

SENATE BILL No. 521

September 19, 2013, Introduced by Senators EMMONS and COLBECK and referred to the Committee on Families, Seniors and Human Services.

A bill to amend 1982 PA 295, entitled "Support and parenting time enforcement act," by amending sections 31, 32, 33, 37, 44, and 45 (MCL 552.631, 552.632, 552.633, 552.637, 552.644, and 552.645), sections 31, 33, 44, and 45 as amended by 2009 PA 193, section 32 as amended by 2002 PA 567, and section 37 as amended by 1999 PA 160, and by adding section 36.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 31. (1) If a person is ordered to pay support under a
2 support order and fails or refuses to obey and perform the order,
3 and if an order of income withholding is inapplicable or
4 unsuccessful, a recipient of support or the office of the friend of
5 the court may commence a civil contempt proceeding ~~by filing in the~~
6 ~~circuit court a petition for an order to show cause why the~~
7 ~~delinquent payer should not be held in contempt.~~ **AS PROVIDED BY**

1 **SUPREME COURT RULE.** If the payer fails to appear ~~in response to an~~
2 ~~order to show cause,~~ **AT THE HEARING,** the court shall do 1 or more
3 of the following **AS THE COURT CONSIDERS APPROPRIATE GIVEN THE**
4 **INFORMATION AVAILABLE AT THE HEARING:**

5 (a) Find the payer in contempt for failure to appear.

6 (b) Find the payer in contempt ~~for the reasons stated in the~~
7 ~~motion for the show cause hearing.~~ **UNDER SECTION 33 OR 35.**

8 (c) Apply an enforcement remedy authorized under this act or
9 the friend of the court act for the nonpayment of support,
10 including suspending the payer's occupational license, driver's
11 license, or recreational or sporting license.

12 (d) Issue a bench warrant for the payer's arrest requiring
13 that the payer be brought before the court without unnecessary
14 delay for further proceedings. ~~in connection with the show cause or~~
15 ~~contempt proceedings.~~

16 (e) Adjourn the hearing.

17 (f) Dismiss the ~~order to show cause~~ **HEARING** if the court
18 determines that the payer is not in contempt.

19 (g) Enter an order that a law enforcement agency render any
20 vehicle owned by the payer temporarily inoperable, by booting or
21 another similar method, subject to release on deposit of an
22 appropriate bond.

23 (h) Place the payer under the supervision of the office for a
24 term fixed by the court with reasonable conditions, including 1 or
25 more of the following:

26 (i) Participating in a parenting program.

27 (ii) Participating in drug or alcohol counseling.

- 1 (iii) Participating in a work program.
2 (iv) Seeking employment.
3 (v) Participating in other counseling.
4 (vi) Continuing compliance with a current support or parenting
5 time order.
6 (vii) Entering into and compliance with an arrearage payment
7 plan.

8 (2) In a bench warrant issued under this section, the court
9 shall decree that the payer is subject to arrest if apprehended or
10 detained anywhere in this state and shall require that, upon
11 arrest, unless the payer deposits a cash performance bond in the
12 manner required by section 32, the payer shall remain in custody
13 until the time of the hearing. The court shall specify in the bench
14 warrant the cash performance bond amount. The court shall set the
15 cash performance bond at not less than \$500.00 or 25% of the
16 arrearage, whichever is greater. At its own discretion, the court
17 may set the cash performance bond at an amount up to 100% of the
18 arrearage and add to the amount of the required deposit the amount
19 of the costs the court may require under subsection (3). If a payer
20 is arrested on a felony warrant issued for a violation of section
21 165 of the Michigan penal code, 1931 PA 328, MCL 750.165, unless
22 the payer deposits a cash performance bond in the manner required
23 by section 32, the court shall require that, upon arrest, the payer
24 remain in custody until the time of the preliminary examination.
25 Upon notification that a payer who has an outstanding bench warrant
26 under this section has been arrested or arraigned on a felony
27 warrant for a violation of section 165 of the Michigan penal code,

1 1931 PA 328, MCL 750.165, the court may order that the bench
2 warrant be recalled.

