

**Department of Legislative Services**  
Maryland General Assembly  
2018 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

House Bill 386

(Chair, Judiciary Committee)(By Request - Departmental  
- Human Services)

Judiciary

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**Child Support - Potential Income - Definition**

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This departmental bill alters the definition of “potential income” under State child support guidelines.

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**Fiscal Summary**

**State Effect:** The bill does not materially affect the workload of the Judiciary or the Department of Human Services (DHS). The bill does not materially affect revenues, as discussed below.

**Local Effect:** The bill does not materially affect the workload for the circuit courts.

**Small Business Effect:** DHS has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

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**Analysis**

**Bill Summary:** “Potential income” means income attributed to a parent determined by the parent’s employment potential and probable earnings level based on, but not limited to the parent’s (1) age; (2) mental and physical condition; (3) educational attainment; (4) special training or skills; (5) literacy; (6) residence; (7) occupational qualifications and job skills; (8) employment and earnings history; (9) record of efforts to obtain and retain employment; and (10) criminal record and other employment barriers. It also considers employment opportunities in the community where the parent lives, including the status of the job market, prevailing earnings levels, and the availability of employers willing to hire the parent.

“Potential income” also considers the parent’s assets, actual income from any source, and any other factor bearing on the parent’s ability to obtain funds for child support.

**Current Law:** In a proceeding to establish or modify child support, whether *pendente lite* or permanent, the court is required to use the child support guidelines. The basic child support obligation is established in accordance with a schedule provided in statute. The current schedule uses the combined monthly “adjusted actual income,” as specified, of both parents and the number of children for whom support is required to determine the basic child support obligation.

If a parent is voluntarily impoverished, child support may be calculated based on a determination of potential income. A determination of potential income may not be made for a parent who is unable to work because of a physical or mental disability or is caring for a child younger than age two for whom the parents are jointly and severally responsible. “Potential income” means income attributed to a parent determined by the parent’s employment potential and probable earnings level based on, but not limited to, recent work history, occupational qualifications, prevailing job opportunities, and earnings levels in the community.

The child support statute establishes a rebuttable presumption that the amount of child support that would result from the application of the child support guidelines is the correct amount of child support that the court is to award. The presumption may be rebutted, however, by evidence that the application of the guidelines would be unjust or inappropriate in a particular case. If the court determines that application of the guidelines would be unjust or inappropriate in a particular case, the court must make a written finding or specific finding on the record that states the reasons for departure from the guidelines, as required by statute.

**Background:** DHS advises that the bill is intended to expand the definition of “potential income” to include all of the factors required by the federal Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs Rule (FEM Rule), which took effect in 2017, as well as factors established by State case law. The FEM Rule requires a court to consider specified factors when determining a parent’s “potential income,” and is intended to require a stronger focus on setting child support orders based on evidence of the noncustodial parent’s actual ability to pay, instead of using standard imputed income amounts. The Office of Child Support Enforcement (OCSE) advises that many factors, including the parent’s assets, residence, literacy, health, criminal record and employment barriers, and age, impact an individual’s realistic ability to earn income and pay child support and must be considered when determining potential income. OCSE further notes that overuse of imputed income frequently results in child support orders that are not based on a realistic determination of ability to pay. Because research indicates that orders set too

high actually result in less money paid as child support, this practice is detrimental to families.

**State Revenues:** Temporary Cash Assistance (TCA) recipients must assign their support rights to the State and federal governments as partial reimbursement for 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. Special fund revenues may be impacted to the extent that income imputed pursuant to the bill's altered definition of "potential income" increases or decreases the amount of child support ordered and collected. Any such impact cannot be quantified due to the unavailability of data, but is not anticipated to materially impact State finances.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Department of Human Services; Office of Child Support Enforcement; *Federal Register*; Department of Legislative Services

**Fiscal Note History:** First Reader - February 6, 2018  
md/jc

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**ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES**

**TITLE OF BILL:** Child Support – Potential Income – Definition

**BILL NUMBER:** HB 386

**PREPARED BY:** Department of Human Services  
(Dept./Agency)

**PART A. ECONOMIC IMPACT RATING**

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND  
SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND  
SMALL BUSINESSES

**PART B. ECONOMIC IMPACT ANALYSIS**