

HOUSE BILL No. 4237

February 9, 1999, Introduced by Reps. Stamas, DeWeese, Birkholz, Raczkowski, Bovin, Julian, Jelinek and Hart and referred to the Committee on Family and Civil Law.

A bill to amend 1982 PA 295, entitled
"Support and parenting time enforcement act,"
by amending sections 33, 35, and 39 (MCL 552.633, 552.635, and
552.639), sections 33 and 35 as amended by 1998 PA 334.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 33. (1) The court may find a payer in contempt if the
2 court finds that the payer is in arrears and if the court is sat-
3 isfied that the payer has the capacity to pay out of currently
4 available resources all or some portion of the amount due under
5 the support order. In the absence of proofs to the contrary
6 introduced by the payer, the court shall presume that the payer
7 has currently available resources equal to 4 weeks of payments
8 under the support order. The court shall not find that the payer
9 has currently available resources of more than 4 weeks of

1 payments without proof of those resources by the office of the
2 friend of the court or the recipient of support.

3 (2) Upon finding a payer in contempt of court under this
4 section AND SUBJECT TO SUBSECTION (4), the court may immediately
5 enter an order doing 1 OR MORE of the following:

6 (a) Committing the payer to the county jail.

7 (b) Committing the payer to the county jail with the privi-
8 lege of leaving the jail during the hours the court determines,
9 and under the supervision the court considers, necessary for the
10 purpose of allowing the payer to go to and return from his or her
11 place of employment.

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

15 (d) If the payer holds an occupational license, driver's
16 license, or recreational or sporting license, conditioning a sus-
17 pension of the payer's license, or any combination of the
18 licenses, upon noncompliance with an order for payment of the
19 arrearage in 1 or more scheduled installments of a sum certain.
20 A court shall not order the sanction authorized by this subdivi-
21 sion unless the court finds that the payer has accrued an arrear-
22 age of support payments in an amount greater than the amount of
23 periodic support payments payable for 6 months under the payer's
24 support order.

25 (e) Ordering the payer to participate in a work activity.
26 The court shall not enter an order using this subdivision unless
27 the payer's arrearage is under a child support order and a child

1 who is the subject of that order is receiving financial
2 assistance under title IV of the social security act,
3 chapter 531, 49 Stat. 620, 42 U.S.C. 601 to 603, 604 to 608, 609
4 to 619, 620 to 629e, 651 to 660, 663 to 669b, 670 to 673, 673b,
5 674 to 679, 679b, and 681 to 687. This subdivision does not
6 alter the court's authority to include provisions in an order
7 issued under this section concerning a payer's employment or his
8 or her seeking of employment as that authority exists on ~~the~~
9 ~~effective date of the amendatory act that added this subdivision~~
10 AUGUST 10, 1998.

11 (3) ~~-(2)-~~ If the court enters an order under subsection
12 ~~-(1)(d)-~~ (2)(D) and the payer fails to comply with the arrearage
13 payment schedule, after notice and opportunity for a hearing, the
14 court shall order suspension of the payer's license or licenses
15 with respect to which the order under subsection ~~-(1)(d)-~~ (2)(D)
16 was entered and shall proceed under section 30.

17 (4) IF THE COURT DECIDES TO INCARCERATE A PAYER WHO IS FOUND
18 IN CONTEMPT, THE COURT SHALL ENTER AN ORDER ALLOWING THE PAYER TO
19 WORK AT HIS OR HER EMPLOYMENT AS PROVIDED IN SUBSECTION (2)(B),
20 AND SHALL INFORM THE OFFICE OF THE FRIEND OF THE COURT OF THE
21 PAYER'S PLACE OF EMPLOYMENT, IF BOTH OF THE FOLLOWING ARE TRUE:

22 (A) THE PAYER PROVES THAT HE OR SHE IS EMPLOYED, OTHER THAN
23 BEING SELF-EMPLOYED.

24 (B) AN ORDER OF INCOME WITHHOLDING IS EFFECTIVE TO SECURE
25 PAYMENT OF THE PAYER'S SUPPORT OBLIGATION.

26 Sec. 35. (1) The court may find a payer in contempt if the
27 court finds that the payer is in arrears and if the court is

1 satisfied that by the exercise of diligence the payer could have
2 the capacity to pay all or some portion of the amount due under
3 the support order and that the payer fails or refuses to do so.