3 (3) If the court issues a bench warrant under this section,
4 except for good cause shown on the record, the court shall order
5 the payer to pay the costs related to the hearing, the issuance of
6 the warrant, the arrest, and any later hearings. Those costs and
7 costs ordered for failure to appear under section 32 or 44 shall be
8 transmitted to the county treasurer for distribution as required in
9 section 2530 of the revised judicature act of 1961, 1961 PA 236,
10 MCL 600.2530.

11 Sec. 32. (1) If a bench warrant was issued and the payer is
12 arrested in the county that issued the warrant or another county in
13 this state, the payer shall remain in custody until there is a
14 hearing or the payer posts an adequate cash performance bond. If
15 the payer cannot post the cash performance bond in the amount
16 stated in the bench warrant, the payer is entitled to a hearing
17 within 48 hours, excluding weekends and holidays. The issues to be
18 considered at a hearing required under this subsection are limited
19 to the payer's answer to the ~~order to show cause~~ **CONTEMPT**
20 **PROCEEDING** and, if the payer was found in contempt, to further
21 proceedings related to the payer's contempt. If the hearing is not
22 held as provided in this subsection, the court shall review, based
23 on criteria prescribed in the Michigan court rules, the amount of
24 the cash performance bond to determine an amount that will ensure
25 the payer's appearance and shall set a date for a hearing to be
26 held under subsection (4) within the time limit prescribed in the
27 Michigan court rules.

1 (2) The officer receiving a cash performance bond under
2 subsection (1) shall give to the arrested payer a receipt for the
3 cash performance bond on a form substantially as follows:

4 "Date _____

5 Received from _____ (referred to in this
6 receipt as "the payer") to assure the performance of the payer's
7 support obligation. The payer shall appear for hearing at a date
8 noticed to the payer by the court at the following address:

9 _____
10 (address furnished by the payer for receipt of notice)

11 The hearing is for the payer to answer **TO** the ~~show cause order~~
12 **CONTEMPT PROCEEDING** and, if the payer was found in contempt, to
13 further proceedings related to the payer's contempt.

14 If the payer fails to appear at the time and place indicated
15 in the court's notice, fails to submit to the jurisdiction of the
16 court, and fails to abide by an order of the court, the cash
17 performance bond shall be transmitted to the friend of the court or
18 to the state disbursement unit for payment of the arrearage to the
19 recipient of support and of costs to the court. If the payer
20 appears at the time and place indicated above and the court
21 determines that the payer owes an arrearage under the support order
22 that is the basis of the ~~order to show cause~~ **CONTEMPT PROCEEDING** or
23 owes costs to the court, the cash performance bond deposited shall
24 be transmitted to the office of the friend of the court or to the
25 state disbursement unit for payment of the arrearage to the
26 recipient of support and of costs to the court. By depositing the
27 cash performance bond with the officer and accepting this receipt,

1 the recipient of this receipt waives a claim to the money under the
2 cash performance bond following its transmittal to the friend of
3 the court or to the SDU.

4 _____
5 Officer: _____ Dept.: _____".

6 (3) The officer receiving a cash performance bond shall in
7 turn deposit the bond received under this section with the clerk of
8 the court that issued the bench warrant. If the payer deposits a
9 cash performance bond under this section, the date for a hearing to
10 be held under subsection (4) shall be set within the time limit
11 prescribed in the Michigan court rules.

12 (4) At a hearing held after a payer deposits a cash
13 performance bond, the issues to be considered are limited to the
14 payer's answer to the ~~order to show cause~~ **CONTEMPT PROCEEDING** and,
15 if the payer was found in contempt, to further proceedings related
16 to the payer's contempt. On the basis of the hearing, the court by
17 order shall determine how much of the cash performance bond
18 deposited under this section is to be transmitted to the friend of
19 the court or to the SDU for payment to 1 or more recipients of
20 support and to the county treasurer for distribution as provided in
21 section 31. The balance, if any, shall be returned to the person
22 who posted the cash performance bond on the payer's behalf.

