



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 4772 (Substitute S-1 as reported)
House Bill 4773 (Substitute S-1 as reported)
House Bill 4774 (Substitute S-3 as reported)
House Bill 4775 (Substitute S-1 as reported)
House Bill 4776 (Substitute S-1 as reported)
House Bill 4792 (Substitute S-1 as reported)
Sponsor: Representative Barb Vander Veen (H.B. 4772)
Representative Paul Condino (H.B. 4773)
Representative Jim Howell (H.B. 4774 & 4776)
Representative James Koetje (H.B. 4775)
Representative John Garfield (H.B. 4792)

House Committee: Judiciary

Senate Committee: Family and Children Services

Date Completed: 6-21-04

RATIONALE

Child support payments are ordered to ensure that the needs of children are adequately provided for even if the child's parents are not married. The Friend of the Court (FOC) and the Office of Child Support (OCS) are granted several enforcement remedies to ensure the collection of current and past due support. The agencies may pursue 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 bench warrants for a delinquent payer's arrest. Despite the availability of these measures, a significant number of parents continually do not meet their child support obligations. While some parents simply choose not to pay the required amount, many parents simply cannot afford to pay. According to the Friend of the Court Association, Federal studies indicate that at least 75% of Michigan parents who are behind on their child support earn less than \$10,000 per year. Their difficulties may be compounded when a support order is not adjusted to reflect their particular circumstances, or when a past-due surcharge is assessed, once an arrearage has accumulated. It has been suggested that policies be implemented to streamline the child support

process and make paying support easier for parents who are struggling financially.

CONTENT

House Bill 4772 (S-1) would amend the Support and Parenting Time Enforcement Act to do the following:

- **Require the FOC to send a notice of arrearage if a support payer's income withholding were being administratively adjusted.**
- **Revise requirements regarding information that must be included in an arrearage notice.**
- **Allow a payer to contest an order of income withholding on the ground that an administrative adjustment would cause an unjust or inappropriate result.**
- **Revise provisions under which an employer may be held in contempt for failing to comply with an income withholding order.**
- **Allow a court to find a payer in contempt for failing to obtain a source of income and participate in a work activity after referral by the FOC; and order him or her to pay a maximum fine of \$100 to the FOC Fund.**
- **Require a court, upon finding a payer in contempt for failing or refusing to**

pay, to order him or her to participate in a work activity.

House Bill 4773 (S-1) would amend the Friend of the Court Act to do the following:

- Revise the time periods for a periodic review of a child support order, and allow a review because of one party's incarceration or release from incarceration.
- Change the procedures for initiating and conducting a review of a child support order, and modifying an order.
- Allow the FOC to impute income to a party who failed or refused to provide requested information, and require the FOC Bureau to develop guidelines for imputing income.
- Allow the FOC to schedule a joint meeting between the parties to attempt to expedite resolution of support issues in accordance with statutory guidelines.

House Bill 4774 (S-3) would amend the Support and Parenting Time Enforcement Act to provide that a surcharge on past due child support could not be assessed under certain circumstances; and allow a party or the FOC to file a motion for a repayment plan providing for the discharge of a surcharge and the waiver of a future surcharge, for surcharges accruing after the bill's effective date.

House Bill 4775 (S-1) would amend the Paternity Act to provide that a child support obligation would be retroactive only to the date that a paternity complaint was filed, except under certain conditions.

House Bill 4776 (S-1) would amend the Friend of the Court Act to do the following:

- Provide that a referee's recommended order in a domestic relations matter could be presented to the court for entry of an interim order, pending a de novo hearing.
- Allow each county to establish a citizen FOC advisory committee, rather than require it; and revise the composition of the committees.

House Bill 4792 (S-1) would amend the Support and Parenting Time Enforcement Act to allow a person who

had an arrearage under a child support order to establish an arrearage payment plan.

The bills are described below in further detail.

House Bills 4772 (S-1) and 4792 (S-1) would take effect on February 28, 2005. House Bill 4773 (S-1) would take effect on June 30, 2005. Provisions of House Bill 4774 (S-3) concerning the calculation and collection of surcharges would take effect on June 30, 2004, and provisions concerning the discharge and waiver of surcharges would take effect on June 30, 2005. House Bills 4775 (S-1) and 4776 (S-1) would take effect on October 1, 2004.

