

Act No. 378
Public Acts of 2014
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**STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014**

Introduced by Senators Emmons and Colbeck

ENROLLED SENATE BILL No. 521

AN ACT to amend 1982 PA 295, entitled “An act to provide for and to supplement statutes that provide for the provisions and enforcement of support, health care, and parenting time orders with respect to divorce, separate maintenance, paternity, child custody and support, and spousal support; to prescribe and authorize certain provisions of those orders; to prescribe the powers and duties of the circuit court and friend of the court; to prescribe certain duties of certain employers and other sources of income; to provide for penalties and remedies; and to repeal acts and parts of acts,” by amending sections 3, 31, 32, 33, 37, 44, and 45 (MCL 552.603, 552.631, 552.632, 552.633, 552.637, 552.644, and 552.645), sections 3, 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; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 3. (1) A support order issued by a court of this state shall be enforced as provided in this act.

(2) Except as otherwise provided in this section, a support order that is part of a judgment or is an order in a domestic relations matter is a judgment on and after the date the support amount is due as prescribed in section 5c, with the full force, effect, and attributes of a judgment of this state, and is not, on and after the date it is due, subject to retroactive modification. No additional action is necessary to reduce support to a final judgment. Retroactive modification of a support payment due under a support order is permissible with respect to a period during which there is pending a petition for modification, but only from the date that notice of the petition was given to the payer or recipient of support.

(3) This section does not apply to an ex parte interim support order or a temporary support order entered under supreme court rule.

(4) The office of the friend of the court shall make available to a payer or payee the forms and instructions described in section 5 of the friend of the court act, MCL 552.505.

(5) This section does not prohibit a court approved agreement between the parties to retroactively modify a support order. This section does not limit other enforcement remedies available under this or another act.

(6) Every support order that is part of a judgment issued by a court of this state or that is an order in a domestic relations matter shall include all of the following:

(a) Substantially the following statement: “Except as otherwise provided in section 3 of the support and parenting time enforcement act, 1982 PA 295, MCL 552.603, a support order that is part of a judgment or that is an order in a domestic relations matter as defined in section 2 of the friend of the court act, 1982 PA 294, MCL 552.502, is a judgment on and after the date each support payment is due, with the full force, effect, and attributes of a judgment of this state, and is not, on and after the date it is due, subject to retroactive modification. A surcharge may be added to support amounts that are past due as provided in section 3a of the support and parenting time enforcement act, 1982 PA 295, MCL 552.603a.”

(b) Notice informing the payer of the imposition of liens by operation of law and that the payer's real and personal property can be encumbered or seized if an arrearage accrues in an amount greater than the amount of periodic support payments payable under the payer's support order for the time period specified in this act.

(c) Notice that an order for dependent health care coverage takes effect immediately and that, in a friend of the court case, a national medical support notice will be sent to the parent's current and subsequent employers and insurers if appropriate. The notice shall inform the parent that he or she may contest the action by requesting a review or hearing concerning availability of health care coverage at a reasonable cost.

(7) A support order that is an order in a friend of the court case shall require each party to provide all of the following information to the friend of the court in writing:

- (a) A single mailing address for the party, to which all notices and papers in the case will be served.
- (b) The party's residential address.
- (c) The party's telephone number.
- (d) A statement of whether the payer or payee holds an occupational license, driver's license, or recreational license.
- (e) The names, addresses, and telephone numbers of the payer's and payee's current sources of income.

(f) The payer's and payee's social security numbers and driver's license numbers. The requirement of this subdivision to provide a social security number does not apply to a payer or payee who demonstrates he or she is exempt under law from obtaining a social security number or to a payer or payee who for religious convictions is exempt under law from disclosure of his or her social security number under these circumstances. The court shall inform the payer and payee of this possible exemption.

(8) A support order that is an order in a friend of the court case shall include a requirement that if any of the information provided to the friend of the court under subsection (7) changes, each party shall notify the friend of the court of the new information within 21 days after the change and that a failure to provide the new information may subject the party to imposition of a fee under subsection (12). A notice of new information under this subsection shall be in writing or by any other method allowed under guidelines established by the state court administrative office under the supervision and direction of the supreme court.