23 (5) If the payer fails to appear as required, the court shall
24 order the cash performance bond forfeited and transmit the bond to
25 the friend of the court or to the SDU for payment to 1 or more
26 recipients of support and to the county treasurer for distribution
27 as provided in section 31. In addition, the court may again issue a

1 bench warrant for the further appearance of the payer as provided
2 in section 31.

3 (6) The court may set aside a finding of contempt under
4 section 31 if the court finds, based on the hearing under this
5 section, that the payer is in compliance with the court's order or
6 for other good cause shown.

7 (7) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A
8 PAYER FOR WHOM A BENCH WARRANT HAS BEEN ISSUED MAY VOLUNTARILY
9 APPEAR AT THE OFFICE OF THE FRIEND OF THE COURT TO ANSWER THE BENCH
10 WARRANT. THE PAYER SHALL DO EITHER OF THE FOLLOWING:

11 (A) POST THE BOND SET BY THE COURT IN THE BENCH WARRANT.

12 (B) BE TAKEN PROMPTLY BEFORE THE COURT FOR FURTHER
13 PROCEEDINGS.

14 (8) IF A BOND IS POSTED UNDER SUBSECTION (7) (A), THE FRIEND OF
15 THE COURT OR THE CLERK OF THE COURT SHALL GIVE A RECEIPT TO THE
16 PAYER THAT SUBSTANTIALLY CONFORMS TO THE REQUIREMENTS OF SUBSECTION
17 (2). THE RECEIPT SHALL DIRECT THE PAYER TO APPEAR BEFORE THE COURT
18 AT A SPECIFIC TIME AND DATE. THE FRIEND OF THE COURT OR THE CLERK
19 OF THE COURT SHALL NOTIFY A LOCAL LAW ENFORCEMENT AGENCY TO REMOVE
20 THE BENCH WARRANT FROM THE LAW ENFORCEMENT INFORMATION NETWORK AS
21 PROVIDED BY THE C.J.I.S. POLICY COUNCIL ACT, 1974 PA 163, MCL
22 28.211 TO 28.215.

23 Sec. 33. (1) The court may find a payer in contempt if the
24 court finds that the payer is in arrears and if the court is
25 satisfied that the payer has the capacity to pay out of currently
26 available resources all or some portion of the amount due under the
27 support order. In the absence of proofs to the contrary introduced

1 by the payer, the court shall presume that the payer has currently
2 available resources equal to ~~4 weeks~~ **1 MONTH** of payments under the
3 support order. The court shall not find that the payer has
4 currently available resources of more than ~~4 weeks~~ **1 MONTH** of
5 payments without proof of those resources. ~~by the office of the~~
6 ~~friend of the court or the recipient of support.~~ Upon finding a
7 payer in contempt of court under this section, the court may
8 immediately enter an order that does 1 or more of the following:

9 (a) Commits the payer to the county jail or an alternative to
10 jail.

11 (b) Commits the payer to the county jail or an alternative to
12 jail with the privilege of leaving the jail or other place of
13 detention during the hours the court determines, and under the
14 supervision the court considers, necessary for the purpose of
15 allowing the payer to go to and return from his or her place of
16 employment.

17 (c) Commits the payer to a penal or correctional facility in
18 this state that is not operated by the state department of
19 corrections.

20 (d) If the payer holds an occupational license, driver's
21 license, or recreational or sporting license, conditions a
22 suspension of the payer's license, or any combination of the
23 licenses, upon noncompliance with an order for payment of the
24 arrearage in 1 or more scheduled installments of a sum certain. A
25 court shall not order the sanction authorized by this subdivision
26 unless the court finds that the payer has accrued an arrearage of
27 support payments in an amount greater than the amount of periodic

1 support payments payable for 2 months under the payer's support
2 order.