House Bill 4772 (S-1)

Notice Requirements

The Support and Parenting Time Enforcement Act requires the Office of the Friend of the Court to send notice of an arrearage to a payer at his or her last known address, if the arrearage reaches the amount that requires the initiation of one or more support enforcement measures as provided in Section 11 of the Friend of the Court Act. (Section 11 requires the Office to initiate enforcement measures when the arrearage under a support order is equal to or greater than the monthly amount of support payable under the order.) Under the bill, the Office would have to send the notice if the arrearage reached the amount requiring enforcement measures and income withholding were not immediately effective, or if the amount of income withholding were administratively adjusted for arrears under the FOC Act.

Currently, the notice must state that the payer's income is subject to income withholding and the amount to be withheld. The bill would require the notice either to contain that information, or to state that the payer's income withholding was being administratively adjusted and the amount of the adjustment.

Under the Act, the notice must inform the payer that he or she may request a hearing to contest the withholding, within 21 days after the date of the notice, but only on the ground that the withholding is not proper because of a factual mistake concerning the amount of current or overdue support or the

payer's identity. Under the bill, if the notice included an administrative adjustment of arrears, it would have to inform the payer that he or she could request a hearing on the ground that the adjustment would cause an unjust or inappropriate result. The bill also would require the notice to include the place where a request for a hearing would have to be filed.

Hearing

The Act allows a payer to request a hearing within 21 days after receiving a notice of arrearage. Under the bill, the payer would have to file the request as provided in the notice and serve a copy on the other party. If a payer requested a hearing, the notice and request would have to be filed with the court clerk as a motion contesting the proposed action.

The Act requires a referee or circuit court judge to hold a requested hearing within 14 days. If the payer establishes at the hearing that the withholding is not proper because of a factual mistake concerning the amount of current or overdue support or the payer's identity, the referee or judge may direct the income withholding order to be rescinded. Under the bill, if the payer established that the withholding was not proper because of a factual mistake, or that periodic implementation of an administrative adjustment of the amount of the periodic payment of arrears to be withheld would cause an unjust or inappropriate result, the income withholding would have to be modified or rescinded according to the guidelines for setting and administratively adjusting the amount of periodic payments for overdue support established under the Friend of the Court Act.

The bill would allow the FOC Office to review the objection administratively before a hearing was held before a referee or judge. If the Office did so, either party could object and a hearing would have to be held before a referee or judge.

Noncompliance by an Employer

Under the Support and Parenting Time Enforcement Act, the court may find a source of income in contempt and fine the source if it is served with an income withholding notice and fails to comply or pay withheld amounts to the FOC after the order becomes binding. (The Act defines "source

of income" as an employer or successor employer or another individual or entity that owes or will owe income to the payer.) Under the bill, the court also could require the source of income to pay an amount according to Section 11a(2) if the terms of that section were satisfied. (Under that section, a source of income is liable for an amount that it knowingly and intentionally fails to withhold from the payer's income following service on the source of a notice of income withholding.)

The bill provides that the IV-D agency would be responsible for initiating contempt proceedings. (Under the Act, "IV-D agency" means the State agency performing the functions under Part D of Title IV of the Social Security Act and includes a person performing those functions under contract, including an office of the FOC and a prosecuting attorney. The Family Independence Agency is the State's Title IV-D agency.) Contempt proceedings could be initiated in any county with jurisdiction over the source of income.

The Act allows the circuit court to take other enforcement action under applicable laws, including those listed in the Act. If another law of the State provides that this Act applies to support orders issued under the other law, the other law nevertheless controls if it contains a specific, conflicting provision regarding the contents or enforcement of the support order. The bill specifies that nothing in these provisions would authorize the IV-D agency to pursue enforcement action under applicable laws except as otherwise specifically authorized by statute or court rule.

Contempt for Unpaid Arrearage

Under the Act, the court may find a payer in contempt if it finds that he or she is in arrears and the court is satisfied that he or she has the capacity to pay out of currently available resources all or some portion of the amount due under the support order. Upon finding a payer in contempt, the court immediately may enter an order committing the payer to the county jail or to a penal or correctional facility; conditioning a suspension of the payer's occupational, driver's, or recreational or sporting license upon noncompliance; ordering the payer to participate in a work activity; or ordering the payer to participate in a community corrections program. Under the bill, the

court also could order the parent to pay a maximum fine of \$100, except as provided by Federal law and regulations. The fine would have to be deposited in the FOC Fund created under Section 2530 of the Revised Judicature Act.

