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Senate Bill 521 (as enacted)

PUBLIC ACT 378 of 2014

Sponsor: Senator Judy K. Emmons

Senate Committee: Families, Seniors and Human Services

House Committee: Families, Children, and Seniors

Date Completed: 2-23-15

CONTENT

The bill amends the Support and Parenting Time Enforcement Act to do the following:

- **Allow a recipient of support or the Friend of the Court to commence a civil contempt proceeding as provided by Michigan Supreme Court rule.**
- **Modify the actions a court may take if a payer fails to appear at a contempt proceeding.**
- **Allow the court, upon finding a payer in contempt, to apply any enforcement remedy authorized under the Act or the Friend of the Court Act for nonpayment of support if the payer's arrearage qualifies.**
- **Allow the court to find a payer in contempt if he or she is in arrears and 1) has the capacity to pay but fails or refuses to do so; 2) could have the capacity to pay by the exercise of diligence but fails or refuses to do so; or 3) has failed to obtain a source of income and participate in a work activity.**
- **Allow a payer of support for whom a bench warrant has been issued to voluntarily appear at the Friend of the Court to answer the warrant.**
- **Allow a court that enters a commitment order to 1) stay the order conditioned on the payer's compliance with its conditions; 2) stay the order and require the payer to be brought before the court for further proceedings if he or she fails to satisfy a condition of the order; 3) give credit toward the payer's potential maximum confinement for compliance with the order; and/or 4) incarcerate the payer with the privilege of leaving to comply with the conditions of the order.**
- **Allow the court to issue a bench warrant for the payer's arrest if the court stays a commitment order and the payer fails to satisfy the conditions of the order.**
- **Permit a court to assess the payer the actual reasonable expense of the Friend of the Court in bringing an enforcement action for noncompliance with a spousal support order.**

The bill also repeals Section 35 of the Support and Parenting Time Enforcement Act, which authorizes a court to find a payer in contempt, and issue certain orders, if he or she is in arrears and fails or refuses to pay support.

The bill will take effect on March 17, 2015.

Support Order Contempt Proceedings

If a person fails to pay on or refuses to obey a support order, the recipient of support or the Office of the Friend of the Court may commence a civil contempt proceeding by filing in the circuit court a petition for an order to show cause why the delinquent payer should not be

held in contempt. If the payer fails to appear in response to an order to show cause, the court must take one or more actions that are described in the Act.

Under the bill, instead, a recipient or the Friend of the Court may commence a civil contempt proceeding as provided by Michigan Supreme Court rule. If the payer fails to appear at the hearing, the court must take one or more of the actions described in the Act as the court considers appropriate given the information available at the hearing.

Currently, the court must do one or more of the following:

- Find the payer in contempt for failure to appear.
- Find the payer in contempt for the reasons stated in the show cause order.
- Apply an enforcement remedy authorized under the Act or the Friend of the Court Act for nonpayment of support, including suspending the payer's occupational license, driver license, or recreational or sporting license.
- Issue a bench warrant for the payer's arrest.
- Adjourn the hearing.
- Dismiss the order to show cause if the court determines the payer is not in contempt.
- Enter an order that a law enforcement agency render any vehicle owned by the payer temporarily inoperable by booting or a similar method.
- Place the payer under the supervision of the Office of the Friend of the Court for a term set by the court, with reasonable conditions, including participating in a parenting program, drug or alcohol counseling, or a work program, seeking employment, and/or entering into an arrearage payment plan.

Under the bill, instead, the court must do one or more of the following:

- Find the payer in contempt for failure to appear.
- Find the payer in contempt under Section 33 (for failure or refusal to pay support).
- Issue a bench warrant for the payer's arrest.
- Adjourn the contempt proceeding.
- Dismiss the contempt proceeding if the court determines that the payer is not in contempt.

If the court issues a bench warrant, it may enter an order that a law enforcement agency render any vehicle owned by the payer temporarily inoperable by booting or a similar method.

