

CHILD SUPPORT BENCH WARRANT ENFORCEMENT FUND

House Bill 4770 as introduced
Sponsor: Rep. Matthew Milsoch

House Bill 4771 (Substitute H-1)
Sponsor: Rep. Susan Tabor

First Analysis (6-24-03)
Committee: 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 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 (House Bill 6006) - part of the recent Friend of the Court reform package - 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 of Public Act 567, which became effective on June 1, 2003, was added to the act to clarify that bench warrants are valid throughout the state. It has 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:

Together, the bills would establish and fund the Child Support Bench Warrant Enforcement Fund, and make other amendments. House Bill 4770 is tie-barred to House Bill 4771.

House Bill 4770 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 administer and provide grants for the enforcement of bench warrants that are associated with the collection of 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.

House Bill 4771 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 in an action in which the custody, support, or parenting time of minor children is determined.

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 increase the fees to \$40, \$60, or \$80, respectively. In addition, the bill would require the clerk of the circuit court to submit, at the end of each month, \$10 for each fee collected to the state treasurer for deposit into the Child Support Bench Warrant Enforcement 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). 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. Further, a motion fee would not be collected for a request for a hearing to contest an income withholding order.

FISCAL IMPLICATIONS:

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. (HFA analysis dated 6-20-03)

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 of 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.

Against:

While increasing funding for enforcing bench warrants issued for delinquent child support is certainly a noble cause, the bill fails to provide adequate protections against using the additional funding for purposes other than those specified in the act. Notwithstanding the provisions of the bill that state that such funds supplement, rather than supplant, existing funding, the bill fails to provide any guarantee that the funds won't supplant other funding.

Against:

The bill also provides funding to counties in the form of grants. Under this provision, it is very likely that some counties will eventually support the enforcement activities of other counties, and that funding will be directed to only a few select counties. Provisions should be enacted to ensure that each county receives an adequate amount of funding, such as distributing funds based on the number of outstanding bench warrants issued in the county or requiring that county sheriffs enter into contracts with the state or local Title IV-D agency so they can receive federal funding to assist with child support enforcement.

POSITIONS:

The Friend of the Court Association supports the bills. (6-2-03)

The Family Law Section of the State Bar of Michigan supports the fee increase, but is generally opposed to the bills out of concern that the grant program would become politicized and provide no additional funding to the smaller, more rural counties of the state. (6-23-03)

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.