The Act also allows a court to find a payer in contempt if it finds that the payer is in arrears and could have the capacity to pay all or portion of the amount due, and that the payer fails or refuses to do so. Under the bill, the court also could find the payer in contempt if it found that the payer had failed to obtain a source of income and had failed to participate in a work activity after referral by the FOC.

Under the Act, upon finding a payer in contempt of court, the court may enter generally the same orders as described above. The bill would require the court, absent good cause to the contrary, to order the payer to participate in a work activity. The court also could commit the payer to jail with the privilege of leaving in order to participate in a work activity (instead of leaving for employment purposes), and order the parent to pay a maximum fine of \$100, except as provided by Federal law and regulations. The fine would have to be deposited in the FOC Fund.

(The Act defines “work activity” as: unsubsidized employment; subsidized private sector employment; subsidized public sector employment; work experience, including work associated with the refurbishing of publicly assisted housing, if sufficient private sector employment is not available; on-the-job training; referral to and participation in the Work First program, or other job search and job readiness assistance; community service programs; vocational educational training; job skills training directly related to employment; education directly related to employment; satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence; or the provision of child care services to an individual who is participating in a community service program.)

House Bill 4773 (S-1)

Review of Child Support Order

Under the Friend of the Court Act, after a final judgment containing a child support

order is entered in an FOC case, the FOC Office must review the order periodically. If a child is supported in whole or in part by public assistance, a review must be conducted at least once each 24 months, unless the FOC Office receives notice from the Family Independence Agency (FIA) that there is good cause not to proceed with support action and neither party has requested a review. The bill would change this review period to at least once each 36 months.

Also, the FOC may initiate a child support order review if there are reasonable grounds to believe that the child support amount should be modified or that dependent health care coverage is available and the support order should be modified to include a health care coverage order. Reasonable grounds to review an order include temporary or permanent changes in the physical custody of a child that the court did not order; the child's increased or decreased need; probable access by an employed parent to dependent health care coverage; or changed financial conditions of a child support recipient or payer, including application for or receipt of public assistance, unemployment compensation, or worker's compensation. The bill would add to the reasonable grounds for review the support payer's or recipient's incarceration or release from incarceration after a criminal conviction and sentencing to a term of more than one year. Within 14 days after receiving information that a support recipient or payer was incarcerated or released from incarceration, the FOC Office would have to initiate a review of the order. A review initiated by the FOC Office would not preclude the support recipient or payer from requesting a review.

The Act also requires the FOC Office to conduct a periodic review upon receiving a written request from either party. Within 15 days after receiving the request, the FOC Office must determine whether the order is due for review. The FOC is not required to investigate more than one request received from a party each 24 months. The bill would change that time period to each 36 months.

In addition, the FOC must conduct a periodic review under the following circumstances:

-- If a child is receiving medical assistance, at least once each 24 months, unless the

order requires provision of health care coverage for the child and neither party has requested a review or the FOC Office receives notice from the FIA that there is good cause not to proceed with support action and neither party has requested a review.

- If requested by the initiating state for a recipient of services in that state under Title IV-D of the Social Security Act, at least once each 24 months. Within 15 days after receiving a review request, the FOC Office must determine whether an order is due for review.

The bill would change the time period for those reviews from at least once every 24 months to at least once every 36 months. The bill also would change the period for determining whether an order is due for review from 15 days to 14 days.

In addition, the bill would require the FOC to conduct a review at the direction of the court.

Modification

The Act requires the FOC Office to petition the court if modification is determined to be necessary, unless 1) the difference between the existing and projected child support award is within the minimum threshold for modification of a support amount as established by the child support formula; or 2) the court previously determined that application of the formula was unjust or inappropriate and the FOC Office determines that the facts of the case and the reasons and amount of the prior deviation remain unchanged. The bill would retain these provisions.

Under the Act, each party subject to a child support order must be notified of the right to request a review of the order and the place and manner in which to make the request. For an FOC case, the notice must be given by the FOC Office or, pursuant to court rule, by the plaintiff using an informational packet required under the Act. The FOC Office must notify each party of a review of child support at least 30 days before the review is conducted, and the notice must request income, expense, or other information needed to conduct the review.

