

# Legislative Analysis



## **BOND REQUIREMENTS FOR FELONY NONSUPPORT: INCREASE**

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**House Bill 5372 as enrolled**  
**Public Act 569 of 2004**  
**Sponsor: Rep. John Garfield**

**House Bill 5373 as enrolled**  
**Public Act 570 of 2004**  
**Sponsor: Rep. Mike Nofs**

**House Committee: Judiciary**  
**Senate Committee: Families and Human Services**

### **Second Analysis (8-17-05)**

**BRIEF SUMMARY:** The bills would require that a person arrested for nonpayment of court-ordered child support remain in custody unless a cash performance bond was deposited.

**FISCAL IMPACT:** The bill would have fiscal implications for the state and local units of government. See more detailed information under Fiscal Information later in the analysis.

### **THE APPARENT PROBLEM:**

According to the Office of Attorney General, over \$7 billion is owed to the state's children in the form of unpaid child support. This applies to about 650,000 children. Of this figure, over 400,000 children receive no support at all. When a parent fails to pay child support, that child's standard of living is decreased and the child may be put at risk for educational and behavioral problems in the future.

Recent reforms in child support enforcement has allowed the Child Support Division of the Office of Attorney General to arrest 114 people for nonsupport and collect over \$1.5 million, just in the last seven months of 2003. In the first two months of 2004 alone, about \$570,000 was collected in past due support. Unfortunately, with over \$7 billion in uncollected past due child support, Michigan ranks third worst in the nation. Some believe that if those arrested for failure to pay child support had to post a bond that was a percentage of what was owed, there would be a greater incentive to pay the arrearage for those who can afford to pay.

### **THE CONTENT OF THE BILLS:**

House Bill 5372 would amend the Support and Parenting Time Enforcement Act (MCL 552.631) to specify that if an individual was arrested on a felony warrant for violating the criminal nonsupport provisions of the Michigan Penal Code, the court would require the individual to remain in custody until the time of the preliminary examination unless the individual deposited a cash performance bond. The bill also would specify that upon

notification that a payer with an outstanding bench warrant had been arrested or arraigned on a felony warrant, the court could order the bench warrant recalled.

House Bill 5373 would amend the section of the Michigan Penal Code (MCL 750.165) dealing with the failure to pay court-ordered support to specify that an individual arrested for a violation would remain in custody until the arraignment unless the individual deposited a cash bond of at least \$500 or 25 percent of the arrearage, whichever was greater. If the individual remained in custody, the court would address the amount of the cash bond at the arraignment and at the preliminary examination and, except for good cause shown on the record, would order the bond to be continued in the same amount. At the court's discretion, the cash bond could be set at an amount not more than 100 percent of the arrearage and the court could add costs required under the Support and Parenting Time Enforcement Act. The court would specify that the cash bond amount be entered into the Law Enforcement Information Network (LEIN). If a bench warrant under the Support and Parenting Time Enforcement Act was outstanding for an individual when the individual was arrested, the court would notify the court handling the civil support case that the bench warrant could be recalled.

#### ***BACKGROUND INFORMATION:***

The bills were part of a multi-bill package that would have amended various acts to create a graduated penalty structure for non-support based on the amount owed; create a public "most wanted list" of payers who owed more than \$200,000 in support; limit the amount a support order could be reduced when a payer is incarcerated; and put the new felony penalties in the sentencing guidelines. Only the bills that required a cash bond before release pending arraignment and the preliminary examination were enacted. The other bills, House Bills 5368-5371 were passed by the House of Representatives but failed to see Senate action.

#### ***FISCAL INFORMATION:***

Under federal and state law, states are allowed to retain a portion of child support collections owed to custodial parents that have received public assistance from the state. These retained collections are meant to reimburse the state for the cost of this initial assistance. The retained collections are used to fund current public assistance costs and help reduce state-funded costs in this area. Thus, to the extent that the bills' provisions lead to an increase in child support collections owed to families that are or were receiving public assistance from the state, the bills could reduce state-funded public assistance costs to some degree.

Furthermore, by mandating that certain individuals remain in custody until certain support requirements are satisfied, the bills could increase local correctional costs; costs of incarceration in the county jail vary from county to county.

## ***ARGUMENTS:***

### ***For:***

Current law requires a bond of at least \$500 or 25 percent of the child support arrearage, whichever is greater, before a person can be released after being arrested on a bench warrant for nonsupport. House Bills 5372 and 5373 would establish a minimum bond amount for a person arrested for felony non-support at the same minimal level for misdemeanor bench warrants. (Bench warrants are issued by the court and may be issued for the arrest of a person found in contempt of a court order.) This proposed legislation, say proponents, will provide a disincentive for parent to neglect their responsibility towards their children by requiring a bond to be posted for release until arraignment or preliminary examination. As a result, children may be better provided for, fewer families may be dependent on public assistance, and the amount of uncollected child support should decrease (which in turn may make the state eligible to receive more revenue from a federal incentive measure designed to encourage increased collection rates).

### ***Response:***

Local costs for county jails could increase due to the cost of housing those who can't afford the bond requirements. And, if such incarceration results in job loss, a low-income person owing the child support may have a more difficult time ever paying off the arrearage.

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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.