



**House
Legislative
Analysis
Section**

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**CASH BOND FOR CHILD SUPPORT
ARREARAGE**

**House Bill 5206 as passed by the House
First Analysis (1-7-02)**

**Sponsor: Rep. Gretchen Whitmer
Committee: Family and Children
Services**

THE APPARENT PROBLEM:

Under the Support and Parenting Time Enforcement Act, if a person is ordered to pay child support and fails or refuses to do so, and if an order withholding that person's income is inapplicable or unsuccessful, the person may be ordered to show cause before a court. If the person fails to appear, the court may issue a bench warrant requiring that the person be brought before the court without any unnecessary delay.

The act requires that if a bench warrant is issued, and the person is arrested, the person remains in custody unless he or she deposits a bond or cash of at least \$500 or 25 percent of the arrearage, whichever is greater. If a person arrested under a bench warrant cannot be brought before the court within 24 hours, the payer may recognize for his or her appearance (that is, obligate himself or herself to appear) by leaving with the sheriff or deputy in charge of the county jail a bond or cash in an amount determined by the court.

If, after posting a bond or cash, the payer fails to appear before the court, fails to submit to the jurisdiction of the court, and fails to comply with an order of the court, the bond or cash deposited is transmitted to the Friend of the Court (FOC) or the state disbursement unit for payment of the arrearage to the recipient of support and for court costs. In addition, the act also requires a court to hold a "show cause" hearing within 48 hours after the arrest.

Many believe that because the law allows a debtor to post a bond, rather than cash, child support recipients continue to be without much needed support. A bond is intended to ensure that a defendant will appear before a court. If the person does not appear, that money is forfeited. When a payer who posts a bond appears before a court, the bondsman providing the bond receives his or her money back, but no money is applied to the child support arrearage. Cash, on the other hand allows a person to be released from

custody without an appearance requirement. In addition, many believe that the time period in which to hold a hearing—48 hours after the arrest—is not long enough. Often arrests are made on Fridays or in jurisdictions other than the one issuing the bench warrant, thereby making it very difficult to hold a hearing within 48 hours after the arrest.

THE CONTENT OF THE BILL:

The bill would amend the Support and Parenting Time Enforcement Act so that a person arrested under a bench warrant would only be permitted to provide cash in the amount stated on the bench warrant (at least \$500 or 25 percent of the arrearage, whichever is greater), in order to be released from custody.

In addition, the bill would increase the time period for holding a show cause hearing (if a payer does not provide cash and remains in custody) from within 48 hours after the arrest to within 72 hours after the arrest. The bill would also add that if a payer were arrested after a bench warrant were issued, the court could order the payer to attend a fatherhood, motherhood, or parental responsibility class. The Friend of the Court with the appropriate jurisdiction could monitor the payer's class attendance.

The bill would also define "cash" to mean money or the equivalent of money, such as a money order, cashier's check, or negotiable check or a payment by debit or credit card, which equivalent is accepted as cash by the agency that employs the officer accepting the payment.

MCL 552.602 et al.

House Bill 5206 (1-7-02)

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal impact on the state or on local units of government. (1-7-02)

ARGUMENTS:***For:***

Current law allows a person to provide a surety bond, rather than a cash bond, to ensure his or her appearance. When a person appears before the court, a surety bond does not provide any funds to be applied to the child support arrearage. Child support payments are funds that help provide food, clothing, and other benefits for children. The bench warrant process takes place only after a negligent debtor accumulates several arrearages and is given ample opportunity to alleviate the problem, but continues to not pay the required child support. Often, the money involved in these cases can be substantial. By merely posting a surety bond, the delinquent payer often does not take responsibility for his or her financial obligations, thereby not supporting his or her children, who are the ultimate beneficiaries of the support. Cash bonds, on the other hand, can be used to go to the Friend of the Court and be applied to the arrearage.

Against:

Allowing a person to only provide a cash bond can result in greater support arrearages. In many instances, a person fails to pay child support, not because he or she chooses not to, but rather because he or she cannot afford to do so, or is simply unaware of the arrearage. If a person cannot provide the requisite amount of cash, he or she remains in custody. As a result, the person may lose his or her job, thereby making him or her unable to keep up with current support requirements, let alone make up the arrearage. In addition, because many more delinquent payers may not be able to afford the cash bond in order to be released from custody, already crowded jails could see further population increases. This will place a greater financial burden on the counties retaining individuals who fail to pay child support. Rather than placing greater burdens on the delinquent payer, pro-active steps should be taken to prevent child support arrearages.

For:

The 48-hour time period for a court appearance and hearing is not long enough. Due to the fact that many arrests are made outside of the jurisdictions that issue the bench warrant, it is difficult to transport a person

from the arresting jurisdiction to the court that issued the bench warrant within the time constraints. In addition, the current law does not allow nearly enough time to provide court records or testimony from the Friend of the Court. The current time requirement does not allow the payee enough time to ready him or herself for the hearing. The failure to hold the hearing has resulted in the release of debtors without either a bond or any payment to the court. In some instances, this has resulted in additional periods of freedom for people for whom there might have been an active bench warrant outstanding for a significant period of time.

POSITIONS:

The Michigan Friend of the Court Association supports the bill. (12-19-01)

Dads of Michigan supports the bill. (12-20-01)

Analyst: M. Wolf

■ 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.