After a review, the FOC Office must notify each party of a proposed change in the

amount of child support, a proposed modification to order health care coverage, or a determination that there should be no change in the order. Notice of a change in child support or a health care coverage modification may be provided by or with a copy of the petition for modification. The notice also must inform the parties that either party may object, at a hearing before a court referee, to the proposed modification or determination that there should be no change. A petition for modification may be made at the same time the parties are provided with this notice.

The Act requires the FOC Office to make available to each party and his or her attorney a copy of the written report, transcript, recommendation, and supporting documents or a summary of supporting documents prepared or used by the FOC Office in its review, before the court modifies the order.

The bill would delete the review and modification procedures described above. Child support orders entered after the bill's effective date would have to be modified according to the bill. For a support order entered before the bill's effective date, the FOC Office would have to notify the parties of their right to a review as required by Federal law. That notice could be placed in a court order, as allowed by Federal law.

Under the bill, the FOC Office would have to initiate proceedings to review support by sending a notice to the parties. The notice would have to request information sufficient to allow the FOC to review support, state the date the information was due, and advise the parties concerning how the review would be conducted. After that information was due, but not sooner than 21 days or later than 120 days after the date the notice was sent, the FOC would have to calculate the support according to the child support formula and send a notice to each party and his or her attorney. The notice would have to include the amount calculated for support; the proposed effective date of the support amount; and substantially the following statement: "Either party may object to the recommended support amount. If no objection is filed within 21 days of the date this notice was mailed, an order will be submitted to the court incorporating the new support amount." (Currently, a party has 30 days after the notice is mailed to file an objection.) The notice also would have to

inform the parties of how and where to file an objection.

The bill specifies that this notice would constitute a petition for modification of the support order and would have to be filed with the court.

At least 21 days after the date the notice was sent, the FOC Office would have to determine if an objection had been filed. If an objection were filed, the FOC would have to set the matter for a hearing before a judge or referee or, if the FOC received additional information with the objection, it could recalculate the support amount and send out a revised notice. If no objection were filed, the FOC would have to prepare an order that the court would have to enter if it approved of the order.

The FOC could schedule a joint meeting between the parties to attempt to expedite resolution of support issues in accordance with guidelines set forth in the Act.

In support review proceedings under the bill, a recommendation would have to state the calculations upon which the support amount was based. If the FOC recommended a support amount based on imputed income, the recommendation also would have to state the amount that would have been recommended based on the actual income of the parties, if the actual income were known. If income were imputed, the recommendation would have to specify all factual assumptions on which the imputed income was based. The FOC Office could impute income to a party who failed or refused to provide information requested under the bill.

At a hearing based on an objection to an FOC recommendation, the trier of fact could consider the FOC's recommendation as evidence to prove a fact relevant to the support calculation when no other evidence was presented concerning that fact, if the parties agreed or did not object.

The court could not require proof of a substantial change in circumstances to modify a child support order when support was adjusted under a periodic review conducted by the FOC Office.

A party also could file a motion to modify support. Upon a party's motion, the court could modify a child support order only upon

finding a substantial change in circumstances, including health care coverage becoming newly available to a party and a change in the support level.

The bill would require the FOC to conduct a more frequent review of the support order upon presentation by a party of evidence of a substantial change in circumstances as set forth in the child support formula guidelines.

Support Formula/Report

The Act requires the FOC Office to use the child support formula developed by the FOC Bureau in calculating the child support award. The bill would delete a provision under which the FOC Office must prepare a written report if it determines from the facts of the case that application of the child support formula would be unjust or inappropriate, or that income should not be based on actual income earned by the parties.

FOC Bureau

The Act created the State FOC Bureau within the State Court Administrative Office (SCAO), under the supervision and direction of the Supreme Court. The Bureau's responsibilities include establishing a nine-person State Advisory Committee composed of three public members, three attorneys, and three human services professionals, each of whom must be a member of a citizen advisory committee. Under the bill, the State Advisory Committee members would not have to be members of a citizen advisory committee, but the Bureau would have to give preference to a member of a citizen advisory committee.

Also, the Act requires the FOC Bureau to develop and provide the FOC Office with all of the following:

- Form motions, responses, and orders for use by an individual in requesting the court to modify child support, custody, or parenting time, or in responding to a motion for modification, without legal counsel.
- Instructions on preparing and filing the forms, service of process, and scheduling a support, custody, or parenting time modification hearing.

Under the bill, the Bureau also would have to develop and provide to the FOC Office

guidelines for imputing income for the calculation of child support.

