

Written Testimony Regarding HB 435 - FAVORABLE.pdf

Uploaded by: Ameer Vora

Position: FAV



**MARYLAND
LEGAL AID**

Advancing
**Human Rights and
Justice for All**

House Bill 00435

Child Support – Incarcerated Obligor

In the Senate Judicial Proceedings

Hearing on March 21, 2024

Position: FAVORABLE

Maryland Legal Aid (MLA) submits its written testimony on HB 00435 at the request of its sponsor, Delegate Luke Clippinger.

MLA asks that the Committee report **favorably** on House Bill 00435, which expands the ability of child support obligors to stop child support arrears from accruing during periods when they are incarcerated and, thus, unable to work. MLA is Maryland’s largest private, civil non-profit law firm, providing free legal services to indigent Maryland residents. MLA assists low-income individuals and families in every Maryland county with a wide array of civil legal issues, including family law cases such as divorce, custody, child support, and domestic violence matters. In our family law cases, MLA represents mothers as well as fathers, and custodial as well as non-custodial parents.

MLA assists formerly incarcerated individuals with a variety of legal matters. Many of those formerly incarcerated individuals report leaving jail or prison only to find that child support debt had been accumulating while they were incarcerated, despite their obvious inability to pay during that time. Shouldering child support debt can enormously hamper a returning citizen’s ability to successfully reenter society; for example, this debt could lead to driver’s license suspension, show up on a credit report run by a prospective landlord, or trigger a tax refund interception.

Existing Maryland law provides that “child support is not past due and arrearages may not accrue”¹ when obligors are sentenced to 180 days or more in prison. However, no such relief is available for individuals incarcerated for fewer than 180 days, even though they too are unlikely to be able to pay child support during the period of their incarceration, and will almost certainly be negatively impacted by child support debt upon their release. HB00435 makes child support order suspension available to *all* incarcerated individuals, regardless of the amount of time they spend in prison or jail, in recognition of the fact that incarceration of any length almost always interferes with an obligor’s ability to pay child support.

¹ MD Fam L Code § 12-104.1(b)

Of course, there may be some rare circumstances where brief periods of incarceration – such as when someone is temporarily taken into custody after being arrested and released on bail one or two days later – may not interfere with an obligor’s ability to continue paying child support. In such situations, HB 00435 allows for courts to exercise discretion as to whether to suspend a child support order, based on whether there is evidence that an obligor’s ability to pay child support has been reduced due to incarceration. If HB 00435 is passed, MLA would encourage the Child Support Administration (CSA) to craft and implement rules and regulations to guide the court and CSA in administering this relief appropriately.

One recurring problem HB 00435 does not address is the fact that, even under current law, many of our clients report that their child support orders are not actually being suspended while they are incarcerated for periods over 180 days; instead, upon their release, they discover that arrears have been accruing and then must work with the Child Support Administration to obtain a retroactive adjustment of their balance. Even though MLA has found the Child Support Administration helpful in assisting formerly incarcerated people with adjusting their arrears, sometimes the damage has already been done by the time the obligor learns of his arrearage balance; for example, they might receive a criminal citation for driving on a license they did not know was suspended, or their tax refund might be intercepted for arrears that never should have accrued.

MLA encourages CSA to work with the judiciary, the Maryland Department of Public Safety and Correctional Services, as well as community advocacy organizations like ourselves to ensure that child support orders are actually suspended at the *start* of an obligor’s period of incarceration, not merely adjusted on the backend after release. There are many creative approaches Maryland could take to ensure this happens; in the District of Columbia, for example, the court is required to advise criminal defendants at sentencing hearings that they have the right to suspend their child support orders during their incarceration, and these suspension requests can be filed on the spot, in open court.² MLA would welcome the opportunity to be a part of tackling this problem, and making child support suspension more widely accessible to individuals facing incarceration.

For these reasons, Maryland Legal Aid urges the Committee to issue a FAVORABLE report on HB 00435. If you have any questions, please contact Ameer Vora, (443) 604-6186, avora@mdlaborg.org.

² See D.C. Code § 23-112a.

HB 435 - Child Support - Incarcerated Obligor - 3

Uploaded by: Kam Bridges

Position: FAV

JOTF JOB OPPORTUNITIES TASK FORCE

Advocating better skills, jobs, and incomes

Testimony in Support of House Bill 435

Child Support - Incarcerated Obligor

TO: Hon. William C. Smith, Jr, Chair, and Members of the Senate Judicial Proceedings Committee

FROM: Job Opportunities Task Force

DATE: March 21, 2024

The Job Opportunities Task Force (JOTF) is an independent, nonprofit organization that develops and advocates policies and programs to increase the skills, job opportunities, and incomes of low-wage workers and job seekers in Maryland. **JOTF supports House Bill 435, which would alter provisions for child support for obligors who are incarcerated.**

House Bill 435 would allow the court to determine that if a person becomes incarcerated, that would qualify as a material change of circumstance that warrants a modification of child support if the party's ability to pay is sufficiently reduced due to incarceration. It also strikes the stipulation that arrearages may not accrue only if the obligor was sentenced to a term of imprisonment of 180 consecutive days or more and if the obligor did not commit the crime with the intent on being incarcerated or otherwise impoverished. Lastly, it states that incarceration shall not be considered voluntary impoverishment.

