



# VOLUNTARY IMPOVERISHMENT

**DEFINE YOUR  
TERMS!**

Definition recently codified in  
Fam. Law 12-201(q)

“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.”

**TO FULLY EVALUATE WHAT  
IS A FREE AND CONSCIOUS  
CHOICE IS, IT HELPS TO  
LOOK AT FACTORS  
ESTABLISHED IN CASE LAW**

JOHN O. V. JANE O.,

90 MD. APP. 406 (1992)

GOLDBERGER V. GOLDBERGER

96 MD. APP. 313 (1993)

DURKEE V. DURKEE

144 MD.APP.161(2002)

- (1) current physical condition;
- (2) level of education;
- (3) the timing of any change in employment or other financial circumstances relative to the divorce proceedings;
- (4) the relationship between the parties prior to the initiation of divorce proceedings;
- (5) efforts to find and retain employment;
- (6) efforts to secure retraining if that is needed;
- (7) whether support has ever been withheld
- (8) past work history;
- (9) the area in which the parties live and the status of the job market there; and
- (10) any other considerations presented by either party

It's a two step process:

Step One: Determine whether a party has impoverished themselves

Step Two: Determine if, and in what amount, income should be imputed to them

*Durkee v Durkee*, 144 Md.App. 161(2002)



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**(M) “POTENTIAL  
INCOME” MEANS  
INCOME ATTRIBUTED  
TO A PARENT  
DETERMINED BY :**

(1) the parent's employment potential and probable earnings level based on (i) 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; and

(ii) employment opportunities in the community where the parent lives, including:

1. the status of the job market;

2. prevailing earnings levels; and

3. the availability of employers willing to hire the parent;

(2) the parent's assets;

(3) the parent's actual income from all sources; and

(4) any other factor bearing on the parent's ability to obtain funds for child support.

The background features a light gray gradient with numerous dark gray and black splatters of varying sizes scattered across it. At the bottom of the image, there is a horizontal strip of a dark brown wood floor with vertical planks.

# **MODIFICATION OF SUPPORT**

# THE LAW

## **Family Law § 12-104. Modification of support award**

- (a) The court may modify a child support award subsequent to the filing of a motion for modification and upon a showing of a material change of circumstance.

# REQUIRES A SHOWING OF “MATERIAL CHANGE IN CIRCUMSTANCES”

This is a threshold issue that must be found before recalculating

- Walsh v Walsh, 333 Md. 492(1994)

Change must be since the last court order

- Kierein v Kierein, 115 Md.App. 448 (1997)

Burden of proving the change is on the person requesting change



# WHAT CONSTITUTES A MATERIAL CHANGE?

## TWO-PART TEST:

*Petitto v Petitto*, 147 Md  
App 280 (2002)

## PART ONE:

It must be “relevant to the level of support a child is actually receiving or is entitled to receive”

## PART TWO:

It must be “of sufficient magnitude to justify judicial modification for the support order”

# ARE THESE EVENTS RELATIVE TO THE LEVEL OF SUPPORT A CHILD?

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**Emancipation of one of the children in a multi-child order**

**Remarriage**

**Disability of a party**

**Change in the child's needs**

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## WHAT ABOUT THESE?

**Termination of a family maintenance order in a domestic violence case**

**Payor has a new child support obligation for another child**

**A child support order that was factored into the original support obligation calculation is now expired due to emancipation of that child**

