

# SENATE BILL 762

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CF 9lr1390

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By: **Senator Smith**

Introduced and read first time: February 4, 2019

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Child Support – Potential Income, Voluntary Impoverishment, and No Support**  
3 **Order**

4 FOR the purpose of authorizing the court to decline to establish a child support order under  
5 certain circumstances; specifying that the fact that a parent meets or ceases to meet  
6 certain criteria shall constitute a material change of circumstance for the purpose of  
7 a modification of a child support award; requiring the court to take certain actions if  
8 there is a dispute as to whether a parent is voluntarily impoverished; altering a  
9 certain definition; defining a certain term; providing for the application of this Act;  
10 and generally relating to child support.

11 BY repealing and reenacting, with amendments,  
12 Article – Family Law  
13 Section 12–201, 12–202, and 12–204(b)  
14 Annotated Code of Maryland  
15 (2012 Replacement Volume and 2018 Supplement)

16 BY repealing and reenacting, without amendments,  
17 Article – Family Law  
18 Section 12–204(a)  
19 Annotated Code of Maryland  
20 (2012 Replacement Volume and 2018 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
22 That the Laws of Maryland read as follows:

23 **Article – Family Law**

24 12–201.

25 (a) In this subtitle the following words have the meanings indicated.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (b) (1) “Actual income” means income from any source.

2 (2) For income from self–employment, rent, royalties, proprietorship of a  
3 business, or joint ownership of a partnership or closely held corporation, “actual income”  
4 means gross receipts minus ordinary and necessary expenses required to produce income.

5 (3) “Actual income” includes:

6 (i) salaries;

7 (ii) wages;

8 (iii) commissions;

9 (iv) bonuses;

10 (v) dividend income;

11 (vi) pension income;

12 (vii) interest income;

13 (viii) trust income;

14 (ix) annuity income;

15 (x) Social Security benefits;

16 (xi) workers’ compensation benefits;

17 (xii) unemployment insurance benefits;

18 (xiii) disability insurance benefits;

19 (xiv) for the obligor, any third party payment paid to or for a minor  
20 child as a result of the obligor’s disability, retirement, or other compensable claim;

21 (xv) alimony or maintenance received; and

22 (xvi) expense reimbursements or in–kind payments received by a  
23 parent in the course of employment, self–employment, or operation of a business to the  
24 extent the reimbursements or payments reduce the parent’s personal living expenses.

25 (4) Based on the circumstances of the case, the court may consider the  
26 following items as actual income:

1 (i) severance pay;

2 (ii) capital gains;

3 (iii) gifts; or

4 (iv) prizes.

5 (5) “Actual income” does not include benefits received from means–tested  
6 public assistance programs, including temporary cash assistance, Supplemental Security  
7 Income, food stamps, and transitional emergency, medical, and housing assistance.

8 (c) “Adjusted actual income” means actual income minus:

9 (1) preexisting reasonable child support obligations actually paid; and

10 (2) except as provided in § 12–204(a)(2) of this subtitle, alimony or  
11 maintenance obligations actually paid.

12 (d) “Adjusted basic child support obligation” means an adjustment of the basic  
13 child support obligation for shared physical custody.

14 (e) “Basic child support obligation” means the base amount due for child support  
15 based on the combined adjusted actual incomes of both parents.

16 (f) “Combined adjusted actual income” means the combined monthly adjusted  
17 actual incomes of both parents.

18 (g) (1) “Extraordinary medical expenses” means uninsured expenses over  
19 \$100 for a single illness or condition.

20 (2) “Extraordinary medical expenses” includes uninsured, reasonable, and  
21 necessary costs for orthodontia, dental treatment, asthma treatment, physical therapy,  
22 treatment for any chronic health problem, and professional counseling or psychiatric  
23 therapy for diagnosed mental disorders.

24 (h) “Health insurance” includes medical insurance, dental insurance, prescription  
25 drug coverage, and vision insurance.

26 (i) “Income” means:

27 (1) actual income of a parent, if the parent is employed to full capacity; or

28 (2) potential income of a parent, if the parent is voluntarily impoverished.

29 (j) “Obligee” means any person who is entitled to receive child support.

1 (k) "Obligor" means an individual who is required to pay child support under a  
2 court order.

3 (l) "Ordinary and necessary expenses" does not include amounts allowable by the  
4 Internal Revenue Service for the accelerated component of depreciation expenses or  
5 investment tax credits or any other business expenses determined by the court to be  
6 inappropriate for determining actual income for purposes of calculating child support.

