

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 1077
Judiciary

(Delegate Holmes)

Family Law - Failure to Pay Child Support

This bill establishes a criminal penalty for an individual who fails to pay child support when the person has knowledge of the existing court order and fails to pay the child support as ordered for at least one year.

Fiscal Summary

State Effect: The bill's requirements could be met with existing resources.

Local Effect: It is expected that the bill's provisions could be enforced with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: A person who has knowledge of an existing court order to pay child support and fails to comply with the order for at least one year is guilty of a misdemeanor. An individual convicted of this crime is subject to a fine of up to \$5,000 and/or imprisonment for up to three years. It is a defense that the individual was unable to pay child support as ordered, unless the individual was voluntarily impoverished. An individual is considered to be voluntarily impoverished if a free and conscious choice is made by the individual, not compelled by factors beyond the individual's control, that render the individual without adequate financial resources.

Before trial and with the written consent of the accused individual, or on conviction of the individual, and instead of or in addition to the penalty, the court may:

- order the individual to pay child support in accordance with the existing court order;
- order the individual to make payments toward an arrearage that accrued under the existing order; and
- place the individual on probation for three years on the individual's entering into a recognizance.

The court may order that a forfeited recognizance be paid wholly or partly to the recipient or the child support enforcement agency as provided under the existing order for child support. If the court sentences an individual under the provisions of this bill, the court may order the Commissioner of Correction to deduct an amount from any earnings of the individual and to pay that amount at certain intervals as provided in the existing order for child support.

The bill applies provisions relating to pretrial inquiry, the information, and an indictment that apply only to Baltimore City to the offense in this bill. The bill further specifies that the District Court does not have jurisdiction of an offense charged under the provisions of this bill.

Current Law: A parent who willfully fails to support his/her child, regardless of the existence of a court order, is guilty of a misdemeanor and is subject to a fine up to \$100 and/or imprisonment up to three years. In the case *Ewell v. State*, 201 Md. 288 (1954), the Court of Appeals ruled that an individual must intentionally refuse to pay support without just cause to be guilty of nonsupport. Intent may be established through proof of voluntary impoverishment. Before trial and with the written consent of the accused individual, or on conviction and instead of or in addition to the penalty, the court may:

- order the individual to pay child support periodically in a specified amount for three years, or if there is an agreement for support of the child, order the individual to make the payments specified in the agreement; and
- place the individual on probation on the individual's entering a recognizance.

The court is required to consider the financial circumstances of the accused individual when passing the order for support. The accused individual must make payments to the person who has custody of the minor child through the appropriate support enforcement agency or if there is an agreement, to the recipient designated in the agreement. A court may modify the support order as circumstances warrant.

A recognizance ordered by the court must be in the amount as directed by the court and issued on the condition that the individual must appear if summoned during the three-

year probationary period and the individual must pay support as ordered by the court. The court may order that a forfeited recognizance be paid wholly or partly as provided by statute.

If the court sentences an individual to the Division of Correction after conviction of willful nonsupport of his/her child, the court may order the Commissioner of Correction to deduct an amount from any earnings of the individual and to pay that amount at certain intervals. During the individual's imprisonment, the court may modify or revoke the order. An individual who is charged with nonsupport or desertion of his/her minor child may be prosecuted in the jurisdiction where the individual or the minor child resides.

Except as otherwise provided, the District Court does not have jurisdiction of an offense if a person is charged with another offense arising out of the same circumstances but not within the District Court's jurisdiction. The District Court does not have jurisdiction if a person is charged in circuit court with an offense arising out of the same circumstances and within the concurrent jurisdiction of the District Court and the circuit court. The crime of willful failure to pay child support is one in which the District Court and the circuit court have concurrent jurisdiction.

Background: The offense of willful failure to support one's minor child is a crime of "specific intent." Crimes of specific intent are regarded by prosecutors as difficult to prove, although proving the existence of an underlying court order is not a prerequisite to prosecution. To convict a defendant of willful failure to support his/her minor child, the prosecution must show that the individual intended to accomplish the precise action that is prohibited by the statute, *i.e.*, willfully failing to support the minor child.

This bill creates a crime of "general intent." In proving a crime of general intent, it is not necessary for the prosecution to show the individual intended the precise harm or result. Under this bill, the prosecution is only required to show the existence of a court order for child support, knowledge of the order by the accused, and a failure to pay support according to the terms of the order for at least one year.

State Expenditures: The Department of Public Safety and Correctional Services advises that in fiscal 2004, there were eight intakes with an average sentence of 11 months for failure to support minor children. Historically, courts have been reluctant to impose imprisonment or fines on defendants who have not paid child support. Instead, the courts try to obtain compliance with the order or agreements to make support payments. As a result, the imprisonment penalty for this crime is not expected to materially increase general fund expenditures.

Local Fiscal Effect: It is expected that the bill's provisions could be enforced with existing resources. Historically, courts have been reluctant to impose imprisonment or

finer on defendants who have not paid child support. Instead, the courts try to obtain compliance with the order or agreements to make support payments. As a result, the fine and imprisonment penalties for this crime are not expected to materially increase local revenues and expenditures.

Additional Information

Prior Introductions: This bill is similar to HB 115 of the 2001 session, which was given an unfavorable report by the Judiciary Committee.

Cross File: None.

Information Source(s): State's Attorneys' Association, Department of Human Resources, Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, Department of Legislative Services

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