3 (e) Orders the payer to participate in a work activity. This
4 subdivision does not alter the court's authority to include
5 provisions in an order issued under this section concerning a
6 payer's employment or his or her seeking of employment as that
7 authority exists on August 10, 1998.

8 (f) If available within the court's jurisdiction, orders the
9 payer to participate in a community corrections program established
10 as provided in the community corrections act, 1988 PA 511, MCL
11 791.401 to 791.414.

12 (g) Except as provided by federal law and regulations, orders
13 the parent to pay a fine of not more than \$100.00. A fine ordered
14 under this subdivision shall be deposited in the friend of the
15 court fund created in section 2530 of the revised judicature act of
16 1961, 1961 PA 236, MCL 600.2530.

17 (h) Places the payer under the supervision of the office for a
18 term fixed by the court with reasonable conditions, including 1 or
19 more of the following:

20 (i) Participating in a parenting program.

21 (ii) Participating in drug or alcohol counseling.

22 (iii) Participating in a work program.

23 (iv) Seeking employment.

24 (v) Participating in other counseling.

25 (vi) Continuing compliance with a current support or parenting
26 time order.

27 (vii) Entering into and compliance with an arrearage payment

1 plan.

2 (2) If the court enters an order under subsection (1)(d) and
3 the payer fails to comply with the arrearage payment schedule,
4 after notice and opportunity for a hearing, the court shall order
5 suspension of the payer's license or licenses with respect to which
6 the order under subsection (1)(d) was entered and shall proceed
7 under section 30.

8 **SEC. 36. IN ADDITION TO ANY REMEDY OR SANCTION PROVIDED IN**
9 **SECTION 31, 33, OR 35, THE COURT SHALL ASSESS THE PAYER THE ACTUAL**
10 **REASONABLE EXPENSE OF THE FRIEND OF THE COURT IN BRINGING ANY**
11 **ENFORCEMENT ACTION FOR NONCOMPLIANCE WITH A SPOUSAL SUPPORT ORDER.**

12 Sec. 37. (1) An order of commitment under section 33 or 35
13 shall be entered only if other remedies appear unlikely to correct
14 the payer's failure or refusal to pay support.

15 (2) An order of commitment under section 33 shall separately
16 state both of the following:

17 (a) The amount of the arrearage under the support order.

18 (b) The amount to be paid by the payer in order to be released
19 from the order of commitment, which amount may not be greater than
20 the payer's currently available resources as found by the court.

21 (3) An order of commitment under section 35 shall separately
22 state both of the following:

23 (a) The amount of arrearage under the support order.

24 (b) The amount to be paid in order to be released from the
25 order of commitment.

26 (4) A commitment shall continue until the amount ordered to be
27 paid under subsection (2)(b) or (3)(b) is paid but shall not exceed

1 45 days for the first adjudication of contempt or 90 days for a
2 subsequent adjudication of contempt. **A COMMITMENT MAY BE FOR**
3 **CONSECUTIVE DAYS, SPECIFIC DAYS, OR A COMBINATION OF THE 2 AND MAY**
4 **BE CONDITIONED ON SPECIFIC AMOUNTS BEING PAID BY SPECIFIC DATES.**

5 (5) The court may further direct that a portion or all of the
6 earnings of the payer in the facility or institution shall be paid
7 to and applied for support until the payer complies with the order
8 of the court, until the payer is released ~~pursuant~~ **ACCORDING** to
9 this section from an order of commitment, or until the further
10 order of the court. If it appears that the department has
11 contributed towards the support of the minor child or children
12 during the period of noncompliance with the order of the court, the
13 court, in the contempt proceedings, may order all or part of a lump
14 sum payment to the office of the friend of the court, state
15 disbursement unit, or county clerk to be paid to the department not
16 to exceed the amount of the contribution made by the department.
17 The court may order the money paid to the person or persons
18 entitled to the money in weekly or monthly installments by the
19 office of the friend of the court, SDU, or county clerk to the
20 extent that the court considers installments necessary for support.

