

**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Reps. Howell, Voorhees and Vander Veen

ENROLLED HOUSE BILL No. 4776

AN ACT to amend 1982 PA 294, entitled "An act to revise and consolidate the laws relating to the friend of the court; to provide for the appointment or removal of the friend of the court; to create the office of the friend of the court; to establish the rights, powers, and duties of the friend of the court and the office of the friend of the court; to establish a state friend of the court bureau and to provide the powers and duties of the bureau; to prescribe powers and duties of the circuit court and of certain state and local agencies and officers; to establish friend of the court citizen advisory committees; to prescribe certain duties of certain employers and former employers; and to repeal acts and parts of acts," by amending sections 2, 2a, 3, 4, 4a, 7, and 9 (MCL 552.502, 552.502a, 552.503, 552.504, 552.504a, 552.507, and 552.509), sections 2, 2a, and 9 as amended by 2002 PA 571, section 3 as amended by 1996 PA 365, sections 4 and 4a as added by 1996 PA 366, and section 7 as amended by 1996 PA 144, and by adding section 7a.

The People of the State of Michigan enact:

Sec. 2. As used in this act:

- (a) "Bureau" means the state friend of the court bureau created in section 19.
- (b) "Centralizing enforcement" means the process authorized under section 10 of the office of child support act, 1971 PA 174, MCL 400.240.
- (c) "Chief judge" means the following:
 - (i) The circuit judge in a judicial circuit having only 1 circuit judge.
 - (ii) Except in the county of Wayne, the chief judge of the circuit court in a judicial circuit having 2 or more circuit judges.
 - (iii) In the county of Wayne, the executive chief judge of the circuit court in the third judicial circuit.
- (d) "Citizen advisory committee" means a citizen friend of the court advisory committee established as provided in section 4.

(e) “Consumer reporting agency” means a person that, for monetary fees or dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and that uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. As used in this subdivision, “consumer report” means that term as defined in section 603 of the fair credit reporting act, title VI of the consumer credit protection act, Public Law 90-321, 15 USC 1681a.

(f) “County board” means the county board of commissioners in the county served by the office. If a judicial circuit includes more than 1 county, action required to be taken by the county board means action by the county boards of commissioners for all counties composing that circuit.

(g) “Court” means the circuit court.

(h) “Current employment” means employment within 1 year before a friend of the court request for information.

(i) “Custody or parenting time order violation” means an individual’s act or failure to act that interferes with a parent’s right to interact with his or her child in the time, place, and manner established in the order that governs custody or parenting time between the parent and the child and to which the individual accused of interfering is subject.

(j) “De novo hearing” means a new judicial consideration of a matter previously heard by a referee.

(k) “Department” means the family independence agency.

(l) “Domestic relations matter” means a circuit court proceeding as to child custody or parenting time, or child or spousal support, that arises out of litigation under a statute of this state, including, but not limited to, the following:

(i) 1846 RS 84, MCL 552.1 to 552.45.

(ii) The family support act, 1966 PA 138, MCL 552.451 to 552.459.

(iii) Child custody act of 1970, 1970 PA 91, MCL 722.21 to 722.31.

(iv) 1968 PA 293, MCL 722.1 to 722.6.

(v) The paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(vi) Revised uniform reciprocal enforcement of support act, 1952 PA 8, MCL 780.151 to 780.183.

(vii) Uniform interstate family support act, 1996 PA 310, MCL 552.1101 to 552.1901.

(m) “Domestic relations mediation” means a process by which the parties are assisted by a domestic relations mediator in voluntarily formulating an agreement to resolve a dispute concerning child custody or parenting time that arises from a domestic relations matter.

(n) “Friend of the court” means the person serving under section 21(1) or appointed under section 23 as the head of the office of the friend of the court.

(o) “Friend of the court case” means a domestic relations matter that an office establishes as a friend of the court case as required under section 5a. The term “friend of the court case”, when used in a provision of this act, is not effective until on and after December 1, 2002.

(p) “Income” means that term as defined in section 2 of the support and parenting time enforcement act, 1982 PA 295, MCL 552.602.

Sec. 2a. As used in this act:

(a) “Medical assistance” means medical assistance as established under title XIX of the social security act, 42 USC 1396 to 1396r-6 and 1396r-8 to 1396v.

