

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 847

(Senator Sydnor)

Judicial Proceedings

Judiciary

Child Support – Guidelines

This bill (1) revises the schedule of basic child support obligations used to calculate child support amounts under the State’s child support guidelines; (2) alters the definition of “potential income” under State child support guidelines; (3) establishes circumstances under which a court may decline to establish a child support obligation; and (4) 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 bill’s effective date. **The bill takes effect October 1, 2021.**

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 and Voluntary Impoverishment

“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 or institutionalized in a psychiatric care facility. 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.

Basic Child Support Obligations

The current schedule is expanded to include monthly incomes of up to \$30,000; the schedule also specifies amounts for monthly incomes between \$0 and \$1,200. The bill authorizes the court, when considering whether the application of the guidelines would be unjust or inappropriate in a particular case, to consider whether an obligor’s monthly child support obligation would leave the obligor with a monthly actual income below 110% of the 2019 federal poverty level for an individual. The bill alters the definition of “basic child support obligation” to mean the base amount due for child support calculated using the combined adjusted actual incomes of both parents as adjusted by the self-support reserve (SSR). “Self-support reserve” means the adjustment to a basic child support obligation ensuring that a child support obligor maintains a minimum amount of monthly income, after payment of child support, federal and state income taxes, and Federal Insurance Contribution Act taxes, of at least 110% of the 2019 Federal Poverty Level for an individual.

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 maximum combined monthly income subject to the schedule is \$15,000. For parental incomes above this amount, the court may use its discretion in setting the amount of child support. For monthly incomes up to \$1,250, the schedule provides for a basic child support obligation of \$20 to \$150 per month, based on the resources and living expenses of the obligor and the number of children due support. Although an SSR is built into the guidelines schedule, it is not specifically delineated or defined.

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.

The Low-Income Subcommittee also found that although current guidelines recommend a discretionary order amount between \$20 and \$150 for cases in which the combined parental incomes are below \$1,250 per month, the amount of child support awarded was higher than \$150 in more than 40% of cases reviewed. The subcommittee made several recommendations, including (1) listing specific schedule amounts for low-end incomes; (2) including \$0 in the lowest income bracket; (3) beginning the minimum obligation for one child at \$50 and increasing the obligation by the proportional cost of raising additional children; and (4) updating the SSR and noting when it is used within the guideline schedule. The High-Income Subcommittee recommended expanding the schedule to include incomes up to \$30,000 per month in order to promote uniformity of child support outcomes for families and better reflect current economic data.

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, after specified initial amounts are passed directly to the family, 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: HB 732 of 2019, a similar bill to revise the child support guidelines, passed the House and was referred to the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, SB 763, received a hearing in the Senate Judicial Proceedings, but no further action was taken. HB 726 of 2019, a similar bill regarding potential income, voluntary impoverishment, and no support orders, passed the House and was referred to the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, SB 762, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Designated Cross File: HB 946 (Delegate Dumais, *et al.*) - Judiciary.

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

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