

BENCH WARRANTS FOR CHILD SUPPORT ARREARAGES

House Bill 6006 as passed by the House Second Analysis (6-4-02)

**Sponsor: Rep. James Koetje
Committee: Civil Law and the Judiciary**

THE APPARENT PROBLEM:

Under the Support and Parenting Time Enforcement Act, if a person is ordered to pay child support and fails or refuses to do so, and if an order withholding that person's income is inapplicable or unsuccessful, the person may be ordered to show cause before a court. If the person fails to appear, the court may issue a bench warrant requiring that the person be brought before the court without any unnecessary delay.

The act requires that if a bench warrant is issued, and the person is arrested, the person remains in custody unless he or she deposits a bond or cash of at least \$500 or 25 percent of the arrearage, whichever is greater. If a person arrested under a bench warrant cannot be brought before the court within 24 hours, the payer may recognize for his or her appearance (that is, obligate himself or herself to appear) by leaving with the sheriff or deputy in charge of the county jail a bond or cash in an amount determined by the court.

If, after posting a bond or cash, the payer fails to appear before the court, fails to submit to the jurisdiction of the court, and fails to comply with an order of the court, the bond or cash deposited is transmitted to the Friend of the Court (FOC) or the state disbursement unit for payment of the arrearage to the recipient of support and for court costs. In addition, the act also requires a court to hold a "show cause" hearing within 48 hours after the arrest.

Many believe that the current laws do not adequately ensure that the delinquent payer is brought before court to resolve the matter and begin paying current and past due child support. Legislation has been introduced that would clarify provisions regarding the issuance of bench warrants, bond requirements, and findings of contempt.

THE CONTENT OF THE BILL:

The bill would amend provisions in the Support and Parenting Time Enforcement Act (MCL 552.602 et al.) relating to the issuance of bench warrants, bond requirements, and findings of contempt. The bill would take effect June 1, 2003.

Bench Warrants. Under the act, if a person is ordered to pay support under a support order and fails or refuses to obey, and if an income withholding order is inapplicable or unsuccessful, a payee or the Friend of the Court may commence a civil contempt proceeding requiring the payee to show cause as to why he or she should not be held in contempt. If the person fails to appear, the court may issue a bench warrant requiring the person to be brought before the court to answer.

Under the bill, if a payer refused to appear at a show cause hearing, the court would be required to do one or more of the following:

- Find the payer in contempt for failure to appear.
- Find the payer in contempt for the reasons stated in the motion.
- Apply an enforcement remedy for failing to pay the required support.
- Issue a bench warrant for the payer's arrest requiring that the payer be brought before the court.
- Adjourn the hearing.
- Dismiss the order to show cause if the court determines that the payer is not in contempt.

If the court issued a bench warrant, it would have to state that the payer is subject to arrest if apprehended or detained anywhere in the state. In addition, the bill would require the payee to pay a cash performance bond (rather than a regular surety bond or cash) or he or she would be required to remain in custody until the time of the hearing.

The bill would require the court to state in the bench warrant the amount of the cash performance bond which, in the absence of substantial evidence to the contrary, the court would presume that the amount be set at not less than \$500 or 25 percent of the arrearage, whichever is greater.

Under the act, if a payer arrested under a bench warrant cannot be brought before the court within 24 hours, the payer may recognize for his or her appearance by leaving with the sheriff or deputy a bond or cash in the amount stated on the bench warrant. The bill states that if a bench warrant was issued and the payer was arrested in the county that issued the bench warrant or in another county, the payer would be required to remain in custody until the hearing or until he or she provides an adequate cash performance bond. If the payer could not provide the cash performance bond, he or she would be entitled to a hearing within 48 hours (excluding weekends and holidays). The issues to be considered at the hearing would be limited to the payer's answer to the show cause order and, if the payer was found in contempt, to further proceedings related to his or her contempt. If the hearing could not be held within the required time, the court would review the amount of the cash performance bond to determine an amount that will ensure the payer's appearance and set a date for a hearing.

