

Legislative Analysis



CHILD SUPPORT BENCH WARRANT ENFORCEMENT FUND

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House Bill 4770 as enrolled
Public Act 203 of 2004
Sponsor: Rep. Matt Milosch

House Bill 4771 as enrolled
Public Act 205 of 2004
Sponsor: Rep. Sue Tabor
House Committee: Judiciary
Senate Committee: Families and Human Services

Second Analysis (1-12-05)

BRIEF SUMMARY: Together, the bills would establish and fund the Child Support Bench Warrant Enforcement Fund. The bills have an effective date of October 1, 2004.

FISCAL IMPACT: Given the fact that sufficient county data does not exist so as to estimate the new revenue generated, the bills should have no significant fiscal impact on the judiciary, counties, or other agencies of state government.

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 the 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.

Recently, Public Act 567 of 2002 amended the Support and Parenting Time Enforcement Act to require the court to state in the bench warrant that the payer is subject to arrest if apprehended or detained anywhere in this state. This provision was added to the act to clarify that bench warrants are valid throughout the state. It had been common practice to issue bench warrants with a geographical limitation (such as a 25-mile radius). However, there has been some concern that Public Act 567 fails to provide adequate means to ensure the statewide enforcement of bench warrants issued for child support arrearages.

THE CONTENT OF THE BILLS:

House Bill 4770

The bill would amend the Office of Child Support Act (MCL 400.233 and 400.236a) to establish the Child Support Bench Warrant Enforcement Fund, which would be used to enforce civil warrants related to child support. The fund would receive fees collected

under Section 2529 of the Revised Judicature Act of 1961 (as provided in House Bill 4771), in addition to any other money and assets received by the state treasurer for deposit into the fund. The state treasurer would direct investment of the fund and credit interest and earnings from the fund to the fund; any money remaining in the fund at the end of the fiscal year would not lapse into the general fund, but would remain in the enforcement fund. Money from the fund would have to be used to supplement, rather than supplant, money appropriated by the state for the functions of the Office of Child Support. Money used to administer the fund could not exceed 10 percent of the amount annually deposited into the fund.

In addition, the bill would require the Office of Child Support to annually submit a report to the legislature regarding the fund, including a listing of contracts entered into, including the amounts and the agencies involved; the number of bench warrants served by personnel under each contract; and the number of unserved, pending bench warrants as of the start of the date of a contract.

House Bill 4771

The bill would amend the Revised Judicature Act of 1961 (MCL 600.2529) to provide funding for the Child Support Bench Warrant Enforcement Fund. Under the act, the circuit court collects a fee prior to the entry of a final judgment in an action for divorce or separate maintenance in which minor children are involved or in the entry of a final judgment in a child custody dispute submitted to the court as an original action. The bill would amend this provision so that the court would collect a fee prior to entry of a final judgment or order in an action in which the custody, support, or parenting time of minor children is determined or modified

Under the act, the fee is set at \$30, \$50, or \$70 based on whether the matter was submitted to domestic relations mediation or investigation by the Friend of the Court. The bill would, instead, set the fee at \$80 for an action where the custody or parenting time of a child is determined and \$40 for an action where the support of minor child is determined or modified. The \$40 fee, however, would not be required if the \$80 fee is paid. In addition, the court could order a party to reimburse the other party for all or a portion of the fee paid. The bill would allocate \$10 from each fee collected to the Child Support Bench Warrant Enforcement Fund and the balance to the county Friend of the Court Fund.

Further, the bill would permit the court to waive or suspend the fee if the person filing the action is a public officer (and acting in his or her official capacity) or if the order is submitted with the initial filing as a consent order. If the fee were waived or suspended, the court could require in the final judgment that one or more parties to the case pay the fee. Finally, a motion fee would not be collected for a request for a hearing to contest an income withholding order.

ARGUMENTS:

For:

These bills address one of the criticisms of Public Act 567. Often, geographical limitations are placed on bench warrants for child support arrearages because when payers are arrested in counties other than the county that issued the bench warrant, it becomes too costly to transport the apprehended individuals to the county that issued the bench warrant. As a result, it was suggested during the deliberations on Public Act 567 that, for bench warrants to be made valid statewide, counties should receive additional resources to be able to transport apprehended individuals. The establishment of the fund, then, provides counties with the necessary funding to return apprehended delinquent payers to the county that issued the bench warrant.

Further, these bills are necessary given the number of outstanding bench warrants. According to committee testimony, there are 60,000 bench warrants listed on LEIN, with an estimated 99 percent of those related to outstanding child support. Many of these warrants have been outstanding for quite some time and, given the current state of affairs, it seems unlikely that there will be a major crackdown on the bench warrants absent any increase in resources to apprehend these delinquent payers.

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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.