

## **SUPPORT ARREARAGE**

### **Senate Bill 757 (Substitute H-2) First Analysis (2-22-00)**

**Sponsor: Sen. Bill Bullard, Jr.  
House Committee: Family and Civil Law  
Senate Committee: Families, Mental Health  
and Human Services**

#### ***THE APPARENT PROBLEM:***

Under the Support and Parenting Time Enforcement Act, if a person is ordered to pay support and fails or refuses to do so, and if an order of income withholding is inapplicable or ineffective, a recipient of support or the Friend of the Court (FOC) office may file a petition for an order to show cause why the payer should not be held in contempt for his or her failure to pay. If the payer does not appear in response to the show cause order, the court may issue a bench warrant requiring that the payer be brought before the court without unnecessary delay to answer and plead to that neglect or refusal. The act does not require that a bench warrant include any requirement for payment of a bond upon arrest, but a payer who is arrested under this provision and who cannot be brought before the court within 24 hours may pay a sum of money to guarantee that he or she will return for the hearing. The amount is determined by the court and stated in the bench warrant. The required sum may not exceed the amount of support arrearage plus costs that may be ordered if the payer fails to appear. Some people feel that these provisions may be insufficient to encourage delinquent payers to make good on their financial responsibility under a support order and that a bond should be required in the amount of the support arrearage.

#### ***THE CONTENT OF THE BILL:***

The bill would amend the Support and Parenting Time Enforcement Act to specify that a bench warrant issued under the act for a delinquent payer of support would have to require the payer to deposit a bond or cash in the amount of the arrearage. However, a court could set a lower amount if it determined that requiring the full arrearage would be unjust or inappropriate and set forth the reasons for its decision in writing or on the record. At the court's discretion, costs for failure to appear could be included in the amount required.

The bill would require that a bond or cash in the amount stated on the bench warrant be posted, instead

of a "sum of money" set by the court, in order for a payer to be released if he or she cannot be brought before the court within 24 hours. Unless the payer deposited a bond or cash in the amount and manner required, he or she would have to remain in custody until the time of the hearing.

MCL 552.631 and 552.632

#### ***HOUSE COMMITTEE ACTION:***

As passed by the Senate, the bill would have required that a bench warrant issued under the act for a delinquent payer of support require the payer to deposit a bond in the amount of the arrearage.

The House Committee on Family and Civil Law adopted a substitute for the bill, Substitute H-2. In addition to reflecting changes in the underlying language of the statute put in place by the enactment of Public Act 160 of 1999 (House Bill 4818), the committee substitute made the following changes to the Senate-passed bill:

- The committee substitute would allow for the payment of cash, as an alternative to a bond, in the amount of the arrearage.
- The committee substitute would add language allowing the court to set the required deposit at a lower amount if the court determined from the facts of the case that requiring bond or cash at the full amount of the arrearage would be unjust or inappropriate. This provision would require the court to set forth in writing or on the record the reasons for such a determination. At its own discretion, the court could add costs to the amount of the required deposit.

**FISCAL IMPLICATIONS:**

According to the Senate Fiscal Agency, the bill would have an indeterminate fiscal impact on state and local governments. (10-15-99)

**ARGUMENTS:****For:**

If a person subject to a support order is delinquent in his or her payment to the extent that he or she is brought before a court on a bench warrant, the court should hold that person responsible for the amount that he or she owes. When a delinquent payer is released on a bond for far less than the amount owed, he or she may disappear and it could be months or even years before that person is found again. Meanwhile, the amount owed remains unpaid and continues to grow. If a payer's bond is set at the amount of the arrearage, the court can collect the amount owed to the support recipient before releasing the payer. The bill would ensure a delinquent payer's cooperation by requiring that he or she pay off the arrearage he or she owes before he or she may be released.

**Against:**

The bill may have many unintended consequences. One of the main problems stems, according to testimony before the House Committee on Family and Civil Law, from the apparent inaccuracy inherent in the FOC records. Reportedly, many people have been victimized by mistakes in Friend of the Court records. Among the allegations raised are charges that arrearages have been assigned to the wrong person and that payment recording errors have created non-existent arrearages. Opponents of the bill also question the constitutionality of legislation that would require a payer accused of being delinquent in his or her payment of support to choose between paying an amount he or she does not believe is owed and staying in jail until a hearing can be set.

Another potential problem is the risk that the bill will have the effect of creating a "debtor's prison" situation for allegedly delinquent payers. If a payer lacks the financial means to pay off an arrearage (whether the amount is actually owed or not), he or she will have to remain in jail until a hearing can be held. It may be argued that he or she could appear at the show cause hearing to explain why he or she hasn't paid rather than wait until he or she is arrested, but many times payers may be unaware of an alleged delinquency, especially if the delinquency is a result of a bookkeeping error. If the payer is unable to get out of jail until a hearing is

held, he or she may lose his or her job -- placing the payer in downward spiral where he or she is even less able to pay support and thereby more likely to be jailed in the future for non-payment.

Another concern stems from the fact that bill could be seen as interfering with Article III of the state constitution, which provides for the separation of powers. Setting bond amounts should be within the authority of the courts; the legislature, by setting those amounts, could be seen as usurping the authority that should be left to judges.

It is also argued that the costs of incarcerating what could amount to tens of thousands of delinquent payers could have a potentially drastic fiscal impact on the counties of this state. (According to the State Court Administrative Office, 49,441 Friend of the Court bench warrants, the majority of which were related to support issues, were issued in 1998.) Since it is likely that many of the delinquent payers who are arrested on bench warrants for failure to pay will not be able to pay the entire amount owed, they will have to remain in jail until the court can hear their case. The longer a person has to stay in jail, the more it will cost the county that has to hold him or her. This could also lead to a serious shortage of jail space, particularly in smaller counties.

Finally, the bill fails to deal with any of the serious problems regarding how child and spousal support issues are managed in this state. Issues like imputed income, excessive support requirements that are based on assumed costs that may or may not exist in all situations, and record keeping problems, to name a few, should be dealt with before adding another punitive measure to the act. If some of these issues were improved, perhaps there would be fewer delinquent payers to punish.

**POSITIONS:**

The Family Independence Agency supports the bill. (2-11-00)

The Family Law Section of the State Bar of Michigan supports the bill. (2-17-00)

The Michigan Judges Association is neutral on the bill. (2-17-00)

Capitol Area Fathers for Equal Rights opposes the bill. (2-11-00)

DADS of Michigan opposes the bill. (2-15-00)

The Friend of the Court Association has no official position on the bill at this time. (2-22-00)

Analyst: W. Flory

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.