

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 435

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

Judiciary

Judicial Proceedings

Child Support - Incarcerated Obligor

This departmental bill alters statutory provisions that determine the calculation and modification of child support for incarcerated obligors by (1) specifying that a court may determine that a material change of circumstances has occurred if a party becomes incarcerated, provided that the party’s ability to pay child support is sufficiently reduced due to incarceration; (2) establishing that a parent who is incarcerated may not be considered to be voluntarily impoverished; (3) prohibiting a determination of potential income for a parent who is incarcerated; and (4) repealing provisions that limit the circumstances under which a child support payment may not be considered past due and arrearages may not accrue during (and for a specified time after) a period of an obligor’s incarceration.

Fiscal Summary

State Effect: General fund expenditures increase by \$124,800 in FY 2025 only for one-time computer programming costs for the Department of Human Services (DHS). The bill may help protect federal funding by ensuring that Maryland law conforms to federal requirements.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	124,800	0	0	0	0
Net Effect	(\$124,800)	\$0	\$0	\$0	\$0

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill does not materially affect local government operations or finances.

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.

Analysis

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 of both parents and the number of children for whom support is required to determine the basic child support obligation. Adjusted actual income, which is the basis for determining the basic child support obligation, is calculated from actual income minus preexisting reasonable child support obligations actually paid and, except as specified, alimony or maintenance obligations actually paid. 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.

A court is authorized to modify a child support award after a filing of a motion for modification and on a showing of a material change of circumstance. A court may not retroactively modify an award prior to the date of the filing of the motion for modification.

A child support payment is not past due and arrearages may not accrue during an obligor's incarceration (and through the next 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*. (The bill repeals the aforementioned provisions regarding the obligor's minimum term of sentence to imprisonment and specified intent.)

Subject to limited exception, if a parent is voluntarily impoverished, child support may be calculated based on a determination of potential income. If there is a dispute as to whether a parent is voluntarily impoverished, the court must make a finding as to whether, based on the totality of the circumstances, the parent is voluntarily impoverished. If the court determines a parent is voluntarily impoverished, it must consider certain factors to determine the amount of potential income that should be imputed to the parent.

“Potential income” means income attributable to a parent determined by (1) the parent's employment potential and probable earnings level based on specified factors; (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.

“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.

Background: DHS advises that the federal Office of Child Support Services identified technical changes required to bring statute in compliance with the State Title IV-D Child Support State Plan and the federal Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs Final Rule of 2017. According to DHS, noncompliance jeopardizes significant federal funding, including funds received for child support services and the Temporary Assistance for Needy Families program block grant.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Human Services; Department of Legislative Services

Fiscal Note History: First Reader - February 21, 2024
rh/jkb Third Reader - March 14, 2024

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Child Support - Incarcerated Obligor

BILL NUMBER: HB0435

PREPARED BY: Stephen J. Holmes

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