

Department of Legislative Services  
Maryland General Assembly  
2012 Session

**FISCAL AND POLICY NOTE**

House Bill 397  
Judiciary

(Delegate Dumais)

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**Child Support - Criminal Nonsupport and Desertion**

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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.

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**Fiscal Summary**

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

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

**Small Business Effect:** None.

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**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 may 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 expanded application of the penalties for this crime may capture additional people, however, it is unlikely that most of those convicted for this crime will be incarcerated.

**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 may increase as a result of the bill’s incarceration penalty. However, although additional people may be convicted under the bill’s provisions, it is unlikely that most of those convicted will be subject to incarceration.

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 \$60 to \$160 per inmate in recent years.

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### **Additional Information**

**Prior Introductions:** HB 423 of 2011 received an unfavorable report from the House Judiciary Committee.

**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

**Fiscal Note History:** First Reader - February 7, 2012  
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