

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 726
Judiciary

(Delegates Dumais and Malone)

Judicial Proceedings

Child Support - Potential Income, Voluntary Impoverishment, and No Support
Order

This bill (1) alters the definition of “potential income” under State child support guidelines; (2) establishes circumstances under which a court may decline to establish a child support obligation; and (3) requires a court to take specified actions if there is a dispute as to whether a parent is “voluntarily impoverished.” The bill has prospective application and only affects cases filed on or after the October 1, 2019 effective date.

Fiscal Summary

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

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

Small Business Effect: None.

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) 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. 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.

The bill establishes that “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. If there is a dispute as to whether a parent is voluntarily impoverished, the court must (1) make a finding as to whether, based on the totality of the circumstances, the parent is voluntarily impoverished and (2) if the court finds that the parent is voluntarily impoverished, consider the factors specified above in determining the amount of potential income that should be imputed to the parent.

The court may decline to establish a child support order if the parent who would have the obligation to pay child support (1) lives with the child who would be the subject of the order and is contributing to the support of the child or (2) is unemployed, has no financial resources from which to pay child support, and meets one of other specified criteria, including being incarcerated, being institutionalized in a psychiatric care facility, or being permanently disabled, as specified. The fact that a parent meets or ceases to meet the criteria described constitutes a material change of circumstances for the purpose of a modification of a child support award.

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: Federal regulations require states, as a condition of receiving Title IV-D funds, to review their child support guidelines at least once every four years; the 2016 review was completed in 2016. After the review noted areas of potential improvement, the Child Support Guidelines Advisory Committee, coordinated by DHS, began meeting in 2017 to further review the guidelines in light of the best interests of the State’s children and families. Multiple subcommittees were formed to facilitate the committee’s work.

The Low-Income Subcommittee recommended defining “voluntarily impoverished” within statute to promote transparency and limit improper determinations. The subcommittee noted, and DHS has previously advised, that the expanded definition of “potential income” is intended 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. The subcommittee also recommended allowing courts to modify or decline to establish support orders in the circumstances included in the bill; this is consistent with the FEM Rule.

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. Accordingly, special fund revenues are impacted to the extent that child support ordered and collected in these cases differs from what would have been ordered and collected under current law. Any impact

on child support collections involving TCA recipients cannot be reliably quantified but is not expected to materially impact State finances.

Additional Information

Prior Introductions: Provisions of the bill relating to the definition of “potential income” were included in HB 386 of 2018, which was given an unfavorable report by the House Judiciary Committee, with a recommendation that the Guidelines Advisory Committee consider the legislation in its review of the child support guidelines.

Cross File: SB 762 (Senator Smith) - Judicial Proceedings.

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

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