House
Legislative
Analysis
Section

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CHILD SUPPORT ARREARAGE REDUCTION PACKAGE

House Bill 4773 (Substitute H-1)
Sponsor: Rep. Paul Condino

House Bills 4774 and 4776 (Substitutes H-1)
Sponsor: Rep. Jim Howell

House Bill 4775 with House committee amendments
Sponsor: Rep. James Koetje

House Bill 4792 (Substitute H-1)
Sponsor: Rep. John Garfield

Committee: Judiciary
First Analysis (6-24-03)

THE APPARENT PROBLEM:

Child support payments are ordered to ensure that the needs of children are adequately provided for even after the child's parents are no longer married. In many cases, child support payments represent a significant portion of a family's income. As such, child support payments contribute greatly toward the self-sufficiency of those families receiving support. Aside from the immediate financial benefits that child support payments provide families, the support payments also serve to foster a better relationship between noncustodial parents and their children. To that end, there is no arguing the point that when child support payments do not find their way to support their intended recipients (except, when that money is assigned to the state in public assistance cases), the children suffer.

In recognition of the importance of child support, the Friend of the Court and Office of Child Support are granted several enforcement remedies to ensure the collection of current and past due support. These enforcement remedies include contempt proceedings, license suspension, the attachment of liens, the collection of past due support through state and federal income tax refunds, income withholding orders, and even bench warrants for a delinquent payer's arrest.

Despite the availability of these enforcement remedies, a great number of parents continually do not meet their financial obligations. In 2001, the *Detroit News* reported that 400,000 children did not receive the support that had been ordered for them, and that more than 670,000 families who are owed support have been forced on to state assistance. Last session, in announcing a package of bills intended to clarify and strengthen existing law as it relates to child support enforcement and parenting time, and centralize and streamline procedures taken to enforce orders, then-Governor Engler and Michigan Supreme Court Chief Justice Maura Corrigan reported that approximately one-third of the more than 800,000 child support orders involved parents who either do not make their payments on time or at all, and that the total amount of child support owed to the children in the state was estimated to be $6.3 billion. According to recent committee testimony, the total child support arrearage is now estimated to be $7 billion, with an estimated three-quarters of those owing an arrearage earning less than $20,000 per year.

The reasons for such a large cumulative child support arrearage are numerous and quite varied. Perhaps most obvious reason for the large arrearage is the "deadbeat" parents who, while financially capable of paying the required support, simply abscond from their financial obligations to their children. The other reasons - more directly related to the plight of the "deadbroke" parents (those would like to pay, but are simply financially unable to do so) – include the timeliness and necessity for reviews and

modifications of child support orders, the extent to which support orders accurately reflect current circumstances, the assessment of surcharges and interest, the retroactive nature of support orders, and the flexibility afforded to judges and local Friends of the Court to work with the parties involved in coming up with some sort of arrearage payment plan. To that end, legislation has been introduced to address the problem of child support arrearages as it relates to an individual's ability to pay.

THE CONTENT OF THE BILL:

House Bill 4773

The bill would amend provisions in the Friend of the Court Act relating to the review of child support orders.

First, the bill would change time requirements placed on the Friend of the Court (FOC) to determine whether a child support order is due for a review, and to conduct that review. In general, the FOC would have 14 days, rather than 15, upon receiving a request to review an order, to determine whether a review of that child support order is warranted. In addition, the bill would reduce the frequency of reviews from at least once each 24 months, to at least once each 36 months for, in general, public assistance recipients. Further, the bill would add that a review of an order would take place at the direction of the court.

The bill would also provide for a review of a child support order (conducted at the office's initiative) upon a support recipient's or payer's incarceration or release from incarceration following a criminal conviction and sentence of at least one year. The FOC would be required to conduct a review within 14 days of receiving notification of a recipient's or payer's incarceration or release. This added provision would not affect the ability of a party to request a review.

The bill would delete a provision - and related provisions - that permits the FOC to deviate from the child support formula developed by the Friend of the Court bureau if the office determines that the application of the formula would be unjust or inappropriate, or that income should not be based on the actual income earned by the parties.