Cash Performance Bond. Under the bill, if the payer appeared at the time and place stated on the receipt issued to the payer by the sheriff upon payment of the cash performance bond, and the court determined that the payer owes an arrearage under the support order, the cash performance bond would be transmitted to the Friend of the Court or to the State Disbursement Unit (SDU) to be applied toward the arrearage and any costs owed to the court.

If the payer deposited a cash performance bond, the date of the hearing would be set within the time limit prescribed under Michigan Court rules. Again, the issues considered at the hearing would be limited to the payer's answer to the show cause order and, if the payer was found in contempt, to further proceedings related to his or her contempt. The bill adds that the court could set aside a finding of contempt if it found, based on the hearing, that the payer is in compliance with the court's order or for other good cause shown.

Under the act, the court is required to determine the amount of the bond or cash that should be transmitted to the Friend of the Court or the SDU. The balance, if any, is transmitted to the payer. Under the bill the court would determine the amount of the cash

performance bond that should be transmitted to the Friend of the Court or the SDU and to the county treasurer to pay for costs related to the hearing, issuance of the warrant, arrest, and further hearings. The balance, if any, would be paid to the person who posted the cash performance bond on the payer's behalf.

Findings of Contempt. Under the act, the court may find a person in contempt if it determines that the person is in arrears and that the payer has the capacity to pay out of currently available resources all or a portion of the amount due under the support order. The court may also find a person in contempt if it determines that the payer is in arrears and that by the exercise of diligence that payer could have the capacity to pay all or a portion of the amount under the support order and that the payer fails or refuses to do so.

In either case, upon finding a payer in contempt the court may enter an order suspending an occupational license, driver's license, or recreational or sporting license (if the payer holds such a license) if the payer is in noncompliance with an order for payment of the arrearage. However, the court cannot order the suspension of a license unless the court finds that the payer were to accrue an arrearage in an amount greater than the amount payable for six months under the support order. The bill would amend this provision to allow the suspension of a license for an arrearage in an amount greater than the amount payable for two months under the support order.

Under the act, if the court finds a payer in contempt, the court may order the payer to participate in a work activity. The bill would delete a provision that prohibits the court from ordering a payer to participate in a work activity unless the payer's arrearage is under a child support order and a child who is the subject of that order is receiving financial assistance under the Title IV of the federal Social Security Act.

Under the act, an unemployed payer committed to a county jail who finds employment must be released from jail if the payer is self-employed and has completed two consecutive weeks at his or her employment; or if the payer is employed, completes two consecutive weeks of employment, and an income withholding order is in effect. Under the bill, the court could (but would not be required to) release a payer who is unemployed, if the payer is self-employed, completes two consecutive weeks of employment, and makes a support payment as required by the court.

BACKGROUND INFORMATION:

Related Legislation. The bill is part of a larger package of bills proposed by Governor John Engler and state Supreme Court Chief Justice Maura Corrigan that is designed to clarify and strengthen existing law, and centralize and streamline procedures taken to enforce orders, both of which are intended to better enable the local Friend of the Court Offices to refocus their resources, improve service, and increase child support collections. [See House Bills 6004-6012, 6017, and 6020.]

Similar Legislation. House Bill 6006 is similar to House Bill 5206, introduced by Representative Whitmer. House Bill 5206, which passed the House of Representatives, would also amend provisions in the Support and Parenting Time Enforcement Act related to the issuance of bench warrants. The bill would require a person arrested under a bench warrant for a child support arrearage to provide cash in the amount stated on the warrant (at least \$500 or 25 percent of the arrearage, whichever is greater) in order to be released from custody.

The bill would also increase the time period for holding a show cause hearing (if a payer does not provide cash and remains in custody) from within 48 hours after the arrest, to within 72 hours after the arrest. The bill would also require a payer to attend a fatherhood, motherhood, or parental responsibility class, if he or she were arrested after a bench warrant had been issued.

FISCAL IMPLICATIONS:

Fiscal information is not yet available.