Bench Warrant: Voluntary Appearance

Under the bill, if a bench warrant has been issued for a payer of support, the payer may voluntarily appear at the Office of the Friend of the Court to answer the bench warrant. The payer must either: 1) post the bond set by the court in the bench warrant; or 2) be taken promptly before the court for further proceedings.

If the payer posts a bond, the Friend of the Court or the court clerk must give the payer a receipt that directs the payer to appear before the court at a specific time and date. The Friend of the Court or the court clerk must notify a local law enforcement agency to remove the bench warrant from the Law Enforcement Information Network as provided in the C.J.I.S. Policy Council Act.

Finding of Contempt: Payer in Arrears

Currently, the court may find a payer in contempt if the court finds that the payer is in arrears and has the capacity to pay out of currently available resources all or some of the amount due under the support order (referred to below as failure to pay).

Under the bill, the court also may find the payer in contempt if one or both of the following apply:

- The court is satisfied that, by the exercise of diligence the payer could have the capacity to pay all or some of the amount due and fails or refuses to do so.
- The payer has failed to obtain a source of income and has failed to participate in a work activity after referral by the Friend of the Court.

(These grounds for a finding of contempt are referred to below as failure to work.)

Currently, upon finding a payer in contempt, the court may enter an order that does one or more of the following:

- Commits the payer to the county jail or an alternative to jail.
- Commits the payer to the county jail or an alternative to jail with the privilege of leaving for the purpose of going to and returning from his or her place of employment.
- Commits the payer to a penal or correctional facility in Michigan that is not operated by the Department of Corrections.

Under the bill, rather than committing the payer to jail or an alternative to jail with the privilege of leaving for the purpose of employment, the court may make such a commitment with the privilege of leaving for the purpose of allowing the payer to satisfy the terms and conditions imposed under Section 37 (described below) if the payer's release is necessary for him or her to comply with those terms and conditions.

The bill also allows the court to apply any other enforcement remedy authorized under the Support and Parenting Time Enforcement Act or the Friend of the Court Act for the nonpayment of support if the payer's arrearage qualifies and the evidence supports applying that remedy.

Currently, the court also may condition the suspension of the payer's occupational license, driver license, or recreational or sporting license upon noncompliance with an order for payment of the arrearage in one or more scheduled installments, if the support payment arrearage is greater than the amount of periodic support payments payable for two months. If the court enters this order and the payer fails to comply with the arrearage payment schedule, after notice and an opportunity for a hearing, the court must order the suspension of the license. The bill deletes these provisions (although other provisions of the Act allow the suspension of a license if particular criteria are met).

Order of Commitment

Section 37 of the Support and Parenting Time Enforcement concerns an order of commitment entered when a payer is found in contempt for failure or refusal to pay support.

Currently, the order must state the amount of the arrearage under the support order and the amount to be paid by the payer in order to be released from the order of commitment; that amount may not be greater than the payer's currently available resources as found by the court. Under the bill, this applies if an order of commitment is entered for failure to pay. If an order of commitment is entered for failure to work, it must state the conditions that constitute diligence in order to be released from that order, and those conditions must be within the payer's ability to perform.

The bill provides that, notwithstanding the length of commitment imposed, the court may release an unemployed payer who is committed to a county jail and who finds employment if either of the following applies:

- The payer is self-employed, completes two consecutive weeks at his or her employment, and makes a support payment as required by the court.
- The payer is employed and completes two consecutive weeks at his or her employment and an order of income withholding is effective.

Also, under the bill, if the court enters a commitment order due to the payer's failure to work, and the court finds that the payer by performing the conditions set forth in the order will have the ability to pay specific amounts, the amount may establish a specific amount for the payer to pay and do any of the following:

- Stay the commitment order conditioned upon the payer's making the specified payments.
- Stay the commitment order and order that, upon the payer's default in making a specified payment, he or she must be brought before the court for further proceedings in connection with the contempt proceedings,
- Give credit toward the payer's potential maximum commitment for each specified payment made in compliance with the commitment order.