Review of a child support order. Section 17b of the act provides for notification of any review of a child support order. Under that section, the parties are notified of their right to request a review, and are sent notice of a review at least 30 days prior to the review. After a review is conducted, parties are notified of any proposed change in the amount of child support or ordered health care coverage, or any determination that there should not be a modification of the support order. These provisions would be deleted in their entirety, although the new language is nearly the same in certain parts.

The bill provides that any child support order entered after the bill's effective date would be modified in accordance with the new section 17b. For support orders entered prior to the bill's effective date, the FOC would notify the parties of their right to a review as required by federal law.

Under the bill, the FOC would initiate proceedings to review a support order by notifying the parties, and include in that notice a request for sufficient information to allow the FOC to review the order, the date such information is due, and advise the parties as to how the review will be conducted. Current law provides that the notice shall contain a request for income, expense, and other information as needed from the party to conduct the review, and the date such information is due.

After the information is due (though not sooner than 21 days after the notice is sent), the FOC would calculate the amount of support in accordance with the child support formula, and notify each party (and his or her attorney) of the amount of support calculated, the proposed effective date of the modification, and a statement (and directions) informing the parties of their ability to object to the recommended support amount.

Twenty-one or more days after the notice is sent, the FOC would determine whether an objection has been filed. If there is an objection, the FOC would set the matter for a hearing before a judge or referee or, if it receives additional information with the objection, it could recalculate the support amount and send out a revised notice. If no objection is filed, the FOC would prepare an order for court approval. The FOC would be permitted to schedule a joint meeting between the parties to facilitate a resolution of any support issues, taking into consideration any evidence of domestic violence, the safety of the parties and the child, and any uneven bargaining positions of the parties.

The FOC would include in its recommendation for support, the calculations upon which the support amount is based, the amount of support based on actual income (if the recommendation is based on imputed income), and all factual assumptions upon which the imputed income is based. The FOC would

be permitted to impute income to a party who fails or refused to provide information to the office.

At a hearing on a party's objection to an FOC recommendation, the trier of fact would be permitted to consider the FOC's recommendation as evidence to prove a fact relevant to the support calculation when no other evidence is presented concerning that fact, and if the parties agree or no objection to its use for that purpose is made. The court would not require a substantial change in circumstances as a condition for modifying a support order when support is adjusted under 17(1), which applies to a support order that is reviewed during the 36-month reviewing cycle because the child is supported by public assistance, at the initiative of the FOC, at the direction of the court, or upon request from either party or an initiating state. However, upon a motion filed by a party to modify support, the court could only modify support upon finding a substantial change in circumstances, including health care coverage becoming newly available to a party.

Friend of the Court Bureau. Under the act, the FOC Bureau is required to establish a nine-person state advisory committee, composed of members who also serve on a local citizen advisory committee. Under the bill, the commission would remain the same, except that preference would be given to a member of a citizen advisory committee (rather than requiring that each state committee member also serve on the local committee). [Note: the same provision is also contained in House Bill 4776.] In addition, the bill would add that the FOC Bureau would be required to develop guidelines for imputing income for the calculation of child support.

MCL 552.517 et al.

House Bill 4774

Under the Support and Parenting Time Enforcement Act, each January 1 and July 1, a surcharge calculated at an eight percent annual rate is added to support payments that are past due as of those dates. For the purpose of calculating the surcharge, the amount due according to Friend of the Court records on January 1 and July 1 is reduced by an amount equal to the support for one month. In addition, any money received for the payment of support is first credited to the current support and then to any arrearage (including any surcharges).

The bill would delete the above provisions, and states that, for a Friend of the Court case, a surcharge on any past due support would be computed at four percent for each semi-annual cycle each January 1 and July (except as otherwise provided), and the amount of the surcharge would not compound. The surcharge would not be assessed for the current semiannual cycle under the following circumstances:

- Beginning on April 1, 2004, in cases in which the Friend of the Court is collecting on a current child support obligation, the payer has paid at least 90 percent of the most recent semiannual obligation, and the total arrearage as of the assessment date is less than the total arrearage on the assessment date of the previous semi-annual cycle.

