



Romney Building, 10th Floor  
Lansing, Michigan 48909  
Phone: 517/373-6466

## REQUIRE WORK RELEASE FOR DELINQUENT SUPPORT PAYERS

### House Bill 4237 with committee amendments First Analysis (3-16-99)

**Sponsor: Rep. Tony Stamas**  
**Committee: Family and Civil Law**

#### ***THE APPARENT PROBLEM:***

The collection of child and spousal support has become an issue of increasing concern at both the state and federal level. And as a result, a wide variety of laws and regulations have been created in an attempt to increase noncustodial parents' compliance with their court-ordered support obligations. Currently, under the Support and Parenting Time Enforcement Act, a court may find a person who has been required to pay support in contempt if the court finds that the individual is in arrears in his or her support payments and the court is satisfied that the payer has either failed to make his or her support payments in spite of having the resources to do so, or could have paid all or part of the arrearage had he or she made a diligent effort. If the court finds a payer in contempt, the court may, among other things, have the payer jailed. The court then has the discretion to grant the payer the privilege of leaving jail during the hours and with the supervision the court determined necessary for the payer to go to and return from his or her place of employment or to seek employment.

Since placing a delinquent payer in jail makes it is even less likely that he or she will be making any court-ordered support payments and runs the risk of causing the payer to lose his or her job (if he or she has one), it has been suggested that, under certain circumstances, courts should be required to place delinquent payers who have been jailed for failure to pay support on work release.

#### ***THE CONTENT OF THE BILL:***

House Bill 4237 would amend the Support and Parenting Time Enforcement Act to require the court to place certain individuals on work release. The bill would apply to persons who had been found in contempt and jailed for failing to pay their child or spousal support obligations. The court would be required to place a jailed, delinquent payer on work

release so that the payer could continue his or her employment, if the delinquent payer could prove all of the following:

- 1) that he or she was currently employed by someone other than himself or herself,
- 2) that there was an income withholding order in effect to secure the payer's payment of the support obligation, and
- 3) that he or she was not incarcerated under any other court order or sentence.

If the payer was placed on work release under the bill's provisions, the court would be required to inform the office of the friend of the court of the payer's place of employment.

The bill's provisions would take effect July 1, 1999. MCL 552.633, 552.635, and 552.639

#### ***FISCAL IMPLICATIONS:***

Fiscal information is not available.

#### ***ARGUMENTS:***

##### ***For:***

The bill will help to improve the compliance of delinquent payers of child and spousal support by giving a jailed delinquent payer an opportunity to continue working and, thereby, keep his or her job and pay support at the same time. Hopefully, a working payer who has not revealed that he or she is employed will be willing to reveal his or her employment and have a withholding order put in place so that he or she will be placed on work release rather than remain in jail without work release.

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**For:**

Since the practice of jailing noncustodial parents for failure or inability to make support payments is an unfair recollection of the debtor's prison system, any provisions that make an effort to correct the harm done by this practice are welcome. However, required work release should also be extended to those noncustodial parents with responsibilities to children that are in their custody; for example, second families. In addition, release should be granted for the noncustodial parent's scheduled parenting time periods.

The Family Law Section of the State Bar of Michigan has not yet taken a position on the bill. (3-12-99)

**Against:**

The bill does not provide judges with any discretion regarding the placement of payers on work release. There are cases in which a delinquent payer could meet the criteria provided in the bill and still not be a good candidate for work release. Although the provision removing individuals who are incarcerated for another reason from the list of payers that the courts are required to release might keep some of these individuals from being released, it does not address all of the risks. The bill might serve its purpose better if it required the court to consider work release for certain payers and, if work release is not granted, require that the reasons for refusal be stated on the record. However, the best means of dealing with the question of who should be placed on work release is to leave such issues to the discretion of the judges to decide on a case by case basis.

**Against:**

Although it makes sense to condition work release on the payer's payment of support, the bill's provision requiring that a jailed delinquent payer be placed on work release if he or she has a job with an effective withholding order will be self-limiting. Those payers who have jobs that are subject to effective withholding orders are not the payers that are sent to jail for contempt; if money is being withheld and payments made, then the payer will not be held in contempt. The bill should clarify that before the payer can be released, the court must be assured that the payer's wages from the place of employment to which he or she is being released will be garnished in accordance with the payer's support obligations.

**POSITIONS:**

The Family Independence Agency supports the bill. (3-11-99)

The Friend of the Court Association supports the concept of work release, but is concerned about limits on judicial discretion to deal with problem cases. (3-12-99)

Analyst: W. Flory

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.