUAL, OR ON CONVICTION OF THE INDIVIDUAL UNDER § 10-204.1 OF THIS  
35 SUBTITLE, INSTEAD OF OR IN ADDITION TO IMPOSING A PENALTY UNDER § 10-204.1  
36 OF THIS SUBTITLE, THE COURT MAY:

1 (1) ORDER THE INDIVIDUAL TO PAY CHILD SUPPORT IN ACCORDANCE  
2 WITH THE TERMS OF THE EXISTING ORDER;

3 (2) ORDER THE INDIVIDUAL TO MAKE PAYMENTS TOWARD ANY  
4 ARREARAGE THAT HAS ACCRUED UNDER THE EXISTING ORDER; AND

5 (3) PLACE THE INDIVIDUAL ON PROBATION FOR 3 YEARS ON THE  
6 INDIVIDUAL'S ENTERING INTO A RECOGNIZANCE.

7 10-205.

8 (a) A recognizance ordered by the court under § 10-202 [or], § 10-204, OR §  
9 10-204.2 of this subtitle shall be:

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

11 (2) on the conditions that:

12 (i) if the individual is summoned to appear by the court within the  
13 3-year probationary period, the individual shall appear; and

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

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

17 (c) (1) [The] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS  
18 SUBSECTION, THE court may order that a forfeited recognizance be paid wholly or  
19 partly as provided in § 10-202(c) or § 10-204(c) of this subtitle, as appropriate.

20 (2) THE COURT MAY ORDER THAT A FORFEITED RECOGNIZANCE  
21 ENTERED INTO UNDER § 10-204.2 OF THIS SUBTITLE BE PAID WHOLLY OR PARTLY TO  
22 THE RECIPIENT OR SUPPORT ENFORCEMENT AGENCY AS PROVIDED UNDER THE  
23 EXISTING ORDER FOR CHILD SUPPORT.

24 10-207.

25 (a) If the court sentences an individual who is convicted under § 10-201 [or],  
26 § 10-203, OR § 10-204.1 of this subtitle to the jurisdiction of the Division of Correction,  
27 the court may order the Commissioner of Correction:

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

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

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

1 (ii) as provided in § 10-204(c) of this subtitle, if the individual is  
2 convicted of nonsupport or desertion of the individual's minor child under § 10-203 of  
3 this subtitle; OR

4 (III) AS PROVIDED IN THE EXISTING ORDER FOR CHILD SUPPORT, IF  
5 THE INDIVIDUAL IS CONVICTED OF FAILURE TO PAY CHILD SUPPORT UNDER §  
6 10-204.1 OF THIS SUBTITLE.

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

9 10-208.

10 (a) An individual who is charged with nonsupport of the individual's spouse  
11 may be prosecuted in the jurisdiction where the individual or the spouse resides.

12 (b) An individual who is charged with nonsupport or desertion of the  
13 individual's minor child UNDER § 10-203 OF THIS SUBTITLE OR FAILURE TO PAY  
14 CHILD SUPPORT UNDER § 10-204.1 OF THIS SUBTITLE may be prosecuted in the  
15 jurisdiction where the individual or the individual's minor child resides.

16 10-209.

17 The commencement of a civil action for child support does not affect the  
18 jurisdiction of the court in a criminal action [for nonsupport or desertion] UNDER  
19 THIS SUBTITLE.

20 10-212.

21 This Part II of this subtitle applies only to Baltimore City.

22 10-213.

23 (a) On receipt of a complaint or on personal knowledge or information that an  
24 individual has violated § 10-201 [or], § 10-203, OR § 10-204.1 of this subtitle, the  
25 State's Attorney, a deputy State's Attorney, or an assistant State's Attorney may hold  
26 a pretrial inquiry.

27 10-215.

28 (a) After a pretrial inquiry before the State's Attorney, a deputy State's  
29 Attorney, or an assistant State's Attorney, the State's Attorney may:

30 (1) file an information that charges the accused individual with  
31 [nonsupport or desertion] A VIOLATION OF § 10-201, § 10-203, OR § 10-204.1 OF THIS  
32 SUBTITLE, as appropriate; or

33 (2) seek an indictment that charges the accused individual with  
34 [nonsupport or desertion] A VIOLATION OF § 10-201, § 10-203, OR § 10-204.1 OF THIS  
35 SUBTITLE, as appropriate.

1 (b) After an information is filed and before trial, the court, with the written  
2 consent of the accused individual, may pass an order under § 10-202 [or], § 10-204,  
3 OR § 10-204.2 of this subtitle.

4 (c) If the accused individual fails or refuses to consent to a court order being  
5 passed, the individual has a right to be tried on the charge.

6 **Article - Courts and Judicial Proceedings**

7 4-302.

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

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

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

16 (III) UNDER § 10-204.1 OF THE FAMILY LAW ARTICLE.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
18 October 1, 2005.