(b) “Office” and “office of the friend of the court” mean an agency created in section 3.

(c) “Payer” means a person ordered by the circuit court to pay support.

(d) “Public assistance” means cash assistance provided under the social welfare act, 1939 PA 280, 400.1 to 400.119b.

(e) “Recipient of support” means the following:

(i) The spouse, if the support order orders spousal support.

(ii) The custodial parent or guardian, if the support order orders support for a minor child or a child who is 18 years of age or older.

(iii) The family independence agency, if support has been assigned to that department.

(f) “State advisory committee” means the committee established by the bureau under section 19.

(g) “State disbursement unit” or “SDU” means the entity established in section 6 of the office of child support act, 1971 PA 174, MCL 400.236.

(h) "Support" means all of the following:

(i) The payment of money for a child or a spouse ordered by the circuit court, whether the order is embodied in an interim, temporary, permanent, or modified order or judgment. Support may include payment of the expenses of medical, dental, and other health care, child care expenses, and educational expenses.

(ii) The payment of money ordered by the circuit court under the paternity act, 1956 PA 205, MCL 722.711 to 722.730, for the necessary expenses incurred by or for the mother in connection with her confinement, for other expenses in connection with the pregnancy of the mother, or for the repayment of genetic testing expenses.

(iii) A surcharge under section 3a of the support and parenting time enforcement act, MCL 552.603a.

(i) "Support and parenting time enforcement act" means 1982 PA 295, MCL 552.601 to 552.650.

(j) "Support order" means an order entered by the circuit court for the payment of support in a sum certain, whether in the form of a lump sum or a periodic payment.

(k) "Title IV-D" means part D of title IV of the social security act, 42 USC 651 to 655, 656 to 657, 658a to 660, and 663 to 669b.

(l) "Title IV-D agency" means that term as defined in section 2 of the support and parenting time enforcement act, MCL 552.602.

Sec. 3. (1) There is created in each judicial circuit of this state an office of the friend of the court, except as provided in subsection (2).

(2) If each county in a multicounty judicial circuit has a separate office of the friend of the court on the day before the effective date of this act, each county in that circuit shall have a separate office of the friend of the court on the effective date of this act. If a vacancy occurs in the position of the friend of the court in such a county, the chief judge may merge the office of the friend of the court in that county with the office of the friend of the court in another county of the judicial circuit.

(3) The head of each office is the friend of the court serving under section 21(1) or appointed according to section 23.

(4) The friend of the court is an employee of the circuit court in the judicial circuit served by the friend of the court.

(5) The duties of the office shall be performed under the direction and supervision of the chief judge.

(6) Except as otherwise required by federal law on cases that are eligible for funding under title IV-D, the friend of the court is only required to perform activities under this act or the support and parenting time enforcement act when a party in that case has requested title IV-D services.

(7) Each friend of the court shall take all necessary steps to adopt office procedures to implement this act, the Michigan court rules, and the recommendations of the bureau. Office of the friend of the court duties shall be performed in accordance with the Elliott-Larsen civil rights act, 1976 PA 453, MCL 37.2101 to 37.2804.

(8) An office of the friend of the court shall be open to the public making available all of the office's services not less than 20 hours each month during nontraditional office hours. This subsection does not require an office of the friend of the court to be open for a greater number of hours than it was required to be open before January 1, 1997.

Sec. 4. (1) Each county may establish a citizen friend of the court advisory committee composed of the following members, each of whom is a resident of the county:

(a) A noncustodial parent.

(b) A custodial parent.

(c) An attorney who engages primarily in family law practice.

(d) The county sheriff or the sheriff's designee.

(e) The prosecuting attorney or the prosecuting attorney's designee.

(f) The director of the family independence agency or the director's designee.

(g) A mental health professional who provides family counseling.

(h) Two members of the general public who are not serving on the committee in a category listed in subdivisions (a) to (g).

(2) Except for a member serving under subsection (1)(d), (e), or (f), and except as otherwise provided in this subsection, the county board shall appoint the citizen advisory committee members. In a county organized under 1966 PA 293, MCL 45.501 to 45.521, the county executive shall appoint the citizen advisory committee members with the advice and consent of the county board, and shall exercise the other powers and duties prescribed for the county board by this section in regard to the citizen advisory committee.

