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Senate Bill 521 (as introduced 9-19-13)
Sponsor: Senator Judy K. Emmons
Committee: Families, Seniors and Human Services

Date Completed: 10-23-13

CONTENT

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

- Allow a recipient of support or the Office of the Friend of the Court to commence a civil contempt proceeding as provided by Michigan Supreme Court rule.**
- Modify the procedure by which a Friend of the Court must commence a civil contempt proceeding for a dispute regarding a parenting time order.**
- Allow an order of commitment to be for consecutive days, specific days, or a combination of the two, and be conditioned on specific amounts being paid by specific dates.**
- Allow a payer of support for whom a bench warrant had been issued to voluntarily appear at the Friend of the Court to answer the warrant.**
- Require a court to 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.**

Support Order & Parenting Time 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 could commence a civil contempt proceeding as provided by Michigan Supreme Court rule. If the payer failed to appear at the hearing, the court would have to take one or more of the actions described in the Act as the court considered appropriate given the information that was available at the hearing.

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

Under the bill, the Friend of the Court instead would have to schedule a hearing before the court. The hearing notice could include a subpoena as determined under Michigan Supreme Court rules, be made part of an order to appear, or be accompanied by a separate subpoena. A hearing notice would have to include, either in the notice or by reference to another document that was attached to it, a statement of the allegations at issue and the information currently specified in the Act.

Finding of Contempt

One of the actions that a court must choose from if a payer fails to appear at a hearing is to find the payer in contempt for the reasons stated in the motion for the show cause hearing. Under the bill, instead, the court could find the payer in contempt under Section 33 or 35.

Section 33 allows a court to find a payer in contempt if it finds that the payer is in arrears and if the court is satisfied that the payer has the capacity to pay all or some portion of the amount due out of his or her currently available resources. Absent evidence to the contrary, the court must presume that the payer has resources equal to four weeks of payments under the support order. The bill would refer to one month instead of four weeks.

Section 35 allows a court to find a payer in contempt if it finds that the payer is in arrears and either: 1) the court is satisfied that by the exercise of diligence the payer could have the capacity to pay all or some portion of the amount due under the order and that the payer fails or refuses to do so; or 2) 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.

Order of Commitment

If a court chooses an order of commitment as a remedy under Section 33 or 35, the order must be entered only if other remedies appear unlikely to correct the payer's failure or refusal to pay support. A commitment must continue until the amount ordered to be paid is paid, but cannot exceed 45 days for the first finding of contempt or 90 days for a second finding.

Under the bill, an order of commitment could be for consecutive days, specific days, or a combination of the two, and be conditioned on specific amounts being paid by specific dates.

Bench Warrants

Under the bill, if a bench warrant were issued for a payer of support, the payer could voluntarily appear at the Office of the Friend of the Court to answer the bench warrant. The payer would have to 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 posted a bond, the Friend of the Court or the court clerk would have to give the payer a receipt that substantially conformed to the Act's requirements for a receipt of cash performance on a bond. The receipt would have to direct the payer to appear before the court at a specific time and date. The Friend of the Court or the court clerk would have to 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.

The Act provides that if a parent fails to appear in response to an order to show cause, the court may issue a bench warrant. Under the bill, if a parent failed to appear in response to a subpoena or an order to appear, the court could issue a bench warrant.

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 would have to 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.

MCL 552.631 et al.

Legislative Analyst: Glenn Steffens

FISCAL IMPACT

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

Fiscal Analyst: Dan O'Connor

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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.