ARGUMENTS:

For:

Prior to the enactment of Public Act 442 of 2000, an individual arrested on a bench warrant for a child support arrearage was required to pay “a sum of money” not exceeding the arrearage to ensure his or her appearance. Public Act 442 permitted a delinquent payer to pay a surety bond rather than a cash bond to ensure his or her appearance. However, the act seemed to confuse civil procedures and criminal procedures. Generally, for criminal cases, a bond ensures the person’s appearance. For civil matters, the bond ensures the performance of a court order. By explicitly stating that a person is required to provide a cash performance bond, the bill would clear up the confusion that resulted from

Public Act 442 as to the true nature of the bonds issued.

For:

Child support payments are funds that help provide food, clothing, and other benefits to the children. The bench warrant process is initiated only after the delinquent payer accumulates several arrearages and is given ample opportunity to alleviate the problem, but continues to not pay the required child support. Often, the money involved in these cases is substantial as arrearages can accumulate for several years and reach upward in the tens of thousands of dollars. By merely posting an appearance bond, the delinquent payer continues to not take full responsibility for his or her financial obligations, and thereby not support his or her children, who are the ultimate beneficiaries for the support. Cash performance bonds, on the other hand, can be used by the Friend of the Court and be applied to the arrearage.

Against:

Allowing a person to only provide a cash performance bond may potentially result in greater support arrearages. In many instances, a person fails to pay child support, not because he or she chooses not to pay, but rather because he or she cannot afford to do so, or is simply unaware of the arrearage. If a person cannot provide the required amount, he or she will remain in jail, thus unable to go to work, and then may lose his or her job, resulting in an even larger arrearage in support.

For:

The bill clarifies that bench warrants are valid throughout the state. Under current practice, many judges will issue bench warrants with a geographical limitation (such as a 25-mile radius). With billions of dollars in overdue child support due to the children in the state, the limitation sends the wrong message to delinquent payers and the children for whom support has been ordered. With a limitation in place, it appears that the court does not view overdue child support as matter worthy of proactive enforcement throughout the state. Placing such limitation on the bench warrant allows delinquent payers to continue to default on their financial obligations. The geographical limitation allows the arrearage to continue to accumulate, further punishing the children for whom support has been ordered.

Response:

The bill will not address problem of judges placing a geographical limitation on bench warrants for child support arrearages. In most instances, the limitation is set in place because many delinquent payers are not arrested in the county that issued the bench warrant and often it is too costly to transport an apprehended individual to the county that issued the bench warrant. To address this problem, counties should be given additional resources to be able to transport apprehended individuals. Furthermore, mandating statewide application of bench warrants could have some Headlee implications as well.

The Association for Children for Enforcement of Support (ACES) supports the bill. (5-22-02)

Dads of Michigan PAC is neutral on the bill. (5-22-02)

For:

The bill would delete a provision in current law that allows a payer to provide a bond for his or her appearance if a court hearing cannot be held within 24 hours. In many instances, if the payer cannot be brought to court within the 24 hours, he or she is free to go without providing a bond. Under the bill, the payer would be required to remain in custody until there is a hearing or the payer posts an adequate cash performance bond. This ensures that the payer will receive a hearing or, if the person posts bond, he or she is not released without any payment to the court.

For:

The current law requires that a hearing to be held within 48 hours if the apprehended payer does not post bond. Under the bill, this 48-hour time period would not include weekends and holidays. This potentially requires the hearing to be held within 96 hours. If the arrest were to occur on a Thursday or Friday, the hearing would not have to take place until after the weekend. This provision is very important as many arrests are made on weekends or outside of the jurisdiction that issued the bench warrant. Often, it is difficult to transport a person from the arresting jurisdiction to the court that issued the bench warrant within the time constraints, especially if the arrest occurred on a weekend. This, too, has resulted in the release of debtors without any payment to the court. Allowing for the extra time provides the county that issued the bench warrant time to transport the person to be brought before the court.

POSITIONS:

The Family Independence Agency supports the bill. (5-22-02)

The Friend of the Court Association supports the bill. (5-22-02)

Analyst: M. Wolf

■ 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.