(3) A vacancy on the citizen advisory committee shall be filled for the remainder of the term in the same manner as the position was originally filled. The county board shall attempt to compose the citizen advisory committee so that its membership reflects the ethnic, racial, and gender distribution of the community that it serves.

(4) Committee members shall serve renewable terms of 3 years for each time appointed. Members appointed under subsection (1)(a), (b), (c), (g), and (h) shall serve initial terms of 3 years for 2 members, 2 years for 2 members, and 1 year for 2 members to allow 1/3 of those members to be appointed to the committee each year.

(5) A citizen advisory committee shall elect 1 of its members as chairperson and 1 as vice-chairperson.

(6) A citizen advisory committee shall honor any guidelines established by the state court administrative office for a friend of the court office pertaining to citizen advisory committees.

(7) Except for a member serving under subsection (1)(d), (e), or (f), a citizen advisory committee member shall not serve more than 2 consecutive terms. After completion of 2 consecutive terms, a former member shall not be reappointed to serve during the 2 years immediately following the end of his or her previous term.

Sec. 4a. (1) A citizen advisory committee is advisory only. Once established, the citizen advisory committee shall do all of the following:

(a) Meet not less than 6 times annually. The citizen advisory committee shall keep minutes of each meeting and submit a copy to the county board.

(b) Review and investigate grievances concerning the friend of the court as provided in section 26.

(c) Advise the court and the county board on the office of the friend of the court's and the friend of the court's duties and performance, and on the community's needs relating to the office's services.

(d) At the end of each calendar year, submit an annual report of its activities to the county board, court, state court administrative office, governor's office, and standing senate and house committees and appropriations subcommittees that are responsible for legislation concerning the judicial branch.

(2) A citizen advisory committee chairperson may appoint subcommittees comprised of 3 committee members to review, investigate, and hold hearings on grievances submitted to the citizen advisory committee as provided in section 26. The chairperson may serve on a grievance subcommittee and shall attempt to appoint members so that each member has an equal opportunity for subcommittee participation.

(3) Except as otherwise provided in this subsection, a citizen advisory committee meeting is open to the public. A member of the public attending a meeting shall be given a reasonable opportunity to address the committee on an issue under consideration by the committee. If a vote is to be taken by the citizen advisory committee, the opportunity to address the committee shall be given before the vote is taken. A citizen advisory committee meeting, including a meeting of a subcommittee appointed under subsection (2), is not open to the public while the committee or subcommittee is reviewing, investigating, or holding a hearing on a grievance as provided in section 26.

Sec. 7. (1) The chief judge may designate a referee as provided by the Michigan court rules.

(2) A referee may do all of the following:

(a) Hear all motions in a domestic relations matter, except motions pertaining to an increase or decrease in spouse support, referred to the referee by the court.

(b) Administer oaths, compel the attendance of witnesses and the production of documents, and examine witnesses and parties.

(c) Make a written, signed report to the court containing a summary of testimony given, a statement of findings, and a recommended order; or make a statement of findings on the record and submit a recommended order.

(d) Hold hearings as provided in the support and parenting time enforcement act, 1982 PA 295, MCL 552.601 to 552.650. The referee shall make a record of each hearing held.

(e) Accept a voluntary acknowledgment of support liability, and review and make a recommendation to the court concerning a stipulated agreement to pay support.

(f) Recommend a default order establishing, modifying, or enforcing a support obligation in a domestic relations matter.

(3) If ordered by the court, or if stipulated by the parties, a referee shall make a transcript, verified by oath, of each hearing held. The cost of preparing a transcript shall be apportioned equally between the parties, unless otherwise ordered by the court.

(4) The court shall hold a de novo hearing on any matter that has been the subject of a referee hearing, upon the written request of either party or upon motion of the court. The request of a party shall be made within 21 days after the recommendation of the referee is made available to that party.

(5) A hearing is de novo despite the court's imposition of reasonable restrictions and conditions to conserve the resources of the parties and the court if the following conditions are met:

(a) The parties have been given a full opportunity to present and preserve important evidence at the referee hearing.