**Career change**

**Retirement**

## WHAT DOES “OF SUFFICIENT MAGNITUDE” MEAN?

**IT'S ALL RELATIVE AND PERSPECTIVE MATTERS!**

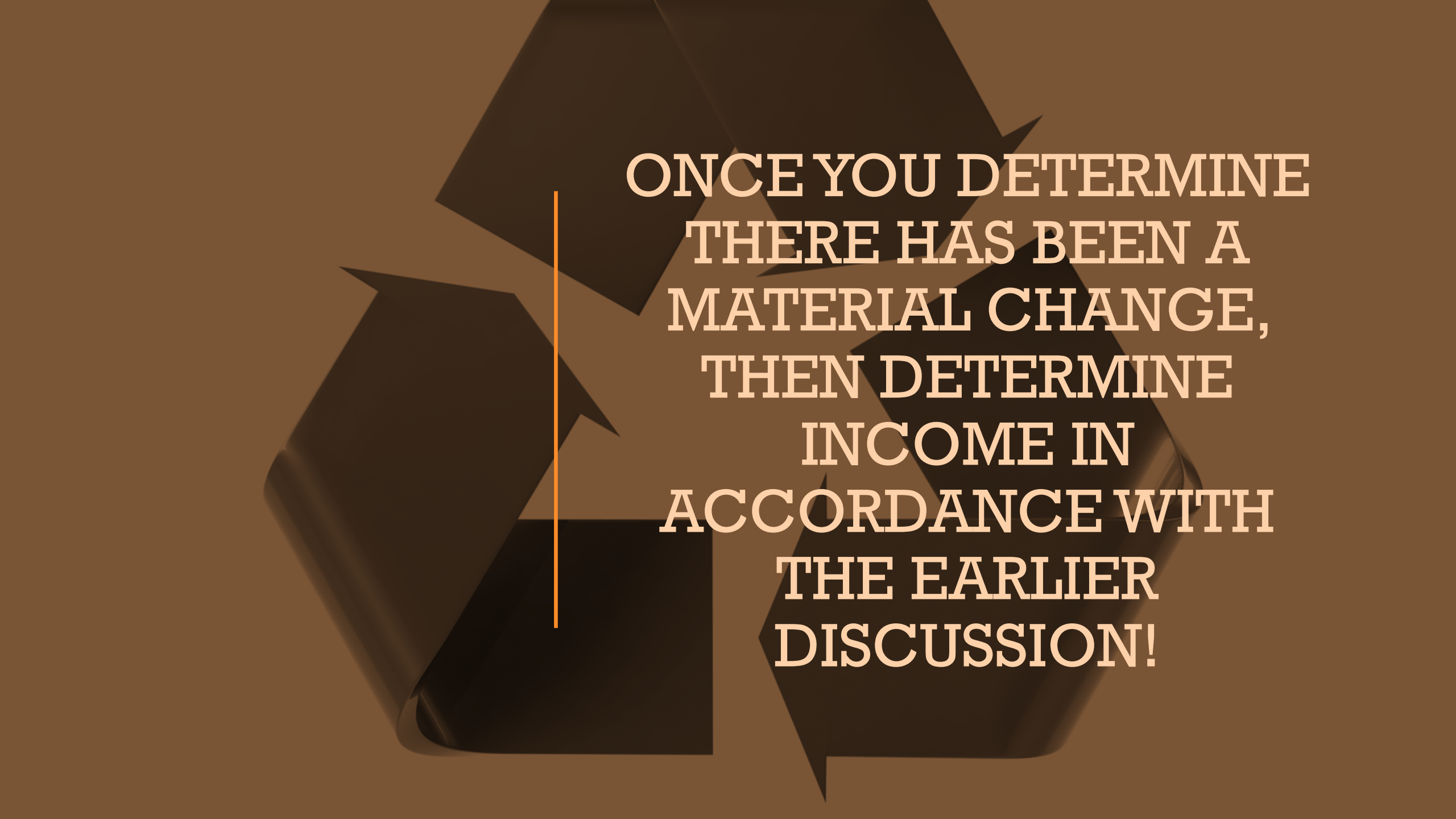
eg. - A \$2,000/year change in income for someone making \$75,000 a year means less than it does to someone who makes \$20,000 each year.

Look at the participants' financial circumstances to evaluate the impact of the change. How does the change impact the child?

# IS PROOF OF MATERIAL CHANGE ALWAYS REQUIRED?

## NO!

- Not required if the obligation was established in a settlement agreement that has not been incorporated into a court order
- Not required if the support obligation was established by pendente lite order
- *Payne v Paynes* 730Md. App. 473 (1988)
- *Knott v Knott*, 146 Md. App 232 (2002)



**ONCE YOU DETERMINE  
THERE HAS BEEN A  
MATERIAL CHANGE,  
THEN DETERMINE  
INCOME IN  
ACCORDANCE WITH  
THE EARLIER  
DISCUSSION!**

# RETROACTIVITY AND MODIFICATIONS

## THE LAW

### Family Law § 12-104. Modification of support award

- (b) The court may not retroactively modify a child support award prior to the date of the filing of the motion for modification.



## WHY LIMIT RETROACTIVITY?

The limit on retroactivity is the result of a federal mandate that tied the receipt of public assistance funds to compliance with the “no retro” rule.



# AWARDING RETROACTIVITY IS DISCRETIONARY

- Contrast discretion in modification cases with a presumption of retroactivity in initial establishment cases!

An illustration of two hands shaking in a prison cell. The hands are rendered in a stylized, blocky manner with horizontal lines on the fingers. The background consists of vertical bars representing prison bars. The text 'INCARCERATED OBLIGORS' is written in a bold, orange, sans-serif font across the center of the image. A thin vertical orange line is positioned to the left of the text.

# INCARCERATED OBLIGORS

# FL 12-104.1

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ARREARAGES  
CANNOT ACCRUE  
WHILE  
INCARCERATED  
AND FOR 60 DAYS  
AFTER RELEASE  
IF...

Obligor is sentenced to at least 180 consecutive calendar days **AND**

Obligor is not on work release **AND**

Obligor has insufficient resources with which to make payment **AND**

Obligor did not commit the crime with the intent of being incarcerated or becoming impoverished.

**NO MODIFICATION PETITION  
REQUIRED IN CSA CASES.  
THE ADMINISTRATION CAN  
ADJUST THE ACCOUNTING**

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CSA must notify the receiving parent and inform them of their right to object

# RECOUPMENT/RESTITUTION



- There is no automatic right to recoup any funds overpaid
- Issues to consider in determining whether to award recoupment:
  - Was the overpaid amount expended to support the child?
  - Would recoupment deprive the child?
  - Does the receiving parent have the money?

Krikstan v Krikstan, 90 Md. App. 462 (1992)

Rand v Rand, 40 Md. App 550 (1978)