

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 779
Judiciary

(Delegate Pena-Melnyk, *et al.*)

Family Law - Child Support Enforcement - Criminal Contempt

This bill authorizes a local support enforcement office attorney to exercise the powers and duties of a State's Attorney for the limited purpose of prosecuting an action for constructive criminal contempt for failure to pay child support under a court order.

Fiscal Summary

State Effect: None. The Local Child Support Enforcement Administration within the Department of Human Resources (DHR) can prosecute actions for constructive criminal contempt with existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: In a support enforcement action where an alleged constructive civil contempt is based on the failure to pay child support, any agency authorized by law may bring the proceeding. The court may make a finding of contempt if the petitioner proves by clear and convincing evidence that the alleged contemnor has not paid the amount owed, accounting from the effective date of the support order through the date of the contempt hearing. (*See* Maryland Rules 15-206 and 15-207.)

The court may not make a finding of contempt if the alleged contemnor proves by a preponderance of the evidence that: (1) from the date of the support order through the date of the contempt hearing the alleged contemnor never had the ability to pay more

than the amount actually paid and made reasonable efforts to become or remain employed or otherwise lawfully obtain the funds necessary to make payment; or (2) enforcement by contempt is barred by limitations as to each child support payment for which the alleged contemnor does not make the required proof. On a finding of constructive civil contempt for failure to pay child support, the court must issue a written order that specifies: (1) the amount of the arrearage for which enforcement by contempt is not barred by limitations, (2) any sanction imposed for the contempt, and (3) how the contempt may be purged. The committee note to Rule 15-207 states that if the contemnor fails, without just cause, to comply with any provision of the order, a constructive criminal contempt proceeding may be brought based on a violation of that provision. (See Maryland Rule 15-207.)

The State's Attorney may initiate a proceeding for constructive criminal contempt committed against a trial court sitting within the county in which the State's Attorney holds office by filing a petition with that court. The court or any person with actual knowledge of the facts constituting a constructive criminal contempt may request the State's Attorney, the Attorney General, or the State Prosecutor, as appropriate, to file a petition. (See Maryland Rule 15-205.)

Background: This bill intends to address the lack of uniformity in Maryland with enforcement of child support orders by contempt actions. Some counties only enforce child support cases using civil contempt, while other counties enforce support orders through criminal contempt actions. Under either constructive civil or constructive criminal contempt, the alleged contemnor is subject to a jail sentence. However, because the purpose of imprisoning the contemnor in civil contempt cases is remedial in nature, civil contempt orders must contain a purging provision with which the contemnor has the ability to comply. When a child support agency enforces a support order with a civil contempt action, incarceration cannot be imposed for willfully failing to comply with a court order unless the contemnor has been given the opportunity to purge the contempt, generally by complying with the original court order.

If the State's Attorney's Office is in charge of enforcing child support orders, then that enforcement takes place through prosecution for criminal contempt. An action for constructive criminal contempt is punitive in nature, aimed at punishing defiance of the court's directives, and the contemnor is subject to a jail sentence of a specific length. Generally, subsequent compliance with the original court order will not mitigate the determinate jail sentence.

Because noncustodial parents are treated differently depending on whether a child support agency or a State's Attorney's Office enforces the child support orders, DHR advises that in some cases, obligors with cases in two counties will pay only in the

jurisdiction in which they are subject to criminal contempt, as the obligor is more likely to be sentenced to jail time in those jurisdictions.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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