(b) For findings of fact to which the parties have objected, the parties are afforded a new opportunity to offer the same evidence to the court as was presented to the referee and to supplement that evidence with evidence that could not have been presented to the referee.

(6) Subject to subsection (5), de novo hearings include, but are not limited to, the following:

(a) A new decision based entirely on the record of a previous hearing, including any memoranda, recommendations, or proposed orders by the referee.

(b) A new decision based only on evidence presented at the time of the de novo hearing.

(c) A new decision based in part on the record of a referee hearing supplemented by evidence that was not introduced at a previous hearing.

(7) Pending a de novo hearing, the referee's recommended order may be presented to the court for entry as an interim order as provided by the Michigan court rules. The interim order shall be served on the parties within 3 days and shall be subject to review as provided under this subsection.

Sec. 7a. (1) A copy of each report, recommendation, and any supporting documents or a summary of supporting documents prepared or used by the friend of the court or an employee of the office shall be made available to the attorney for each party and to each of the parties before the court takes any action on a recommendation by the office.

(2) In a child custody dispute, the parties shall be informed of whether a custody preference expressed by the child was considered, evaluated, and determined by the judge, referee, or employee of the friend of the court. The parties shall not be informed of the preference expressed by the child under section 3 of the child custody act of 1970, 1970 PA 91, MCL 722.23.

(3) If a guardian is appointed for a child, the guardian shall be informed whether a custody preference expressed by the child was considered, evaluated, and determined by the judge, referee, or employee of the friend of the court, and, if so, the preference expressed.

(4) The manner and time within which the information required under this section is made available shall be determined by the Michigan court rules.

Sec. 9. (1) Except as otherwise provided in subsections (2) and (3), after a support order is entered in a friend of the court case, the office shall receive each payment and service fee under the support order; shall, not less than once each month, record each support payment due, paid, and past due; and shall disburse each support payment to the recipient of support within 14 days after the office receives each payment or within the federally mandated time frame, whichever is shorter.

(2) An office shall receive support order and service fee payments, and shall disburse support, as required by subsection (1) until the state disbursement unit implements support and fee receipt and disbursement for the cases administered by that office. At the family independence agency's direction and in cooperation with the SDU, an office shall continue support and fee receipt and support disbursement to facilitate the transition of that responsibility to the SDU as directed in, and in accordance with the transition schedule developed as required by, the office of child support act, 1971 PA 174, MCL 400.231 to 400.240.

(3) After SDU support and fee receipt and disbursement is implemented in a circuit court circuit, the office for that court may accept a support payment made in cash or by cashier's check or money order. If the office accepts such a payment, the office shall transmit the payment to the SDU and shall inform the payer of the SDU's location and the requirement to make payments through the SDU.

(4) Promptly after November 3, 1999, each office shall establish and maintain the support order and account records necessary to enforce support orders and necessary to record obligations, support and fee receipt and disbursement, and related payments. Each office shall provide the SDU with access to those records and shall assist the SDU to resolve support and fee receipt and disbursement problems related to inadequate identifying information.

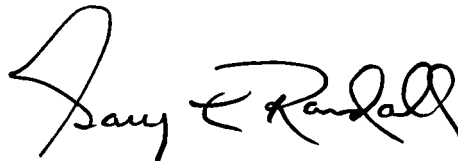
(5) The office shall provide annually to each party, without charge, 1 statement of account upon request. Additional statements of account shall be provided at a reasonable fee sufficient to pay for the cost of reproduction. Statements provided under this subsection are in addition to statements provided for administrative and judicial hearings.

(6) The office shall initiate and carry out proceedings to enforce an order in a friend of the court case regarding custody, parenting time, health care coverage, or support in accordance with this act, the support and parenting time enforcement act, and supreme court rules.

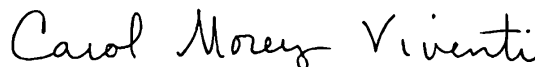
(7) Upon request of a child support agency of another state, the office shall initiate and carry out certain proceedings to enforce support orders entered in the other state without the need to register the order as a friend of the court case in this state. The order shall be enforced using automated administrative enforcement actions authorized under the support and parenting time enforcement act.

Enacting section 1. This amendatory act takes effect October 1, 2004.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor