

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 720

(Senator Zirkin)(By Request - Task Force on Prisoner Reentry) and Senator Jones-Rodwell

Judicial Proceedings

Child Support - Incarcerated Obligor - Suspension of Payments and Accrual of Arrearages

This bill establishes that a child support payment is not past due and arrearages may not accrue during any period when the obligor is incarcerated, and continuing for 60 days after the obligor's release if (1) the obligor was sentenced to a term of imprisonment for 18 consecutive months or more; (2) the obligor is not on work release and has insufficient finances to make child support payments; and (3) the obligor did not commit the crime with the intent of being incarcerated or otherwise becoming impoverished.

In any case where the Child Support Enforcement Administration (CSEA) is providing child support services, CSEA, without filing any motion with the court, may adjust the incarcerated obligor's account to reflect suspension of the accrual of arrearages. Before making such an adjustment, CSEA must send written notice of the proposed action to the obligee, including the obligee's right to object to the proposed action, along with an explanation of procedures for filing an objection.

Fiscal Summary

State Effect: Potential minimal decrease in special fund revenues to the extent that the bill reduces collection of child support. The Department of Human Resources and the Judiciary can implement the bill's changes with existing resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: A court may modify a child support award subsequent to a motion for modification and a showing of a material change in circumstances. However, a court may not retroactively modify a child support award prior to the date that the motion for modification was filed. In *Wills v. Jones*, 340 Md. 480 (1995), the Court of Appeals has ruled that incarceration of an obligor parent may constitute a material change in circumstances that could justify a downward adjustment of the child support obligation if the effect on the prisoner's ability to pay child support is sufficiently reduced due to incarceration. Maryland's Court of Appeals also found that a prisoner is not "voluntarily impoverished" unless he or she committed a crime with the intent of going to prison or otherwise becoming impoverished.

Background: According to a 2007 report from the Center for Law and Social Policy (CLASP), about 65% of women and 55% of men in state prisons have children younger than 18. Approximately 50% of inmates throughout the United States have open child support cases, with typical support orders ranging from \$225 to \$300 per month. At the time an incarcerated parent enters prison, he or she is likely to owe about \$10,000 in arrearages. By the time an incarcerated parent leaves prison, he or she is likely to owe \$20,000 or more in arrearages.

Generally, modifications in child support orders are not granted by state courts unless there is a material change in circumstances. While few would dispute that becoming incarcerated qualifies as a change in circumstances, the CLASP report noted that states differ in their treatment of incarceration for child support purposes. According to the report, in up to half of the states, incarceration is considered to be "voluntary unemployment," which disqualifies incarcerated parents from obtaining reduced support orders. The Office of Child Support Enforcement in the U.S. Department of Health and Human Services has noted a growing awareness of the need to provide services to this population.

This bill is one of the legislative recommendations made by the Task Force on Prisoner Re-entry, established by Chapters 625 and 626 of 2009. The task force, in its final report, noted that attaining financial stability as soon as possible after release from incarceration is critical to an individual's successful reentry into the community. It also stated that because individuals often have trouble finding employment once released from incarceration, obligations to pay substantial child support arrearages further compounds the difficulties faced by these individuals.

State Revenues: Special fund revenues may be reduced to the extent that the bill reduces child support collections. Temporary cash assistance (TCA) recipients must assign their support rights to the State and federal government 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 any reduction in collection revenues. Any such reduction cannot be quantified at this time due to the unavailability of data. While this bill could result in a significant reduction in the arrearages owed, the impact on collections is expected to be minimal.

Additional Information

Prior Introductions: None.

Cross File: HB 651 (Delegate Waldstreicher, *et al.*) (By Request - Task Force on Prisoner Reentry) - Judiciary

Information Source(s): Department of Human Resources, Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, U.S. Department of Health and Human Services, Center for Law and Social Policy, Department of Legislative Services

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