

CIVIL BENCH WARRANTS

House Bills 5203-5208 as enrolled
Second Analysis (7-22-92)

Sponsor: Rep. James A. Kosteva
House Committee: Judiciary
Senate Committee: Judiciary

THE APPARENT PROBLEM:

Occasionally, a police officer stops someone for a traffic violation and discovers that the person has an outstanding bench warrant for a civil matter such as failure to pay child support or court-ordered money judgments. However, the authority of the officer to detain and arrest a person on a civil bench warrant is at best unclear, especially if the warrant was issued outside of the officer's bailiwick. Statute explicitly grants sheriffs and deputies the authority and duty to execute civil warrants, and since 1989 has extended authority to execute domestic relations bench warrants to the state police. However, similar explicit authority for municipal police is lacking, and without it, local police fear exceeding their lawful authority if they attempt to enforce civil bench warrants. Legislation to explicitly provide such authority has been proposed.

THE CONTENT OF THE BILLS:

The bills would amend various municipal acts to explicitly authorize a city, township, or village police officer (or constable when authorized by the township board or city council) to execute a civil bench warrant issued by a court of record or municipal court. However, the officer could not act on a civil bench warrant outside the limits of his or her local unit of government.

House Bill 5203 would amend Chapter 16 of the Revised Statutes of 1846, which deals with general law townships (MCL 41.83b). House Bill 5204 would amend Public Act 359 of 1947, which deals with charter townships (MCL 42.21b). House Bill 5205 would amend Public Act 3 of 1895, which deals with general law villages (MCL 67.46a). House Bill 5206 would amend Public Act 278 of 1909, which deals with home rule villages (MCL 78.22b). House Bill 5207 would amend Public Act 279 of 1909, which deals with home rule cities (MCL 117.34a). House Bill 5208 would amend Public Act 215 of

1895, which deals with fourth class cities (MCL 92.4a).

FISCAL IMPLICATIONS:

With regard to substantially similar versions of the bills then pending before the Senate, the Senate Fiscal Agency said that the bills would have no fiscal impact on state or local government. (3-26-92) According to the Department of Social Services, there are about 20,000 outstanding bench warrants issued for support arrearages in Aid to Dependent Children (ADC) cases; with average ADC arrearages of \$5,500 per case, the department puts the total amount potentially available through repayment of arrearages at over \$1 billion. However, although the department termed the savings potential for the department "significant," it warned that actual collections would be much less than the potential amount, being affected by factors such as the ability to locate the absent parent and that parent's ability to pay. (3-17-92)

ARGUMENTS:

For:

The bill would give local police the clear authority they need to be able to make arrests on civil bench warrants issued by the circuit court. At present, a municipal police officer risks exceeding his or her authority if he or she attempts to arrest or even merely to detain someone wanted on a civil bench warrant. The bills would not require local police to seek out the people named on these warrants, although they would not forbid an officer from doing so. In practice, the bills simply would provide an officer with the authority to arrest a person upon discovering a warrant when, for example, making a routine records check in connection with a traffic violation.

More importantly, there is a strong public interest in enforcing civil bench warrants: most of such warrants are issued for failure to pay child support, meaning that children and taxpayers suffer from a noncustodial parent's failure to meet his or her financial responsibility. To improve support enforcement would be to improve living conditions for Michigan's children and, in many cases, preclude the need for state assistance payments (in fact, payment of support arrearages could mean reimbursement of ADC funds to the state). By clearly providing local police with the authority to execute civil bench warrants, the bills should improve collections of support orders, and of civil fines and judgments as well. In doing so, the bills would help families, defray governmental costs, and improve the administration of justice.

Against:

There may be some lingering concerns about whether the bills could operate to increase burdens for local police, or to relieve sheriffs' departments of their responsibilities.