This bill is a common sense piece of legislation. It is glaringly obvious that an individual who is incarcerated, unless they are on a work release order, has had a material change of circumstance regarding their financial state and ability to pay. The vast majority of Marylanders with child support orders are not wealthy individuals who are able to make consistent payments without access to employment. It would be unreasonable to expect them to pay without having practical means to earn income while being incarcerated. In addition, this bill recognizes the impact that incarceration has on an individual's life. 180 days is less than half a year, but that time can still have significant implications on someone's circumstances. Even an abbreviated stay in jail or prison should trigger a modification of child support; there can be no understating how disruptive this can be for an individual. And there is no systemic issue of individuals voluntarily getting themselves incarcerated in order to avoid child support payments. While there might be a few isolated incidents that qualify, overall this is not an occurrence that is frequent enough to warrant recourse as it is currently written in the Family Law code. Once again, this is a common sense solution that simply addresses pressing concerns with the child support enforcement system.

For these reasons, JOTF supports House Bill 435 and urges a favorable report.

For more information, contact:

Kam Bridges / Senior Public Policy Advocate / Kam@jotf.org

hb435.pdf

Uploaded by: Linda Miller

Position: FAV

HON. STACY A. MAYER
CIRCUIT COURT
JUDGE
BALTIMORE COUNTY
CHAIR

HON. RICHARD SANDY
CIRCUIT COURT
JUDGE
FREDERICK COUNTY
VICE-CHAIR



KELLEY O'CONNOR
ASSISTANT STATE COURT
ADMINISTRATOR
GOVERNMENT RELATIONS
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P: (410) 260-1560

SUZANNE PELZ, ESQ.
SNR. GOVT. RELATIONS AND
PUBLIC AFFAIRS OFFICER
P: (410)260-1523

MARYLAND JUDICIAL COUNCIL LEGISLATIVE COMMITTEE

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: House Bill 435
Child Support – Incarcerated Obligor
DATE: March 15, 2024
(3/21)
POSITION: Support

The Maryland Judiciary supports House Bill 435. This bill would make changes to the law concerning child support as it relates to incarcerated obligors (the individual who is required to pay support under a court order) and parents.

Although the Judiciary has no position on the policy aims of the legislation, it supports the operational efficiencies created with this legislation. When a parent is incarcerated, their ability to contact a child support office or access legal assistance to seek modification of a child support obligation is limited. In addition, federal and state law bar retroactive modifications of support obligations, prior to the date of filing, so the court is currently limited in the discretion it can exercise once the order is in place.

cc. Hon. Luke Clippinger
Judicial Council
Legislative Committee
Kelley O'Connor

2024 03 20, HB 435_FLSC_FAV.pdf

Uploaded by: Michelle Smith

Position: FAV



To: Members of The Senate Judicial Proceedings Committee

From: MSBA FAMILY LAW SECTION COUNCIL

Date: March 20, 2024

Subject: **HB 435** – Child Support – Incarcerated Obligor

Position: **FAVORABLE**

The Maryland State Bar Association (MSBA) Family and Juvenile Law Section **supports House Bill 435 – Child Support – Incarcerated Obligor.**

This testimony is submitted on behalf of the Family Law Section Council (“FLSC”) of the Maryland State Bar Association (“MSBA”). The FLSC is the formal representative of the Family Law Section of the MSBA, which promotes the objectives of the MSBA by improving the administration of justice in the field of family law and, at the same time, tries to bring together the members of the MSBA who are concerned with family laws and in reforms and improvements in such laws through legislation or otherwise. The FLSC is charged with the general supervision and control of the affairs of the Section and authorized to act for the Section in any way in which the Section itself could act. The Section has over 1,200 attorney members.

HB 435 alters provisions relating to the calculation of and modification of child support for incarcerated obligors. The bill provides the Court with authority to determine that a material change of circumstances warranting a modification of child support has occurred if a party becomes incarcerated, provided that the party’s ability to pay child support is sufficiently reduced due to incarceration.