The bill also authorizes the court to do any of the following if it enters a commitment order for failure to work:

- Stay the order conditioned upon the payer's compliance with the conditions set forth in it.
- Stay the order and order that upon the default to satisfy a condition of the order, the payer must be brought before the court for further proceedings in connection with the contempt proceedings.
- Give credit toward the payer's potential maximum commitment for complying with conditions in the order.
- Incarcerate the payer with the privilege of leaving jail to comply with the conditions in the order.

In either case, if the payer is brought before the court for further proceedings, they may include committing the payer for the number of days that he or she would have been committed if the court had not stayed the order.

The bill also allows the court to issue a bench warrant for the payer's arrest, requiring the payer to be brought before the court for further proceedings in connection with his or her contempt, if the court stays a commitment order (entered for failure or refusal to pay support), the payer fails to satisfy the conditions of the order, and the Friend of the Court brings that fact to the court's attention.

Parenting Time Contempt Proceedings

Under the Act, if another procedure for resolving a parenting time dispute is unsuccessful, the Friend of the Court must commence a civil contempt proceeding by filing with the circuit court a petition for an order to show cause why either parent who has violated a parenting time order should not be held in contempt. The Friend of the Court must notify the parent who is the subject of the petition, and the notice must include information specified in the Act.

The bill, instead, requires the Friend of the Court to commence a civil contempt proceeding as provided by the Supreme Court rule, if another parenting time dispute resolution procedure is unsuccessful. Either in the notice or by reference to another document attached to it, the contempt proceeding notice must include a statement of the allegations upon which the dispute is based, in addition to the information specified in the Act.

Currently, if a parent fails to appear in response to an order to show cause, the court may issue a bench warrant requiring the parent to be brought before the court to show cause why he or she should not be held in contempt. The court must order the parent to pay certain

costs and, if the parent has acted in bad faith, may order him or her to pay a sanction. Under the bill, these provisions apply if a parent fails to appear in response to a contempt proceeding.

The bill also permits the court, if it issues a bench warrant, to enter an order that a law enforcement agency render any vehicle owned the party temporarily inoperable, by booting or a similar method, subject to release on deposit of an appropriate bond.

Spousal Support Orders: Friend of the Court Expense Assessments

Under the bill, in addition to the other remedies available to the court under the Act, a court may assess the payer the actual reasonable expense of the Friend of the Court in bringing any enforcement action for noncompliance with a spousal support order that is not eligible for funding under Title VI-D of the Social Security Act (Temporary Assistance for Needy Families).

Change of Address

Except as otherwise provided, service of notices or other papers under the Support and Parenting Time Enforcement Act and under the Friend of the Court Act must be made by first-class mail, postage prepaid. If mail is returned as undeliverable from that address, the Friend of the Court may change the address according to guidelines established by the State Court Administrative Office or the Supreme Court.

The bill also permits the Friend of the Court to change an address according to those guidelines if the Department of Human Services or the Friend of the Court determines through use of an automated Federal database that mail is not deliverable to the address.

Repeal

Section 35 of the Support and Parenting Time Enforcement Act provides that a court may find a payer in contempt if the payer is in arrears and fails or refuses to pay support and has the ability to do so, or has failed to find a source of income and participate in a work activity after referral by the Friend of the Court. Section 35 requires the court, upon finding the payer in contempt, to order him or her to participate in a work activity, and permits the court to commit the payer to jail; suspend an occupational, driver, or recreational license; order the payer to participate in a community corrections program; order the payer to pay a fine; and/or place the payer under the supervision of the Friend of the Court office with certain conditions. Section 35 also contains provisions regarding the release of an unemployed payer who finds employment.

The bill repeals Section 35 (and, as described above, re-enacts some of its provisions with modifications).

MCL 552.631 et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill will have a minor positive impact on local courts because it may reduce administrative costs associated with contempt proceedings. Also, the courts may be reimbursed for actual and reasonable expenses in bringing an enforcement action for noncompliance with a spousal support order, which will result in a minor positive impact.

Fiscal Analyst: John Maxwell

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.