21 Sec. 44. (1) If the office of the friend of the court
22 determines that a procedure for resolving a parenting time dispute
23 authorized under section 41 other than a civil contempt proceeding
24 is unsuccessful in resolving the parenting time dispute, the office
25 of the friend of the court shall commence a civil contempt
26 proceeding to resolve the dispute by ~~filing with the circuit court~~
27 ~~a petition for an order to show cause why either parent who has~~

1 ~~violated a parenting time order should not be held in contempt. The~~
2 ~~office of the friend of the court shall notify the parent who is~~
3 ~~the subject of the petition.~~ **SCHEDULING A HEARING BEFORE THE COURT.**
4 **THE HEARING NOTICE MAY INCLUDE A SUBPOENA AS DETERMINED UNDER**
5 **SUPREME COURT RULES, MAY BE MADE PART OF AN ORDER TO APPEAR, OR MAY**
6 **BE ACCOMPANIED BY A SEPARATE SUBPOENA.** The **HEARING** notice shall
7 include, **EITHER IN THE NOTICE OR BY REFERENCE TO ANOTHER DOCUMENT**
8 **ATTACHED TO THE NOTICE, A STATEMENT OF THE ALLEGATIONS UPON WHICH**
9 **THE DISPUTE IS BASED AND** at least all of the following:

10 (a) A list of each possible sanction if the parent is found in
11 contempt.

12 (b) The right of the parent to a hearing on a proposed
13 modification of parenting time if requested within 21 days after
14 the date of the notice, as provided in section 45.

15 (2) If the court finds that either parent has violated a
16 parenting time order without good cause, the court shall find that
17 parent in contempt and may do 1 or more of the following:

18 (a) Require additional terms and conditions consistent with
19 the court's parenting time order.

20 (b) After notice to both parties and a hearing, if requested
21 by a party, on a proposed modification of parenting time, modify
22 the parenting time order to meet the best interests of the child.

23 (c) Order that makeup parenting time be provided for the
24 wrongfully denied parent to take the place of wrongfully denied
25 parenting time.

26 (d) Order the parent to pay a fine of not more than \$100.00.

27 (e) Commit the parent to the county jail or an alternative to

1 jail.

2 (f) Commit the parent to the county jail or an alternative to
3 jail with the privilege of leaving the jail or other place of
4 detention during the hours the court determines necessary, and
5 under the supervision the court considers necessary, for the
6 purpose of allowing the parent to go to and return from his or her
7 place of employment.

8 (g) If the parent holds an occupational license, driver's
9 license, or recreational or sporting license, condition the
10 suspension of the license, or any combination of the licenses, upon
11 noncompliance with an order for makeup and ongoing parenting time.

12 (h) If available within the court's jurisdiction, order the
13 parent to participate in a community corrections program
14 established as provided in the community corrections act, 1988 PA
15 511, MCL 791.401 to 791.414.

16 (i) Place the parent under the supervision of the office for a
17 term fixed by the court with reasonable conditions, including 1 or
18 more of the following:

19 (i) Participating in a parenting program.

20 (ii) Participating in drug or alcohol counseling.

21 (iii) Participating in a work program.

22 (iv) Seeking employment.

23 (v) Participating in other counseling.

24 (vi) Continuing compliance with a current support or parenting
25 time order.

26 (vii) Entering into and compliance with an arrearage payment
27 plan.

1 (viii) Facilitating makeup parenting time.

2 (3) The court shall state on the record the reason the court
3 is not ordering a sanction listed in subsection (2). For the
4 purpose of subsection (2), "good cause" includes, but is not
5 limited to, consideration of the safety of a child or party who is
6 governed by the parenting time order.

