

A SUMMARY OF HOUSE BILL 6006 AS INTRODUCED 5-7-02

The bill would amend the Support and Parenting Time Enforcement Act (Public Act 295 of 1982). The bill would amend provisions relating to the issuance of bench warrants; bond requirements; and findings of contempt. In addition, the bill would rename the “Friend of the Court” as the “Court Family Services Office”.

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 Court Family Services Office 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 Court Family Services Office 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 has accrued 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 one month 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.

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