



To: Members of The House Judiciary Committee

From: MSBA FAMILY LAW SECTION COUNCIL

Date: February 12, 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.