House Bill 4774 (S-3)

Surcharge Calculation & Collection

Currently, under amendments enacted by Public Act 276 of 2003, a surcharge must be added to support payments that are past due as of January 1 and July 1. The surcharge must be calculated at six-month intervals at an annual rate of interest equal to 1% plus the average interest rate paid at auctions of five-year United States treasury notes during the preceding six months. (Previously, the surcharge was calculated on January 1 and July 1 at an 8% annual rate.) The amount of the surcharge may not compound. Under the bill, except as described below, the surcharge would have to be assessed on a semiannual cycle on January 1 and July 1 of each year.

Beginning on July 1, 2005, a surcharge could not be assessed for the current semiannual cycle in cases in which the FOC was collecting on a current child support obligation, the payer had paid at least 90% of the most recent semiannual obligation during the semiannual cycle. (Effective June 30, 2005, "most recent semiannual obligation" would mean the total amount of current child support owed by a parent during the preceding January 1 to June 30 or July 1 to December 31.)

For a support order entered after the bill's effective date, a surcharge could not be assessed for any period of time a support order did not exist when support was later ordered for that period. In addition, a surcharge could not be assessed if it were waived or abated under a court order.

A surcharge would have to be collected and enforced by any means authorized under the Support and Parenting Time Enforcement Act, the Friend of the Court Act, or another appropriate Federal or State law for the enforcement and collection of child support, and paid through the State Disbursement Unit (in the Office of Child Support).

These provisions would take effect on June 30, 2004.

Discharge & Waiver

A party or the FOC could file a motion with the court for a repayment plan order that provided for the discharge of amounts assessed as surcharge and for the waiver of future surcharge, subject to Federal law or regulation. After notice and a hearing, the court would have to enter the repayment plan order if it found that all of the following were true:

- The arrearage did not arise from conduct the payer engaged in exclusively for the purpose of avoiding a support obligation.
- The payer had no present ability, and would not have an ability in the foreseeable future, to pay the arrearage absent a repayment plan that waived or discharged amounts assessed as surcharge.
- The plan was reasonable based on the payer's current ability to pay.
- The surcharge accrued or would accrue after the bill's effective date.

After entry of the order, if the court found that the payer had failed substantially to comply with the repayment plan, upon notice and a hearing, the court would have to enter an order reinstating the surcharge and all or part of the surcharge that was discharged.

These provisions would take effect on June 30, 2005.

House Bill 4775 (S-1)

Under the Paternity Act, when a mother files a paternity complaint against her child's father, the court must enter an order of filiation that declares the father's paternity and provides for the support of the child, if the court determines that the man is the father, the defendant acknowledges paternity, or a default judgment is entered against the defendant. The order also must provide for the payment of the necessary expenses incurred by or for the mother in connection with her confinement and pregnancy, and for the funeral expenses if the child has died. The bill would retain these requirements.

The Act also requires that an order of filiation provide for the support of the child before the entry of the order. If the child support proceedings are begun more than six years after the child's birth, however, an

amount must not be awarded for expenses or support that accrued before the complaint was filed, unless at least one of the following three conditions exists: 1) The father acknowledged paternity in writing as required by law; 2) a child support payment was made during the six-year period and child support proceedings are begun within six years after the date of the most recent payment; or 3) the defendant was out of State, was avoiding service of process, or threatened or coerced the complainant not to file a child support proceeding during the six-year period. The bill would delete all of these provisions.

Instead, the bill specifies that a child support obligation would be retroactive only to the date that the paternity complaint was filed, unless the defendant was avoiding service of process, had threatened or coerced through domestic violence or other means the complainant not to file a child support proceeding, or otherwise delayed the imposition of a support obligation.

House Bill 4776 (S-1)

FOC Duties

The bill would delete a provision that the FOC for the third judicial circuit, and any other judicial circuit in which the employees serving the court are paid by the State, is an employee of the State Judicial Council.

The bill specifies that, except as otherwise required by Federal law on cases eligible for Title IV-D funding, the FOC would be required to perform activities under the FOC Act or the Support and Parenting Time Enforcement Act only when a party in the case had requested Title IV-D services.

Hearings

The Act specifies that the chief judge may designate as a referee the Friend of the Court; an employee of the FOC Office who is a member of the State Bar of Michigan; or, if the FOC is not an attorney, a member of the State Bar (appointed to assist the FOC). The bill would delete that provision and state that the chief judge could designate a referee as provided by the Michigan Court Rules.