(9) Except as provided in sections 11 and 25a, service of notices or other papers under this act and under the friend of the court act shall be made by first-class mail, postage prepaid. If mail is returned as undeliverable from that address or the friend of the court or the department determines through use of an automated federal database that mail is not deliverable to 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.

(10) Unless federal law or regulation requires otherwise, if mail served under subsection (9) is returned from an address and a new address has not been established within 21 days after the mail is returned, the party waives his or her right to notice and the friend of the court is not obligated to serve any notice or other paper until the party submits a written change of address to the friend of the court or until the friend of the court has changed the address according to subsection (9).

(11) A support order shall not accrue interest.

(12) If a person fails to comply with the requirements of this section, the court may impose a fee set according to a policy established by the state court administrative office under the supervision and direction of the supreme court. A fee ordered under this subdivision shall be deposited in the friend of the court fund created in section 2530 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2530.

(13) In a proceeding to enforce support, a report, record, or information from the Michigan child support enforcement system or the support disbursement unit that relates to paid or unpaid support is prima facie authentic and may be admitted into evidence without extrinsic evidence of authenticity.

Sec. 31. (1) If a person is ordered to pay support under a support order and fails or refuses to obey and perform the order, and if an order of income withholding is inapplicable or unsuccessful, a recipient of support or the office of the friend of the court may commence a civil contempt proceeding as provided by supreme court rule. If the payer fails to appear at the hearing, the court shall do 1 or more of the following as the court considers appropriate given the information available at the hearing:

- (a) Find the payer in contempt for failure to appear.
- (b) Find the payer in contempt under section 33.
- (c) Issue a bench warrant for the payer's arrest requiring that the payer be brought before the court without unnecessary delay for further proceedings in connection with the contempt proceedings.
- (d) Adjourn the contempt proceeding.
- (e) Dismiss the contempt proceeding if the court determines that the payer is not in contempt.

(2) If the court stays a commitment order under section 37, the payer fails to satisfy the conditions of the order, and that fact is brought to the court's attention by the friend of the court, the court may issue a bench warrant for the payer's arrest requiring the payer to be brought before the court without unnecessary delay for further proceedings in connection with the payer's contempt.

(3) In a bench warrant issued under this section, the court shall decree that the payer is subject to arrest if apprehended or detained anywhere in this state and shall require that, upon arrest, unless the payer deposits a cash performance bond in the manner required by section 32, the payer shall remain in custody until the time of the hearing. The court shall specify in the bench warrant the cash performance bond amount. The court shall set the cash performance bond at not less than \$500.00 or 25% of the arrearage, whichever is greater. At its own discretion, the court may set the cash performance bond at an amount up to 100% of the arrearage and add to the amount of the required deposit the amount of the costs the court may require under subsection (4). If a payer is arrested on a felony warrant issued for a violation of section 165 of the Michigan penal code, 1931 PA 328, MCL 750.165, unless the payer deposits a cash performance bond in the manner required by section 32, the court shall require that, upon arrest, the payer remain in custody until the time of the preliminary examination. Upon notification that a payer who has an outstanding bench warrant under this section has been arrested or arraigned on a felony warrant for a violation of section 165 of the Michigan penal code, 1931 PA 328, MCL 750.165, the court may order that the bench warrant be recalled.

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

(5) If the court issues a bench warrant under this section, the court may enter an order that a law enforcement agency render any vehicle owned by the payer temporarily inoperable, by booting or another similar method, subject to release on deposit of an appropriate bond.

Sec. 32. (1) If a bench warrant was issued and the payer is arrested in the county that issued the warrant or another county in this state, the payer shall remain in custody until there is a hearing or the payer posts an adequate cash performance bond. If the payer cannot post the cash performance bond in the amount stated in the bench warrant, the payer is entitled to a hearing within 48 hours, excluding weekends and holidays. The issues to be considered at a hearing required under this subsection are limited to the payer's answer to the contempt proceeding and, if the payer was found in contempt, to further proceedings related to the payer's contempt. If the hearing is not held as provided in this subsection, the court shall review, based on criteria prescribed in the Michigan court rules, the amount of the cash performance bond to determine an amount that will ensure the payer's appearance and shall set a date for a hearing to be held under subsection (4) within the time limit prescribed in the Michigan court rules.

