

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 453

(Delegate Dumais)

Judiciary

Judicial Proceedings

Child Support - Settlement of Arrearages - Best Interest of the Child

This bill establishes that the authority of the Child Support Enforcement Administration (CSEA) to settle child support arrearages under specified circumstances is subject to the best interest of the child.

Fiscal Summary

State Effect: Potential minimal reduction in special fund revenues to the extent the bill reduces child support collections.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: If CSEA considers it to be in the best interest of the State, in a case where a child support recipient assigns his/her right to child support in exchange for Temporary Cash Assistance (TCA), CSEA may accept an amount that is less than the total arrearage as full settlement of a child support obligation. In a case in which an assignment is made, there is a presumption that it is in the best interest of the State to accept as full settlement an amount that is less than the total arrearage under specified circumstances. The presumption that it is in the best interest of the State to accept as full settlement less than the total amount of the arrearage from a TCA recipient applies if:

- the obligor, the TCA recipient, and the child who is the subject of the support order have resided together for at least the 12 months immediately preceding a request for settlement;
- the obligor has been supporting the child for at least the 12 months immediately preceding a request for settlement; and
- the gross income of the obligor is less than 225% of the federal poverty level.

If CSEA does not accept in full settlement of an arrearage in child support payments an amount that is less than the total arrearage under this subsection, CSEA must notify the obligor of the decision and of the obligor's right to appeal the decision to the Office of Administrative Hearings.

Background: This bill is intended to modify the result in *Harvey v. Marshall* 389 Md. 243 (2004). In the *Harvey* case, a father who reunited with his four children petitioned the court to extinguish or direct CSEA to forgive the child support arrearages that he accumulated before he obtained custody of his children. The father cited § 10-118 of the Family Law Article, which states that, subject to any federal law or program, the administration and local offices must promote and serve the best interests of the child when carrying out child support responsibilities. In holding that the “best interests of the child” standard did not apply to the authority of CSEA to settle child support arrearages for less than the full amount, the Court of Appeals said:

Section 10-112 clearly states that the CSEA may settle a child support arrearage if ‘the Administration considers it to be in the best interest of this State.’ There is no mention of the familiar ‘best interests of the child’ standard. We must assume this omission was not by accident. Had the Legislature wished to mandate consideration of the ‘best interests of the child’ as part of CSEA’s calculus in exercising its discretion to forgive arrearages, it could have done so easily...

Indeed, there is a remarkable distinction between the judicial determination of child support, which certainly implicates the best interests of a child and the forgiveness of arrearages that accrued through no fault of the child and are often due to a noncustodial parent’s financial problems or irresponsibility... (*Harvey v. Marshall* 389 Md.243 at 286 and 291)

State Revenues: Special fund revenues could decrease to the extent that CSEA is unable to exercise its authority to accept less than full settlement of child support arrearages. Any such affect is assumed to be minimal. Requiring full payment in those situations

rather than accepting partial payment may mean a greater number of uncollectible child support debts. TCA recipients must assign their support payments to the State and federal governments 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 collection revenues. Any such potential reduction cannot be quantified at this time due to the unavailability of data.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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