Under the Act, a referee may hear all motions in a domestic relations matter (except those pertaining to a change in

spouse support) referred to the referee by the court; make a written report to the court containing a summary of testimony given, a statement of findings, and a recommended order, or make a statement of findings on the record and submit a recommended order; hold hearings as provided in the Support and Parenting Time Act; accept a voluntary acknowledgment of support liability, and review and make a recommendation to the court concerning a stipulated agreement to pay support; and recommend a default order establishing, modifying, or enforcing a support obligation.

The court is required to hold a de novo hearing on any matter that has been the subject of a referee hearing, upon the request of either party or upon the court's motion. The bill would define "de novo hearing" as "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 may at the court's discretion be based in whole or in part on evidence that was not introduced at a previous hearing".

Under the bill, 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 the Michigan Court Rules. The interim order would have to be served on the parties within three days and would be subject to de novo review by the court.

Currently, a party must request a de novo hearing within 21 days after the referee's recommendation is made available to the party. A request for a de novo hearing concerning an order of income withholding, however, must be made within 14 days after the recommendation is made available to the party. Under the bill, all requests would have to be made within 21 days after a recommendation was made available to a party.

Support Guidelines

The Act requires the FOC Bureau to develop a formula to be used in establishing and modifying a child support amount and health care obligation. The formula must be based upon the needs of the child and the actual resources of each parent, and meet other requirements set forth in the Act. Under the

bill, the formula also would have to include guidelines for deviating from the formula.

Citizen Advisory Committee

The Act states that a citizen FOC advisory committee is established in each county and is composed of the following members, each of whom is a county resident:

- An advocate for children.
- A representative of noncustodial parents.
- A representative of custodial parents.
- A family law attorney.
- The county sheriff or his or her designee.
- The prosecuting attorney or his or her designee.
- The FIA Director or his or her designee.
- A mental health professional who provides family counseling.
- A member of the general public who is not an individual who could serve on the committee under any of the other categories.

The bill would allow each county to establish a citizen FOC advisory committee. The bill would delete the requirement that the committee include an advocate for children, and require that the committee include a custodial parent and a noncustodial parent, rather than representatives of custodial parents and noncustodial parents. The bill also would require two members of the general public instead of one.

In addition, the bill would revise the terms of committee members. Currently, except for the initial members, each member serves a renewable three-year term. Under the bill, except for the sheriff, the prosecuting attorney, and the FIA Director (or their designees), members would serve initial terms of three years for two members, two years for two members, and one year for two members to allow one-third of those members to be appointed to the committee each year. Additionally, the bill would delete a requirement that the chairperson and vice-chairperson serve one-year terms.

Under the Act, the SCAO must perform staff and support functions that are necessary for a citizen advisory committee to perform its duties and functions. Instead, under the bill, a citizen advisory committee would have to honor any guidelines established by the SCAO for an FOC office pertaining to citizen advisory committees.

House Bill 4792 (S-1)

The bill would amend the Support and Parenting Time Enforcement Act to allow a person who had an arrearage under a child support order to establish an arrearage payment plan.

Specifically, a payer who had an arrearage could seek relief from the arrearage by complying with the amnesty under Section 3b of the Office of Child Support Act (proposed by House Bill 4654), or by filing a motion with the circuit court for a payment plan to pay arrearages and to discharge or abate arrearages. The court would have to approve the payment plan after notice and a hearing if it found that the plan was in the best interest of the parties and children and that either of the following applied:

1. The arrearage was owed to an individual payee and both of the following applied:
 - The payee had consented to entry of the order under circumstances that satisfied the court that the payee was not acting under fear, coercion, or duress; and
 - The payer established that the arrearage did not arise from his or her conduct engaged in exclusively for the purpose of avoiding a support obligation.
2. The arrearage was owed to the State or a political subdivision, and the payer established all of the following:
 - The arrearage did not arise from conduct engaged in exclusively to avoid a support obligation;
 - The payer had no present ability, and would not have an ability in the foreseeable future, to pay the arrearage without a payment plan;
 - The plan would pay a reasonable portion of the arrearage over a reasonable period of time in accordance with the payer's current ability to pay; and
 - The OCS was served with a copy of the motion at least 56 days before the hearing.