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

"Date _____

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

(address furnished by the payer for receipt of notice)

The hearing is for the payer to answer to the contempt proceeding and, if the payer was found in contempt, to further proceedings related to the payer's contempt.

If the payer fails to appear at the time and place indicated in the court's notice, fails to submit to the jurisdiction of the court, and fails to abide by an order of the court, the cash performance bond shall be transmitted to the friend of the court or to the state disbursement unit for payment of the arrearage to the recipient of support and of costs to the court. If the payer appears at the time and place indicated above and the court determines that the payer owes an arrearage under the support order that is the basis of the contempt proceeding or owes costs to the court, the cash performance bond deposited shall be transmitted to the office of the friend of the court or to the state disbursement unit for payment of the arrearage to the recipient of support and of costs to the court. By depositing the cash performance bond with the officer and accepting this receipt, the recipient of this receipt waives a claim to the money under the cash performance bond following its transmittal to the friend of the court or to the SDU.

Officer: _____ Dept.: _____".

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

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

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

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

(7) Notwithstanding any other provision of this section, a payer for whom a bench warrant has been issued may voluntarily appear at the office of the friend of the court to answer the bench warrant. The payer shall do either of the following:

- (a) Post the bond set by the court in the bench warrant.
- (b) Be taken promptly before the court for further proceedings.

(8) If a bond is posted under subsection (7)(a), the friend of the court or the clerk of the court shall give a receipt to the payer that substantially conforms to the requirements of subsection (2). The receipt shall direct the payer to appear before the court at a specific time and date. The friend of the court or the clerk of the court shall notify a local law enforcement agency to remove the bench warrant from the law enforcement information network as provided by the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215.

Sec. 33. (1) The court may find a payer in contempt if the court finds that the payer is in arrears and 1 or more of the following apply:

(a) The court is satisfied that the payer has the capacity to pay out of currently available resources all or some portion of the amount due under the support order.

(b) 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 support order and that the payer fails or refuses to do so.

(c) 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.

(2) Upon finding a payer in contempt of court under this section, the court may immediately enter an order that does 1 or more of the following:

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

(b) Commits the payer to the county jail or an alternative to jail with the privilege of leaving the jail or other place of detention during the hours the court determines, and under the supervision the court considers, necessary for the purpose of allowing the payer to satisfy the terms and conditions imposed under section 37 if the payer's release is necessary for the payer to comply with those terms and conditions.

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

(d) Apply any other enforcement remedy authorized under this 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.

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

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

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

(h) Places the payer under the supervision of the office for a term fixed by the court with reasonable conditions, including, but not limited to, 1 or more of the following:

- (i) Participating in a parenting program.
- (ii) Participating in drug or alcohol counseling.
- (iii) Participating in a work program.

- (iv) Seeking employment.
- (v) Participating in other counseling.
- (vi) Continuing compliance with a current support or parenting time order.
- (vii) Entering into and compliance with an arrearage payment plan.

(3) In the absence of proof to the contrary introduced by the payer, the court shall presume that the payer has currently available resources equal to 1 month of payments under the support order. The court shall not find that the payer has currently available resources of more than 1 month of payments without proof of those resources by the office of the friend of the court or the recipient of support.

Sec. 36. In addition to any remedy or sanction provided in section 31 or 33, the 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 IV-D.

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

(2) An order of commitment under section 33(1)(a) shall state the amount to be paid by the payer in order to be released from the order of commitment, which amount may not be greater than the payer's currently available resources as found by the court.

(3) An order of commitment under section 33(1)(b) or (c) shall state the conditions that constitute diligence in order to be released from the order of commitment, which conditions must be within the payer's ability to perform.

(4) A commitment shall continue until the payer performs the conditions set forth in the order of commitment but shall not exceed 45 days for the first adjudication of contempt or 90 days for a subsequent adjudication of contempt.

(5) The court may further direct that a portion or all of the earnings of the payer in the facility or institution shall be paid to and applied for support until the payer complies with the order of the court, until the payer is released according to this section from an order of commitment, or until the further order of the court.