- For a support order entered after the bill's effective date, for any period of time in which a support order did not exist when support is ordered for that period.

- The support order is waived or abated under a court order.

The surcharge would be collected and enforced by any means authorized under the act, the Friend of the Court Act, or other appropriate state or federal law for the enforcement and collection of child support. Further, a surcharge would not be considered as support until it is actually collected, and any surcharge collected would be paid as additional support to the recipient of support.

The bill would add that a party or the Friend of the Court would be permitted to file a motion with the court for a repayment plan that waives any amount assessed as a surcharge and any future surcharge. The court would enter an order incorporating the repayment plan (after providing notice and a hearing) if the court finds that the arrearage is not a result of any action on the part of the payer to avoid a support obligation; the payer has no ability (now and in the foreseeable future) to pay the arrearage absent a repayment plan that waives the surcharge; the repayment plan is reasonably based on the payer's ability to pay; and the surcharge accrued or will accrue after the bill's effective date.

Upon entry of the repayment order, and upon notice and hearing, if the court finds that the payer has substantially failed to comply with the repayment plan, the court would enter an order that reinstates the surcharge and all or a portion of the surcharge that was assessed but waived as a condition of the repayment plan.

MCL 552.602 et al.

House Bill 4775

Under the Paternity Act, a court is required to enter a judgment declaring paternity and provide for the support of the child, including child support (in accordance with the Support and Parenting Time Enforcement Act) and the mother's expenses incurred in relation to her confinement and pregnancy, and for any applicable funeral expenses if the child dies.

The act states that if the proceedings under the act are commenced more than six years after the birth of the child, support shall not be awarded for any expenses or support that accrued prior to the date on which the complaint seeking paternity was filed, unless the father has acknowledged paternity in writing; at least one payment was made for support of the child during the six-year period, and proceedings are commenced within six years after the date of the most recent payment; or the defendant was out of state, was avoiding service of process, or threatened or coerced the complainant not to file a proceeding under the act during the six year period. The court can award an amount for expenses or support that accrued prior to the date the complaint was filed if the complaint was filed within a period of time equal to the sum of six years and the time the defendant was out of state, avoiding service of process, or threatened or coerced the complainant not to file a proceeding.

The bill would delete the above provisions pertaining the time period (and any extensions) within which a complaint must be filed in order to receive support, and state that the court would order payment for any expenses related to the mother's confinement and pregnancy, and any funeral costs, as determined by the court under section 2 of the act. [Note: Section 2 of the act would be amended by House Bill 4768 to apportion those costs between both parents.]

The bill would add that a child support obligation would be retroactive only to the date of the paternity complaint unless the defendant was avoiding service of process or threatened or coerced the complainant into not filing a proceeding under the act.

MCL 722.717

House Bill 4776

The bill would amend a provision in the Friend of the Court act concerning the conduct of de novo hearings and make other amendments.

Under the act, the court must hold a de novo hearing on any matter that has been the subject of a referee hearing, upon the written request of either party or upon motion of the court. The request of a party shall be made within 21 days after the recommendation of the referee is made available to the party, except that a request for a de novo hearing concerning an order of income withholding shall be made within 14 days after the recommendation. The bill would delete the language pertaining to the request for a de novo hearing concerning an order of income withholding. In addition, the bill would add that pending a de novo hearing, the referee's recommended order could be presented to the court for entry of an interim order as provided by state Supreme Court rules. The interim court would be served on the parties within three days and would be subject to review. The bill would also define a de novo hearing to mean a judicial consideration of a matter based on the record of a previous hearing, including any memoranda, recommendations, or proposed orders by the referee, but that may at the court's discretion be based in whole or in part on evidence that was not introduced at a previous hearing.

