

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 423
Judiciary

(Delegate Dumais)

Child Support - Criminal Nonsupport and Desertion

This bill alters the crime of nonsupport of a minor child by repealing the element of willfulness from the crime so that it is a misdemeanor for a parent to fail to provide for the support of his or her minor child. The bill also establishes as a defense that the parent was incapable of providing support at the time support was needed or that the parent provided all the support he or she was capable of giving.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to additional convictions that may occur under the bill's provisions.

Local Effect: Potential minimal increase in revenues and expenditures due to additional convictions that may occur under the bill's provisions.

Small Business Effect: None.

Analysis

Current Law: A parent may not "willfully" fail to provide for the support of his or her minor child. A parent is also prohibited from deserting his or her minor child. The statute does not expressly specify any defense to either one of these criminal offenses. The statute specifies that an "individual" who violates either one of these offenses is guilty of a misdemeanor and on conviction is subject to maximum penalties of three years imprisonment and/or a \$100 fine.

Background: Maryland has a similar statute that makes it a crime for a spouse to willfully fail to provide for the support of the other spouse, without just cause. In the case of *Ewell v. State*, 207 Md. 288 (1955), the Court of Appeals interpreted this statute, and ruled that the term “willfully” means an act done with deliberate intention for which there is no reasonable excuse. To establish a willful failure to provide support, one must determine that a defendant intentionally refused to provide support, though he or she had the means or capacity to provide support.

State Revenues: General fund revenues increase minimally as a result of the bill’s monetary penalty provision from additional cases heard in the District Court.

State Expenditures: General fund expenditures increase minimally as a result of the bill’s incarceration penalty due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of additional people convicted due to the expanded application of the penalties for this crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,920 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including variable medical care and variable operating costs) is about \$390 per month. Excluding all medical care, the average variable costs total \$170 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues increase minimally as a result of the bill’s monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Expenditures increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from \$57 to \$157 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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mc/kdm

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