7 (m) "Potential income" means income attributed to a parent determined by:

8 (1) the parent's employment potential and probable earnings level based  
9 on, but not limited to[, recent work history, occupational qualifications, prevailing job  
10 opportunities, and earnings levels in the community]:

11 (I) THE PARENT'S:

- 12 1. AGE;
- 13 2. PHYSICAL AND BEHAVIORAL CONDITION;
- 14 3. EDUCATIONAL ATTAINMENT;
- 15 4. SPECIAL TRAINING OR SKILLS;
- 16 5. LITERACY;
- 17 6. RESIDENCE;
- 18 7. OCCUPATIONAL QUALIFICATIONS AND JOB SKILLS;
- 19 8. EMPLOYMENT AND EARNINGS HISTORY;
- 20 9. RECORD OF EFFORTS TO OBTAIN AND RETAIN  
21 EMPLOYMENT; AND
- 22 10. CRIMINAL RECORD AND OTHER EMPLOYMENT  
23 BARRIERS; AND

24 (II) EMPLOYMENT OPPORTUNITIES IN THE COMMUNITY WHERE  
25 THE PARENT LIVES, INCLUDING:

- 26 1. THE STATUS OF THE JOB MARKET;
- 27 2. PREVAILING EARNINGS LEVELS; AND

1                                   **3. THE AVAILABILITY OF EMPLOYERS WILLING TO HIRE**  
2 **THE PARENT;**

3                                   **(2) THE PARENT'S ASSETS;**

4                                   **(3) THE PARENT'S ACTUAL INCOME FROM ALL SOURCES; AND**

5                                   **(4) ANY OTHER FACTOR BEARING ON THE PARENT'S ABILITY TO**  
6 **OBTAIN FUNDS FOR CHILD SUPPORT.**

7                   (n) (1) "Shared physical custody" means that each parent keeps the child or  
8 children overnight for more than 35% of the year and that both parents contribute to the  
9 expenses of the child or children in addition to the payment of child support.

10                   (2) Subject to paragraph (1) of this subsection, the court may base a child  
11 support award on shared physical custody:

12                                   (i) solely on the amount of visitation awarded; and

13                                   (ii) regardless of whether joint custody has been granted.

14                   **(O) "VOLUNTARILY IMPOVERISHED" MEANS THAT A PARENT HAS MADE THE**  
15 **FREE AND CONSCIOUS CHOICE, NOT COMPELLED BY FACTORS BEYOND THE**  
16 **PARENT'S CONTROL, TO RENDER THE PARENT WITHOUT ADEQUATE RESOURCES.**

17 12-202.

18                   (a) (1) Subject to the provisions of paragraph (2) of this subsection **AND**  
19 **SUBSECTION (B) OF THIS SECTION**, in any proceeding to establish or modify child  
20 support, whether pendente lite or permanent, the court shall use the child support  
21 guidelines set forth in this subtitle.

22                                   (2) (i) There is a rebuttable presumption that the amount of child  
23 support which would result from the application of the child support guidelines set forth in  
24 this subtitle is the correct amount of child support to be awarded.

25                                   (ii) The presumption may be rebutted by evidence that the  
26 application of the guidelines would be unjust or inappropriate in a particular case.

27                                   (iii) In determining whether the application of the guidelines would  
28 be unjust or inappropriate in a particular case, the court may consider:

29                                   1. the terms of any existing separation or property  
30 settlement agreement or court order, including any provisions for payment of mortgages or  
31 marital debts, payment of college education expenses, the terms of any use and possession

1 order or right to occupy the family home under an agreement, any direct payments made  
2 for the benefit of the children required by agreement or order, or any other financial  
3 considerations set out in an existing separation or property settlement agreement or court  
4 order; and

5 2. the presence in the household of either parent of other  
6 children to whom that parent owes a duty of support and the expenses for whom that parent  
7 is directly contributing.

8 (iv) The presumption may not be rebutted solely on the basis of  
9 evidence of the presence in the household of either parent of other children to whom that  
10 parent owes a duty of support and the expenses for whom that parent is directly  
11 contributing.

12 (v) 1. If the court determines that the application of the  
13 guidelines would be unjust or inappropriate in a particular case, the court shall make a  
14 written finding or specific finding on the record stating the reasons for departing from the  
15 guidelines.

16 2. The court’s finding shall state:

17 A. the amount of child support that would have been required  
18 under the guidelines;

19 B. how the order varies from the guidelines;

20 C. how the finding serves the best interests of the child; and

21 D. in cases in which items of value are conveyed instead of a  
22 portion of the support presumed under the guidelines, the estimated value of the items  
23 conveyed.