7 (4) A commitment under subsection (2)(e) or (f) shall not
8 exceed 45 days for the first finding of contempt or 90 days for
9 each subsequent finding of contempt. A parent committed under
10 subsection (2)(e) or (f) shall be released if the court has
11 reasonable cause to believe that the parent will comply with the
12 parenting time order.

13 (5) If a parent fails to appear in response to **A SUBPOENA OR**
14 an order to ~~show cause,~~ **APPEAR**, the court may issue a bench warrant
15 requiring that the parent be brought before the court without
16 unnecessary delay to show cause why the parent should not be held
17 in contempt. Except for good cause shown on the record, the court
18 shall further order the parent to pay the costs of the hearing, the
19 issuance of the warrant, the arrest, and any later hearings, which
20 costs shall be transmitted to the county treasurer for distribution
21 as provided in section 31. If the hearing cannot be held
22 immediately after the parent's arrest, the parent may be released
23 if a bond in the amount of the fines, costs, and sanctions imposed
24 under this section and any additional amount the court determines
25 is necessary to secure the parent's appearance is deposited with
26 the court.

27 (6) If the court finds that a party to a parenting time

1 dispute has acted in bad faith, the court shall order the party to
2 pay a sanction of not more than \$250.00 for the first time the
3 party is found to have acted in bad faith, not more than \$500.00
4 for the second time, and not more than \$1,000.00 for the third or a
5 subsequent time. A sanction ordered under this subsection shall be
6 deposited in the friend of the court fund created in section 2530
7 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2530,
8 and shall be used to fund services that are not title IV-D
9 services.

10 (7) A fine ordered under subsection (2), costs ordered under
11 subsection (5), or a sanction ordered under subsection (6) is a
12 judgment at the time the order is entered.

13 (8) If the court finds that a party to a parenting time
14 dispute has acted in bad faith, the court shall order the party to
15 pay the other party's costs.

16 Sec. 45. (1) If the court enters an order under section
17 44(2)(g) and the parent fails to comply with the makeup and ongoing
18 parenting time schedule, the court shall find the parent in
19 contempt and, after notice and an opportunity for a hearing, may
20 suspend the parent's license or licenses with respect to which the
21 order under section 44(2)(g) was entered and proceed under section
22 30.

23 (2) After entry of a suspension order under subsection (1), a
24 parent may agree to a makeup parenting time schedule. The court may
25 order a makeup parenting time schedule if the parent demonstrates a
26 good faith effort to comply with the parenting time order. If the
27 court orders a makeup parenting time schedule, the court or the

1 friend of the court, as applicable, shall do the following:

2 (a) The court shall enter an order rescinding the suspension
3 order that is effective as provided in section 4 of the regulated
4 occupation support enforcement act, 1996 PA 236, MCL 338.3434, or
5 section 43559 of the natural resources and environmental protection
6 act, 1994 PA 451, MCL 324.43559. Within 7 business days after entry
7 of the order rescinding the suspension order, the office of the
8 friend of the court shall send a copy of the order rescinding the
9 suspension order to the licensing agency.

10 (b) The friend of the court, on verification by the clerk of
11 the court that the driver's license clearance fee required by
12 section 321c of the Michigan vehicle code, 1949 PA 300, MCL
13 257.321c, has been paid, shall provide a certificate to the payer
14 stating that the payer is in compliance with the support order.

15 (3) Within 21 days after the date of the notice under section
16 44, a parent who is notified of a ~~petition to show cause~~ **CONTEMPT**
17 **HEARING** under section 44 may request a hearing on a proposed
18 modification of parenting time. The court shall hold the requested
19 hearing unless the parenting time dispute is resolved by other
20 means. The court shall combine the hearing prescribed by this
21 subsection with the hearing on the order to show cause unless the
22 court finds for good cause shown on the record that the hearings
23 should be held separately. If the court finds that the hearings
24 should be held separately, the hearing on a proposed modification
25 of parenting time shall be held before the **CONTEMPT** hearing. ~~on the~~
26 ~~order to show cause.~~