4 (2) Upon finding a payer in contempt of court under this
5 section AND SUBJECT TO SUBSECTION (5), the court may immediately
6 enter an order doing ~~either~~ 1 OR MORE of the following:

7 (a) Committing the payer to the county jail with the privi-
8 lege of leaving the jail during the hours the court determines,
9 and under the supervision the court considers, necessary for the
10 purpose of allowing the payer to go to and return from his or her
11 place of employment or, if the ~~person~~ PAYER wishes to seek
12 employment, to seek employment.

13 (b) If the payer holds an occupational license, driver's
14 license, or recreational or sporting license, conditioning a sus-
15 pension of the payer's license, or any combination of the
16 licenses, upon noncompliance with an order for payment of the
17 arrearage in 1 or more scheduled installments of a sum certain.
18 A court shall not order the sanction authorized by this subdivi-
19 sion unless the court finds that the payer has accrued an arrear-
20 age of support payments in an amount greater than the amount of
21 periodic support payments payable for 6 months under the payer's
22 support order.

23 (c) Ordering the payer to participate in a work activity.
24 The court shall not enter an order using this subdivision unless
25 the payer's arrearage is under a child support order and a child
26 who is the subject of that order is receiving financial
27 assistance under title IV of the social security act,

1 chapter 531, 49 Stat. 620, 42 U.S.C. 601 to 603, 604 to 608, 609
2 to 619, 620 to 629e, 651 to 660, 663 to 669b, 670 to 673, 673b,
3 674 to 679, 679b, and 681 to 687. This subdivision does not
4 alter the court's authority to include provisions in an order
5 issued under this section concerning a payer's employment or his
6 or her seeking of employment as that authority exists on ~~the~~
7 ~~effective date of the amendatory act that added this subdivision~~
8 AUGUST 10, 1998.

9 (3) Notwithstanding the length of commitment imposed under
10 this section, an unemployed payer committed to a county jail
11 under this section who finds employment shall be released from
12 jail if either of the following applies:

13 (a) The payer is self-employed and has completed 2 consecu-
14 tive weeks at his or her employment.

15 (b) The payer is employed and has completed 2 consecutive
16 weeks at his or her employment and an order of income withholding
17 is effective.

18 (4) If the court enters an order under subsection (2)(b) and
19 the payer fails to comply with the arrearage payment schedule,
20 after notice and an opportunity for a hearing, the court shall
21 order suspension of the payer's license or licenses with respect
22 to which the order under subsection (2)(b) was entered and shall
23 proceed under section 30.

24 (5) IF THE COURT DECIDES TO INCARCERATE A PAYER WHO IS FOUND
25 IN CONTEMPT, THE COURT SHALL ENTER AN ORDER ALLOWING THE PAYER TO
26 WORK AT HIS OR HER EMPLOYMENT AS PROVIDED IN SUBSECTION (2)(A),

1 AND SHALL INFORM THE OFFICE OF THE FRIEND OF THE COURT OF THE
2 PAYER'S PLACE OF EMPLOYMENT, IF BOTH OF THE FOLLOWING ARE TRUE:

3 (A) THE PAYER PROVES THAT HE OR SHE IS EMPLOYED, OTHER THAN
4 BEING SELF-EMPLOYED.

5 (B) AN ORDER OF INCOME WITHHOLDING IS EFFECTIVE TO SECURE
6 PAYMENT OF THE PAYER'S SUPPORT OBLIGATION.

7 Sec. 39. (1) If a payer is committed to jail under section
8 ~~33(b)~~ 33(2)(B) or ~~35(2)~~ 35(2)(A) and violates the conditions
9 of the court, the court shall commit the payer to the county jail
10 without the privilege provided under section ~~33(b)~~ 33(2)(B) or
11 ~~35(2)~~ 35(2)(A) for the balance of the period of the commitment
12 imposed by the court.

13 (2) If a payer is committed to jail under section ~~33(b)~~
14 33(2)(B) or ~~35(2)~~ 35(2)(A) and fails to return to the place of
15 confinement within the time prescribed, the payer shall be con-
16 sidered to have escaped from custody and ~~shall be~~ IS guilty of
17 a misdemeanor, punishable by imprisonment for not more than 1
18 year.

19 Enacting section 1. This amendatory act takes effect July
20 1, 1999.