(6) Notwithstanding the length of commitment imposed under this section, the court may release a payer who is unemployed if committed to a county jail under this section and who finds employment if either of the following applies:

(a) The payer is self-employed, completes 2 consecutive weeks at his or her employment, and makes a support payment as required by the court.

(b) The payer is employed and completes 2 consecutive weeks at his or her employment and an order of income withholding is effective.

(7) If the court enters a commitment order under subsection 33(1)(b) or (c), and the court finds that the payer by performing the conditions set forth in the order of commitment will have the ability to pay specific amounts, the court may establish a specific amount for the payer to pay and do any of the following:

(a) Stay the order of commitment conditioned upon the payer's making the specified payments.

(b) Stay the order of commitment and order that upon default of the payer in making a specified payment, the payer shall be brought before the court for further proceedings in connection with the contempt proceedings that may include committing the payer for the number of days that the payer would have been committed had the court not stayed the order.

(c) Give credit toward the payer's potential maximum commitment for each specified payment made in compliance with the order of commitment.

(8) If the court enters a commitment order under subsection 33(1)(b) or (c), the court may do any of the following:

(a) Stay the order of commitment conditioned upon the payer's complying with the conditions set forth in the order of commitment.

(b) Stay the order of commitment and order that upon default of the payer to satisfy a condition of the order, the payer shall be brought before the court for further proceedings in connection with the contempt proceedings that may include committing the payer for the number of days the payer would have been committed had the order not been stayed.

(c) Give credit toward the payer's potential maximum commitment for complying with conditions in the order.

(d) Incarcerate the payer with the privilege of leaving jail to comply with conditions in the order of commitment.

Sec. 44. (1) If the office of the friend of the court determines that a procedure for resolving a parenting time dispute authorized under section 41 other than a civil contempt proceeding is unsuccessful in resolving the parenting time dispute, the office of the friend of the court shall commence a civil contempt proceeding to resolve the dispute as provided by the supreme court rule. The contempt proceeding notice shall include, either in the notice or by reference

to another document attached to the notice, a statement of the allegations upon which the dispute is based and at least all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

(i) Participating in a parenting program.

(ii) Participating in drug or alcohol counseling.

(iii) Participating in a work program.

(iv) Seeking employment.

(v) Participating in other counseling.

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

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

(viii) Facilitating makeup parenting time.

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

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

(5) If a parent fails to appear in response to a contempt proceeding, the court may issue a bench warrant requiring that the parent be brought before the court without unnecessary delay to show cause why the parent should not be held in contempt. Except for good cause shown on the record, the court shall further order the parent to pay the costs of the hearing, the issuance of the warrant, the arrest, and any later hearings, which costs shall be transmitted to the county treasurer for distribution as provided in section 31. If the hearing cannot be held immediately after the parent's arrest, the parent may be released if a bond in the amount of the fines, costs, and sanctions imposed under this section and any additional amount the court determines is necessary to secure the parent's appearance is deposited with the court.

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

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

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

(9) If the court issues a bench warrant under this section, the court may enter an order that a law enforcement agency render any vehicle owned by the payer temporarily inoperable, by booting or another similar method, subject to release on deposit of an appropriate bond.

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

(2) After entry of a suspension order under subsection (1), a parent may agree to a makeup parenting time schedule. The court may order a makeup parenting time schedule if the parent demonstrates a good faith effort to comply with the parenting time order. If the court orders a makeup parenting time schedule, the court or the friend of the court, as applicable, shall do the following:

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

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

(3) Within 21 days after the date of the notice under section 44, a parent who is notified of a contempt hearing under section 44 may request a hearing on a proposed modification of parenting time. The court shall hold the requested hearing unless the parenting time dispute is resolved by other means. The court shall combine the hearing prescribed by this subsection with the hearing on the order to show cause unless the court finds for good cause shown on the record that the hearings should be held separately. If the court finds that the hearings should be held separately, the hearing on a proposed modification of parenting time shall be held before the contempt hearing.

Enacting section 1. Section 35 of the support and parenting time enforcement act, 1982 PA 295, MCL 552.635, is repealed.

Enacting section 2. This amendatory act takes effect 90 days after the date it is enacted into law.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Jay E. Randall

Clerk of the House of Representatives

Approved

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Governor