The bill would also delete a provision in the act that permits the chief judge to designate as a referee the Friend of the Court (FOC), an employee of the FOC who is a member of the state bar, or a member of the state bar who is assisting the Friend of the Court (if the FOC is not a member of the state bar and does not employ an attorney who is a member of the state bar.)

In addition, the act requires the Friend of the Court Bureau to develop a formula that is to be used in establishing and modifying a child support amount and health care obligation. The bill would add that the formula should also include guidelines for deviating from the formula.

MCL 552.502 et al.

House Bill 4792

The bill would amend the Support and Parenting Time Enforcement Act by adding a new section pertaining to the development of a child support arrearage payment plan. Specifically, the bill states that a payer who has an arrearage under a support order could file a motion with the circuit court for a payment plan to pay the arrearage and discharge or abate arrearages.

The court would approve of the plan if (1) the arrearage is owed to an individual payee and the payee consents to the plan (and does not consent to the plan out of fear, coercion, or duress) or (2) the arrearage is owed to the state or a political subdivision and the arrearage did not arise out of an action by the payer to avoid payment; the payer does not have the ability to pay the arrearage other than through the payment plan; the payment plan will pay a reasonable portion of the arrearage over a reasonable time, based on the payer's ability to pay; and the Office of Child Support has received notice of the payer's intent to petition the court and within 56 days executed a waiver consenting to the court. [By executing the waiver, the office of child support would consent to a compromise of arrearages that the court orders after considering the payer's motion. If the office does not consent to a compromise of arrearages, the office would notify the payer within 56 days].

In addition to the above requirements, the court would also have to find that the establishment of the payment plan would be in the best interest of the parties and children involved in the matter. In addition, the court could require certain conditions in the payment plan (in addition to the payment of support) that it determines are in the best interest of a child, such as the payer's participation in a parenting program, drug or alcohol counseling, anger management classes, a batterer intervention program, and participating in a work program.

The court would be required to discharge any remaining arrearage if the payer completes the payment plan, and the court would be permitted to enter an order granting relief if the payer substantially completes the payment plan. However, the plan would have to include a requirement that any arrearage subject to the plan could be reinstated upon motion and hearing for good cause shown at anytime.

The provisions added by the bill would not modify the right of a party to receive other child support credits nor prevent the court from correcting a support order under other applicable law or court rule. Finally, the Family Independence Agency would have to designate an office to receive service of a motion.

FISCAL IMPLICATIONS:

House Bill 4773. There is no fiscal impact on the FIA. The right to impute income may actually reduce the administrative costs of the FOC when compared to current language in the act, which permits only a request for income, expense, or other information needed to conduct the child support review. However, the amount of such cost reduction is not determinable. (HFA analysis dated 6-20-03)

House Bill 4774. The bill would have no fiscal impact on the FIA. It may possibly reduce the administrative costs of the FOC and the judiciary by eliminating the need to compute, record, and attempt to collect surcharge amounts, but this amount is not determinable. (HFA analysis dated 6-20-03).

House Bill 4775. There is no significant fiscal impact on the FIA. The administrative costs of the FOC and judiciary could be reduced due to shortening the retroactivity period, but the amount of this cost reduction is not determinable. (HFA analysis dated 6-20-03)

House Bill 4776. There is no fiscal impact on the FIA, judiciary, or the FOC. (HFA analysis dated 6-20-03)

House Bill 4792. There is no significant impact on the Family Independence Agency. The Friend of the Court offices may see some reduction in administrative costs due to the decreased need to calculate and monitor arrearages, but this amount is not determinable, and may be offset by the cost of monitoring the payment plans. (HFA analysis dated 6-24-03)

ARGUMENTS:

For:

As a general argument in support of the entire package of bills addressed in this analysis, each of the bills seek to address a particular "cause" of the accrual of substantial child support arrearages. It is believed that current practices and law effectively force payers into becoming delinquent by being inflexible in the processes followed to modify an existing support order and by the assessment of high surcharges and interest. It is generally believed that current procedures as they relate to the review and modification of support are so cumbersome and time consuming as to effectively render the support order outdated, when compared to the actual circumstances surrounding a particular case. What happens, then, is that the support order does not accurately reflect actual circumstances, thereby forcing payers to pay support in an amount that generally exceeds their actual financial abilities. When a payer does not have the financial wherewithal to meet his or her child support obligations, an arrearage will obviously occur; and once that occurs, the likelihood of the payer staying involved in his or her child's life is greatly diminished. To that end, the bills would add

provisions that would streamline the review and modification processes (a theme ensconced in the child support/Friend of the Court package of bills from last session); lower, and in some cases eliminate, the surcharge assessed on an arrearage; decrease the retroactivity of support orders; and work with both parties in a case to establish an arrearage payment plan.

Response:

While not arguing against the bills in their entirety, some people believe that the system would be better served by revising the child support guidelines, which are deemed by some as being outdated, arbitrary, and running counter to the requirements that they be fair and equitable. Further, it is believed that changing the lexicon used in the entire realm of child support and parenting time - particularly moving away from what some believe to be adversarial and divisive words and phrases, such as "custodial" and "non-custodial" parent - would go long way toward improving an often poisonous atmosphere and, ultimately, the lives of the children involved.

House Bill 4773

For:

First, the bill would change the frequency for reviews of support orders from 24 to 36 months. This change may seem to be a bit counterintuitive, given that the general idea for all of the bills is to the have a support order that more closely represents the circumstances surrounding a case (e.g. a payer's financial ability to pay). However, it is believed that the automatic review of support orders every 24 months is rather onerous and affords local Friend of the Court offices with little time and resources to properly review the order and recommend a modification. As a result, the orders are not as accurate as they could be if they were properly reviewed by the FOC, thereby forcing payers to pay an amount beyond their means and resulting in an arrearage or requiring payers to pay an amount below their means and providing less support to their children.

Second, the bill would add that a support order would be reviewed if a payer or payee is incarcerated or released from incarceration for a term of more than one year. While nothing in current law prohibits the Friend of the Court from reviewing an order upon a party's incarceration (or release), sometimes local FOCs are not aware of the situation, and in many instances, the parties simply don't notify the FOC of their incarceration or release from incarceration (despite the fact that state law requires a party to notify the FOC of any change in address). As a result, the payer most assuredly will accrue a substantial arrearage. Given the fact that payer will, in all likelihood, have a diminished earning capacity upon release, the likelihood of him or her ever paying down the arrearage and remain current on his or her support payments is not very high.

Against:

The bill provides that (1) the court shall not require proof of a substantial change in circumstances to modify a child support order when the support order is to reviewed by the FOC under section 17(1), and (2) upon motion by a party to modify support, the court may only modify child support order upon a finding a substantial change in circumstances. First, section 17(1) of the act provides that the FOC shall review a support order upon, among others, the receipt of a written request from either party [§17(1)(d)]. From that, it appears that the bill contradicts the current law, and it is not entirely clear as to the standard of proof that would be necessary to prompt a modification in a child support order if the modification was requested by one of the parties. Second, assuming that there is a different evidentiary standard depending on whether the modification was prompted by a party, it is not entirely clear as to why that disparate treatment is necessary. Further, the standard threshold in order to modify a support order (or an order concerning parenting time or custody) is a simple "change in circumstances", pursuant to the language of Chapter 84 of the Revised Statutes of 1846 (Of Divorce). The act (MCL 552.17) provides that "the court may revise or alter a judgment concerning the care, custody, maintenance, and support of some or all of the children, as the circumstances of the parents and the benefits of the children require." In *Calley v. Calley* (197 Mich App 380), the Michigan Court of Appeals noted that "any substantial change in the amount of support recommended by a new friend of the court report over the report prepared when a judgment of divorce is entered may constitute a 'change in circumstances' that would justify the modification of a support order." That being said, it appears that the bill runs counter to the court's opinion in *Calley* and the language found in MCL 552.17, and would require a higher threshold (by requiring a *substantial* change in circumstances) in order to modify a support order. This higher evidentiary standard - when compared to current law or other provisions of the bill - also appears to run counter to one aspect of the package's purported intent - to have support orders that more closely represent the actual circumstances. If a change in circumstances truly occurs, then the support order should reasonably reflect that change, regardless of how substantial that change in circumstances may be.

House Bill 4774

For:

The bill seeks to address one of the major factors contributing to a substantial child support arrearage: surcharges. Current law requires the court to add a surcharge - which is rolled into the amount of child support owed - equal to eight percent on all support payments that are past due on January 1 and July 1 of each year. The surcharge provisions were added in 1995 as another child support enforcement mechanism to encourage payers to remain current in their support payments. However, it does not appear that the added surcharge is effective at encouraging individuals to pay the ordered support. "Deadbeat" parents do not pay the support even though they, generally, have the financial wherewithal to do so. "Deadbroke" parents would pay the support if only they could afford to do so. What happens, then, is that the surcharge effectively penalizes deadbroke parents, and further hinders their ability the past due support.

To ease the burden caused by the assessment of surcharges, the bill would provide that the surcharge would not be assessed for the current semiannual cycle in certain instances, including when the payer paid at least 90 percent of the support ordered for the most recent semiannual cycle and the arrearage on the assessment date is less than the arrearage on the previous assessment date (meaning that the payer is, for the most part, current on his or her support payments, and is making progress toward reducing the arrearage), or upon the motion of the FOC or a party to enter an order for a repayment plan.

Perhaps more importantly, the bill states that a surcharge is not "support" until it is actually collected and is paid out as additional support to the recipient. Now, when the surcharge is assessed, it considered child support, which greatly exacerbates the arrearage (both from the standpoint of the individual payer and the state). As stated earlier, for the individual payer, the added surcharge really cuts into a deadbroke parent's ability to pay off an arrearage. For the state, when the surcharge is rolled into the amount of support owed, the state loses revenue as federal money flowing down to the state for its child support programs is based, in part, on the state's ability to collect arrearages.

Further, the bill protects those individuals who are currently owed past due support, by providing that for the repayment plan, the surcharge must accrue after the bill's effective date. This provision prevents a deadbeat parent who finally makes arrangements to pay the past due support from filing a motion for repayment that waives all of the surcharges that have accrued over the years. [Further, since the surcharges are counted as child support, it would be quite difficult for the FOC to scour its records and determine how much of the support is due to the surcharges.] In addition, the bill provides that the court shall enter the repayment plan if the arrearage did not arise from the conduct of a payer to avoid the support obligation. This added provision prevents deadbeat parents - those who can pay, but do not - from absconding from their financial obligations to their child for a lengthy period of time, only to enter into a repayment plan that rewards the deadbeat parent by waiving the surcharges. Finally, the bill contains an added protection that reinstates the surcharges if the payer has substantially not complied with the repayment plan.

Against:

Some believe that a better alternative to this bill is House Bill 4654. That bill would establish a time-limited arrearage amnesty program that would waive all criminal and civil penalties for a delinquent payer that pays the past due support in one lump some or in installments (payable in three payments of 50 percent, 25 percent, and 25 percent of the past due support).

Response:

House Bill 4654 would appear to benefit only deadbeat parents, as it is highly unlikely that a deadbroke parent would be financially able to pay off the past due support in such large sums. House Bill 4774 provides a better alternative by assisting deadbroke parents in paying off past due support, and by providing no assistance to parents who have willfully defaulted on their support payments.

House Bill 4775

For:

The bill would limit the retroactivity of support payments ordered under the Paternity Act, by removing the six-year time limit, and permitting support to ordered only from the date the paternity claim was filed, unless the payer avoided service of the claim or threatened or coerced the mother to not file the claim. By permitting, under current law, retroactive support for up to six years after a child's birth (and allowing for an extension for numerous reasons), the act has the potential to provide the father with a huge financial burden, which is likely to compound over time when it goes into arrears. Under current law, a father could be hit with a support order dating back six years for a child that he may have never known about. While one would certainly expect the father to provide support to his

child since that child's birth, it is certainly difficult to expect that to occur if he becomes aware of the child several years (i.e. more than six) after that child's birth, especially if the mother is no more aware of who the child's father is than the father's awareness of that child. Further, if a mother and the putative father have an informal agreement whereby the father will provide periodic support, and the father reneges on that agreement, it is incumbent upon the mother to file a paternity claim as soon as possible (not a period of several years) to minimize whatever disruption in support for her child is likely to occur. To that end, the bill would bring greater fairness in the process by providing that support would be retroactive only to the date the paternity claim was filed, with an extension granted if the father was avoiding service or was threatening or coercing the mother to not file a claim.

Against:

The bill may effectively prohibit a mother from recouping support that rightfully belongs to her child. In many cases when a child is born out of wedlock, the mother and the putative father enter into an agreement whereby the father will informally provide financial support and assistance, absent the actual paternity claim. If such an arrangement continues for a few years and falls apart, thereby forcing the mother to file a paternity claim, the mother would only be able to receive support from the date of the claim, and not before then, even though the father had promised to provide support.

House Bill 4776

For:

The bill would amend the Friend of the Court Act to add a definition of "de novo hearing" so that the hearing conducted in court would be based, in part, on the record of a referee hearing. This change is intended to streamline the process used to settle a dispute regarding custody, parenting time, and child support, and relieve some of the burden of trying the case before a judge. In addition, according to committee testimony, in certain counties, a true de novo hearing does not occur, and judges ask the attorneys for both parties why they should not go along with the findings and recommendations of the referee. Furthermore, the parties know that the decision of the referee is not binding, so they often do not take that hearing as seriously as perhaps they should, and they don't, generally, work as hard in trying to settle a disagreement - thereby wasting the time and energy of everyone involved.

Against:

This bill fundamentally changes the process used to resolve a dispute among parties regarding child support, parenting time, and custody. This bill, by defining a de novo hearing to mean something other than a true de novo hearing, effectively forces parties to go before a referee and makes that referee's decision binding on the parties. Courts, not referees, are the triers of fact. The bill presents serious appellate and due process concerns, given the fact that the parties in a domestic relations matter are entitled to a hearing before a judge (and any appeals to higher courts). Furthermore, the bill does not appear to be necessary since a judicial hearing may be based solely on the record of the referee hearing if both parties consent [MCR 3.215(f)]

House Bill 4792

For:

Many of the arguments in support of House Bill 4792 can be found in the arguments for House Bill 4774. This bill provides for the establishment of an arrearage payment plan, and could be seen as a companion measure to HB 4774, which provides that the surcharges assessed on a support arrearage could be waived if the payer enters into a payment plan. The ability to establish a payment plan provides courts with added flexibility in working with the parties involved in a matter to make some progress in paying down the arrearage (and, by extension, encouraging the continued involvement of the payer in the life of his or her child). The bill provides assurances that the payee would have to consent to the plan, and that if the arrearage is owed to the state or political subdivision, that the arrearage did not arise out of the actions of the payer to avoid payment and that the payer does not have the ability to pay down the arrearage absent the establishment of the payment plan. These added protections provide assurances that these payment plans are not used by deadbeat parents to abscond from a large portion of their past due support.

Against:

Similar to the argument presented against HB 4774, it is believed by some that House Bill 4654 would serve as a better alternative to encourage payers to provide their past due support.

Response:

Likewise, it can contended that the payment plan established under HB 4792 would serve as a better alternative to HB 4654 because HB 4792 assists deadbroke parents, but not deadbeat parents, in paying down their child support arrearage.

POSITIONS:

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

Dads of Michigan supports the concept of the bills. (6-10-03)

The Family Law Section of the State Bar of Michigan is generally opposed the bills, particularly House Bill 4776. They are supportive of House Bill 4774 only to the extent that it seeks to segregate surcharges from actual support. Nonetheless, they oppose the repayment provisions of the bill. (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.