

Department of Legislative Services
2012 Session

FISCAL AND POLICY NOTE

House Bill 1402
Judiciary

(Delegate Tarrant, *et al.*)

Child Support - Contempt Orders - Veterans and Service Members

This bill prohibits a court from imprisoning a veteran or service member for contempt for failure to make a payment of child support under a court order. The bill is applicable to a veteran or service member of any branch of the armed forces of the United States who (1) returned from a deployment within the last 12 months; and (2) has been certified by the U.S. Department of Veterans Affairs as having a service-connected disability regardless of the disability rating, has been diagnosed by a licensed professional with a disease or disorder related to the person's service in the armed forces, is homeless, or is not employed full-time but is seeking full-time employment.

Fiscal Summary

State Effect: The bill's provisions are not expected to materially affect State operations or finances.

Local Effect: The bill's provisions are not expected to materially affect local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary: The bill defines "deployment" as a service member's departure from the service member's home station on military orders for a period of at least 12 months. "Homeless" means lacking a fixed, regular, and adequate nighttime residence. Homeless also means having a primary nighttime residence that is a supervised publicly or privately operated shelter designed to provide temporary living accommodations or a public or private place not designed for or ordinarily used as a regular sleeping accommodation for

human beings. A “veteran” is an individual who served on active duty in the armed forces of the United States, other than for training, and was discharged or released under conditions other than dishonorable.

Current Law: There is no prohibition against imprisoning a veteran or service member for contempt to pay child support. An individual may be found in criminal contempt or civil contempt for failure to pay child support. Under either civil or criminal contempt, the alleged contemnor is subject to a jail sentence.

In a support enforcement action where an alleged civil contempt is based on the failure to pay child support, 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.

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. 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.

In some counties, the State’s Attorney’s Office is in charge of enforcing child support orders, and does so through criminal contempt proceedings. Criminal contempt actions are 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.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Human Resources; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Department of Veterans Affairs; Baltimore City; Kent, Montgomery, and Worcester counties; Department of Legislative Services

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mc/kdm

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