

Chapter 427

(House Bill 435)

AN ACT concerning

Child Support – Incarcerated Obligor

FOR the purpose of altering provisions relating to the calculation and modification of child support for incarcerated obligors; and generally relating to child support.

BY repealing and reenacting, with amendments,

Article – Family Law

Section 12–104, 12–104.1, and 12–204(b)

Annotated Code of Maryland

(2019 Replacement Volume and 2023 Supplement)

BY repealing and reenacting, without amendments,

Article – Family Law

Section 12–201(a), (m), and (q) and 12–204(a)

Annotated Code of Maryland

(2019 Replacement Volume and 2023 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Family Law

12–104.

(a) The court may modify a child support award subsequent to the filing of a motion for modification and upon a showing of a material change of circumstance.

(b) The court may not retroactively modify a child support award prior to the date of the filing of the motion for modification.

(c) IF A PARTY BECOMES INCARCERATED, THE COURT MAY DETERMINE THAT A MATERIAL CHANGE OF CIRCUMSTANCE WARRANTING A MODIFICATION OF CHILD SUPPORT HAS OCCURRED, PROVIDED THAT THE PARTY’S ABILITY TO PAY CHILD SUPPORT IS SUFFICIENTLY REDUCED DUE TO INCARCERATION.

12–104.1.

(a) (1) In this section the following words have the meanings indicated.

(2) “Administration” has the meaning stated in § 10–101 of this article.

(3) “Obligee” has the meaning stated in § 10–101 of this article.

(4) “Obligor” has the meaning stated in § 10–101 of this article.

(b) 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 from confinement, if[

(1) the obligor was sentenced to a term of imprisonment of 180 consecutive calendar days or more;

(2)] the obligor is not on work release and has insufficient resources with which to make payment[; and

(3) the obligor did not commit the crime with the intent of being incarcerated or otherwise becoming impoverished].

(c) (1) In any case in which the Administration is providing child support services under Title IV, Part D of the Social Security Act, the Administration may, without the necessity of any motion being filed with the court, adjust an incarcerated obligor’s payment account to reflect the suspension of the accrual of arrearages under subsection (b) of this section.

(2) Before making an adjustment under paragraph (1) of this subsection, the Administration shall send written notice of the proposed action to the obligee, including the obligee’s right to object to the proposed action and an explanation of the procedures for filing an objection.

12–201.

(a) In this subtitle the following words have the meanings indicated.

(m) “Potential income” means income attributed to a parent determined by:

(1) the parent’s employment potential and probable earnings level based on, but not limited to:

(i) the parent’s:

1. age;
2. physical and behavioral 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; and

(ii) employment opportunities in the community where the parent lives, including:

1. the status of the job market;
2. prevailing earnings levels; and
3. the availability of employers willing to hire the parent;

(2) the parent's assets;

(3) the parent's actual income from all sources; and

(4) any other factor bearing on the parent's ability to obtain funds for child support.

(q) "Voluntarily impoverished" means that a parent has made the free and conscious choice, not compelled by factors beyond the parent's control, to render the parent without adequate resources.

12-204.

(a) (1) The basic child support obligation shall be determined in accordance with the schedule of basic child support obligations in subsection (e) of this section. The basic child support obligation shall be divided between the parents in proportion to their adjusted actual incomes.

(2) (i) If one or both parents have made a request for alimony or maintenance in the proceeding in which a child support award is sought, the court shall decide the issue and amount of alimony or maintenance before determining the child support obligation under these guidelines.

(ii) If the court awards alimony or maintenance, the amount of alimony or maintenance awarded shall be considered actual income for the recipient of the alimony or maintenance and shall be subtracted from the income of the payor of the alimony or maintenance under § 12–201(c)(2) of this subtitle before the court determines the amount of a child support award.

(b) (1) **(I)** Except as provided in paragraph (3) of this subsection, if a parent is voluntarily impoverished, child support may be calculated based on a determination of potential income.

(II) A PARENT WHO IS INCARCERATED MAY NOT BE CONSIDERED TO BE VOLUNTARILY IMPOVERISHED.

(2) If there is a dispute as to whether a parent is voluntarily impoverished, the court shall:

(i) make a finding as to whether, based on the totality of the circumstances, the parent is voluntarily impoverished; and

(ii) if the court finds that the parent is voluntarily impoverished, consider the factors specified in § 12–201(m) of this subtitle in determining the amount of potential income that should be imputed to the parent.

(3) A determination of potential income may not be made for a parent who **IS:**

(i) **[is]** unable to work because of a physical or mental disability;
[or]

(ii) **[is]** caring for a child under the age of 2 years for whom the parents are jointly and severally responsible; **OR**

(III) INCARCERATED.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2024.

Approved by the Governor, May 9, 2024.