24 **(B) (1) THE COURT MAY DECLINE TO ESTABLISH A CHILD SUPPORT**  
25 **ORDER IF THE PARENT WHO WOULD HAVE THE OBLIGATION TO PAY CHILD SUPPORT:**

26 **(I) LIVES WITH THE CHILD WHO WOULD BE THE SUBJECT OF**  
27 **THE CHILD SUPPORT ORDER AND IS CONTRIBUTING TO THE SUPPORT OF THE CHILD;**  
28 **OR**

29 **(II) 1. IS UNEMPLOYED;**

30 **2. HAS NO FINANCIAL RESOURCES FROM WHICH TO PAY**  
31 **CHILD SUPPORT; AND**

32 **3. A. IS INCARCERATED AND IS EXPECTED TO**  
33 **REMAIN INCARCERATED FOR THE REMAINDER OF THE TIME THAT THE PARENT**

1 WOULD HAVE A LEGAL DUTY TO SUPPORT THE CHILD;

2                   **B. IS INSTITUTIONALIZED IN A PSYCHIATRIC CARE**  
3 **FACILITY AND IS EXPECTED TO REMAIN INSTITUTIONALIZED FOR THE REMAINDER**  
4 **OF THE TIME THAT THE PARENT WOULD HAVE A LEGAL DUTY TO SUPPORT THE**  
5 **CHILD;**

6                   **C. IS TOTALLY AND PERMANENTLY DISABLED, IS**  
7 **UNABLE TO OBTAIN OR MAINTAIN EMPLOYMENT, AND HAS NO INCOME OTHER THAN**  
8 **SUPPLEMENTAL SECURITY INCOME OR SOCIAL SECURITY DISABILITY INSURANCE**  
9 **BENEFITS; OR**

10                   **D. IS UNABLE TO OBTAIN OR MAINTAIN EMPLOYMENT IN**  
11 **THE FORESEEABLE FUTURE DUE TO COMPLIANCE WITH CRIMINAL DETAINMENT,**  
12 **HOSPITALIZATION, OR A REHABILITATION TREATMENT PLAN.**

13                   **(2) THE FACT THAT A PARENT MEETS OR CEASES TO MEET THE**  
14 **CRITERIA DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION SHALL CONSTITUTE**  
15 **A MATERIAL CHANGE OF CIRCUMSTANCE FOR THE PURPOSE OF A MODIFICATION OF**  
16 **A CHILD SUPPORT AWARD.**

17                   **[(b)] (C)** The adoption or revision of the guidelines set forth in this subtitle is not  
18 a material change of circumstance for the purpose of a modification of a child support  
19 award.

20                   **[(c)] (D)** On or before January 1, 1993, and at least every 4 years after that date,  
21 the Child Support Administration of the Department of Human Services shall:

22                   (1) review the guidelines set forth in this subtitle to ensure that the  
23 application of the guidelines results in the determination of appropriate child support  
24 award amounts; and

25                   (2) report its findings and recommendations to the General Assembly,  
26 subject to § 2-1246 of the State Government Article.

27 12-204.

28                   (a) (1) The basic child support obligation shall be determined in accordance  
29 with the schedule of basic child support obligations in subsection (e) of this section. The  
30 basic child support obligation shall be divided between the parents in proportion to their  
31 adjusted actual incomes.

32                   (2) (i) If one or both parents have made a request for alimony or  
33 maintenance in the proceeding in which a child support award is sought, the court shall  
34 decide the issue and amount of alimony or maintenance before determining the child

1 support obligation under these guidelines.

2 (ii) If the court awards alimony or maintenance, the amount of  
3 alimony or maintenance awarded shall be considered actual income for the recipient of the  
4 alimony or maintenance and shall be subtracted from the income of the payor of the alimony  
5 or maintenance under § 12–201(c)(2) of this subtitle before the court determines the amount  
6 of a child support award.

7 (b) (1) Except as provided in paragraph [(2)] (3) of this subsection, if a parent  
8 is voluntarily impoverished, child support may be calculated based on a determination of  
9 potential income.

10 (2) IF THERE IS A DISPUTE AS TO WHETHER A PARENT IS  
11 VOLUNTARILY IMPOVERISHED, THE COURT SHALL:

12 (I) MAKE A FINDING AS TO WHETHER, BASED ON THE TOTALITY  
13 OF THE CIRCUMSTANCES, THE PARENT IS VOLUNTARILY IMPOVERISHED; AND

14 (II) IF THE COURT FINDS THAT THE PARENT IS VOLUNTARILY  
15 IMPOVERISHED, CONSIDER THE FACTORS SPECIFIED IN § 12–201(M) OF THIS  
16 SUBTITLE IN DETERMINING THE AMOUNT OF POTENTIAL INCOME THAT SHOULD BE  
17 IMPUTED TO THE PARENT.

18 [(2)] (3) A determination of potential income may not be made for a  
19 parent who:

20 (i) is unable to work because of a physical or mental disability; or

21 (ii) is caring for a child under the age of 2 years for whom the parents  
22 are jointly and severally responsible.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply only to  
24 cases filed on or after the effective date of this Act.

25 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
26 October 1, 2019.