HB 435 also alters the current provisions regarding when child support is deemed past due and arrearages may accrue during the time that the obligor is incarcerated and continuing for 60 days after the obligor’s release from confinement. Currently the stay on the accumulation of arrears requires, *inter alia*, that the obligor be sentenced to a term of imprisonment of 180 consecutive days or more and a finding that the obligor did not commit the crime with the intent of being incarcerated or otherwise becoming impoverished. Removal of both of these provisions from the current statute allows the Court to focus on the primary issue, which is whether or not the incarcerated individual has the financial ability to make the child support payment. The FLSC is in agreement that incarcerated individuals, regardless of the length of the sentence, should not accumulate child arrears unless they are on work release or otherwise have the means to pay the



child support during their incarceration. Removal of the requirement that the Court find that the obligor did not commit the crime with the intent to become impoverished alleviates unnecessary litigation and stream lines the analysis. This bill provides the Court with ability to make a case-by-case determination as to whether or not a modification is appropriate and prevents incarcerated individuals from leaving confinement with a large arrearage which cannot be met. Families are best served if after leaving confinement and obligor can seek gainful employment and resume support and appropriate interaction with the child.

HB 435 further provides that a parent who is incarcerated may not be considered to be voluntarily impoverished and that there cannot be a determination of potential income for a parent who is incarcerated. These provisions are in the interest of judicial economy by avoiding the need for litigation on this issue which would require evidence and consideration of one's intent and the voluntary nature of the act leading to incarceration. HB 435 settles the issue with clarity and consistency on this issue.

HB 435 is in the interests of judicial economy and Maryland families. This bill provides for the modification of child support at a time that the obligor cannot pay child support and eliminates certain issues from consideration to appropriately streamline the litigation. In addition, it provides appropriate incarcerated obligors an opportunity to come out of incarceration without the debt that would occur without this bill.

For the reasons stated above, the MSBA **supports HB 435 and urges a favorable committee report.**

Should you have any questions, please contact Michelle Smith at 410-280-1700 or msmith@lawannapolis.com or Ilene Glickman of the FLSC at iglickman@landaulaw.com.

HB0435 - FAV - DHS.pdf

Uploaded by: Rachel Sledge Government Affairs

Position: FAV

March 21, 2024

The Honorable William C. Smith, Jr.
Senate Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, Maryland 21401

**RE: TESTIMONY ON HB0435 - CHILD SUPPORT - INCARCERATED OBLIGORS -
POSITION: FAVORABLE**

Dear Chair Smith and members of the Judicial Proceedings Committee:

The Maryland Department of Human Services (DHS) thanks the Committee for the opportunity to provide favorable testimony for House Bill 435 (HB0435). With offices in every one of Maryland's jurisdictions, we empower Marylanders to reach their full potential by helping with economic assistance, preventative and supportive services, and protecting children and adults. The Child Support Administration (CSA) within DHS implements the child support program which is affected by HB0435.

During the 2020 legislative session, the Maryland General Assembly passed HB0234 to ensure an obligor's child support payment is not considered past due and arrearages do not accrue for 180 consecutive calendar days while incarcerated. The 2020 bill complied with the federal Flexibility, Efficiency, and Modernization of Child Support Enforcement Programs (FEM) Final Rule of 2017, which required child support programs to implement the 180 calendar days requirement. House Bill 435 expands upon the 2020 bill to limit accrual of arrears while an obligor is incarcerated for more than 180 days. Maryland would be the first state to suspend child support obligations when an incarcerated person does not have the resources to make payments.

House Bill 435 also brings CSA into full compliance with the Flexibility, Efficiency and Modernization (FEM) Rule of 2017 established by the federal Office of Child Support Services. House Bill 435 would bring Maryland into compliance with FEM by clarifying that incarcerated parents are not voluntarily impoverished. If the legislature does not clarify, then Maryland will not be in compliance with our Title IV-D Child Support State Plan.

Noncompliance with Maryland's Child Support state plan will result in immediate suspension of all federal reimbursement for Maryland's \$98 million federal child support grant and \$11 million child support incentives. After a year to correct, further noncompliance could result in quarterly penalties for Maryland impacting the \$229 million Temporary Assistance to Needy Families (TANF) program block grant and \$27 million TANF Contingency funds. The quarterly federal payments would be reduced by the following percentages: one to two percent for the first finding; two to three percent



for the second consecutive finding; and not less than three percent and no more than five percent for the third or subsequent consecutive finding.

We appreciate the opportunity to submit HB0435 to the Committee for consideration during your deliberations. We look forward to the decision of the Committee and welcome continued collaboration on HB0435.

If you require additional information, please contact Rachel Sledge, Director of Government Affairs, at rachel.sledge@maryland.gov.

In service,

A handwritten signature in black ink, appearing to read 'Rafael López', written in a cursive style.

Rafael López
Secretary