(The bill specifies that a payment plan that did not pay the entire arrearage would have to require payments for at least 24 months, if the payer had an income at or below the poverty level; or, if the payer had an income in excess of the poverty level, require payments for at least 24 months plus one

additional month for each \$1,000 above the poverty level that the payer earned.)

In making its findings, the court would have to consider any written comments submitted before the hearing by the OCS or its designee. If written comments were not submitted, the court could do any of the following:

- Adjourn the hearing to seek written comments before making its decision.
- Appoint an examiner to review the payer's assets and the plan and make a recommendation concerning the plan or propose an alternative plan to the court.
- Appoint a receiver to review the payer's assets and the plan and make a recommendation concerning the plan or propose an alternative plan to the court. The receiver would have the powers of a receiver under all applicable laws and, at the court's discretion, could use the payer's assets to complete the plan or otherwise monitor the payer's progress in completing the plan.
- Approve the plan as presented, but only if the payer satisfied the bill's requirements by clear and convincing evidence.
- Deny the plan as presented if the court found that the payer had not satisfied the bill's requirements.

(The examiner or receiver would have to be paid by the payer for services provided under terms and conditions the court established, separately from any payments made through the FOC or the State Disbursement Unit.)

If the court approved a payment plan related to an arrearage owed to the State or a political subdivision, the approval would be considered the State's consent to a compromise of the arrearage.

When the payer completed the plan, he or she would have to provide notice to interested parties and obtain a hearing before the court. If, after notice and hearing, the court found that the payer had completed the payment plan, the court would have to enter an order discharging the remaining arrearage, if any. If the court found that the payer had substantially completed the payment plan, the court could enter an order granting relief appropriate to the circumstances of the case.

A payment plan could provide for discharge of any portion of an arrearage that met the above requirements, even if other portions did not.

A payment plan would have to provide that arrearages subject to the plan could be reinstated upon motion and hearing for good cause shown at any time during the pendency of the payment plan. The bill specifies that good cause would include, but would not be limited to, the payer's receiving property such as lottery proceeds, other winnings, a settlement under an insurance policy or a judgment in a civil action, or an inheritance.

A court could require conditions in the payment plan in addition to the payment of support that the court determined were in the best interests of a child, including any of the following:

- A payer's participation in a parenting program.
- Drug and alcohol counseling.
- Anger management classes or participation in a batterer intervention program that met the standards recommended by the Governor's Task Force on Batterer Intervention Standards.
- Participation in a work program.
- Counseling.
- Continuing compliance with the current support order.

The bill specifies that it would neither modify a party's right to receive other child support credits to which the payer was entitled nor prevent the court from correcting a support order under other applicable law or court rule.

An arrearage subject to a payment plan would have to continue to be enforced under the Support and Parenting Time Enforcement Act, the Office of Child Support Act, and the Friend of the Court Act, when Federal or State law required the enforcement action. When Federal or State law did not require enforcement action, an arrearage subject to a payment plan could continue to be enforced as allowed under the Support and Parenting Time Enforcement Act, the Office of Child Support Act, or the Friend of the Court Act; when the payer was complying with the plan, however, a referee, judge, or person conducting an administrative review or hearing could not allow enforcement to

continue when the statute permitted the exercise of discretion in using the enforcement.

A person who knowingly provided false information on a motion filed under the bill would be guilty of a misdemeanor punishable by imprisonment for up to 180 days and/or a maximum fine of \$1,000.

The bill would require a Title IV-D agency (the FIA) to comply with the amnesty program established under Section 3b of the Office of Child Support Act (proposed by House Bill 4654). If prosecution were initiated under Section 161, 165, or 167 of the Michigan Penal Code before the payer sought participation in the child support amnesty program or a payment plan under the bill, the individual would not be eligible to participate in the amnesty program or a payment plan.

(Under Section 161 of the Penal Code, a person who deserts and abandons his or her spouse and children younger than 17 without providing necessary and proper shelter, food, care, and clothing for them, and a person with sufficient ability who fails, neglects, or refuses to provide shelter, food, care and clothing, is guilty of a felony, punishable by imprisonment in a State correctional facility for between one and three years, or by imprisonment in the county jail for between three months and one year.

Under Section 165, if an individual does not pay the support for his or her former or current spouse or child in the amount or at the time stated in a court order, he or she is guilty of a felony punishable by imprisonment for up to four years and/or a maximum fine of \$2,000.

Under Section 167, a person is a "disorderly person" (which is a misdemeanor) if he or she is a person of sufficient ability who refuses or neglects to support his or her family, or meets other criteria.

When a person has been convicted of refusing or neglecting to support his or her family and then is charged with subsequent violations within a two-year period, he or she must be prosecuted as a second offender, or third and subsequent offender, if his or her family is receiving public relief or support.)

MCL 552.607 et al. (H.B. 4772)
552.517 et al. (H.B. 4773)
552.602 et al. (H.B. 4774)
722.717 (H.B. 4775)
552.502 et al. (H.B. 4776)
Proposed MCL 552.605e (H.B. 4792)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

In many cases, child support payments represent a significant portion of a family's income. As such, child support payments contribute greatly to the self-sufficiency of 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. When child support payments do not find their way to their intended recipients, children suffer.

Parents who accumulate child support arrearages generally fall into two categories. One is the "deadbeat" parent who, while financially capable of paying the required support, chooses not to fulfill the financial obligations to his or her child or children. The other is the "deadbroke" parent who would like to pay, but simply is financially unable to do so. Relevant factors in these cases 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, the retroactive nature of support orders, and the lack of discretion afforded to judges and local FOCs to work with the parties involved in coming up with some sort of arrearage payment plan.

Current law effectively forces payers into becoming delinquent by providing little if any flexibility in the process to modify an existing support order, and by providing for the assessment of high surcharges and interest. By requiring that an individual's circumstances be taken into consideration, the bills would help ensure that more support money goes to its intended recipients.

Supporting Argument

House Bill 4772 (S-1) would make several changes necessary to bring the Support and Parenting Time Enforcement Act into compliance with Federal law, and ensure that custodial parents receive the financial support to which they are entitled. By requiring a judge to order a person to participate in at least one of 12 specified work activities, absent good cause, the bill would ensure that delinquent payers made a concerted effort to obtain adequate employment, which could lead to the payment of child support through income withholding.

Response: Although the bill might be necessary to bring State statute into compliance with Federal law, it raises several concerns. The requirement would be unfair if quality reeducation programs and reemployment programs do not exist, or if payers have difficulty gaining access to them. The work activity provisions have the potential to create a situation amounting to indentured servitude.

Supporting Argument

House Bill 4773 (S-1) would require a support order to be reviewed if a payer or payee were incarcerated for more than one year or released from incarceration after more than one year. Incarcerated parents are not legally obligated to pay support; however, many accumulate large arrearages while in prison because they do not know that they should file a motion to modify child support as soon as they are incarcerated. In many cases, the FOC is not aware that the parent has been incarcerated. Even if a parent requests an order for modification after he or she is incarcerated, the modification is not retroactive. As a result, a payer might face a significant financial burden upon release, even though the arrearage should not have accrued in the first place. Given that a payer likely will have a diminished earning capacity upon release, he or she might never be able to pay off the arrearage and keep up with current support payments.

To be released to such a crushing financial burden can not only discourage a parent from making payments, but also reduce his or her desire to reconnect and maintain a relationship with his or her child. The arrearage and surcharges also can contribute to a cycle of crime from which the parent cannot escape. In some cases, failure to pay child support constitutes a

parole violation and results in the person's eventual return to the corrections system. Additionally, a payer who does manage to secure employment might find that he or she cannot afford basic living necessities after his or her wages are garnished for back child support. Under these circumstances, a person has little incentive to maintain legitimate employment and might resort to further criminal acts to survive.

Under the bill, a review of a support order would be automatic upon a parent's incarceration or release, rather than left to the haphazard efforts of individuals, and support amounts would be based on the parent's ability to pay. Thus, support orders would set more realistic expectations for payers and facilitate a smoother transition from incarceration to family life.

Additionally, the bill would create an administrative process so that Michigan could avoid Federal penalties. The State loses hundreds of thousands of dollars in Federal funds every year because the FOC cannot collect on a lien when a parent is incarcerated.

Supporting Argument

House Bill 4774 (S-3) would address the assessment of the surcharge, which is one of the major factors contributing to a substantial child support arrearage. Although the surcharge was instituted to encourage parents to remain current in their support payments, it has not proved to be as effective as was hoped. "Deadbeat" parents who choose not to pay the initial support amount are no more inclined to pay a past-due surcharge. "Deadbroke" parents would like to pay, but cannot afford to do so. While no parent should shirk his or her child support responsibilities, the surcharge can be excessive for low-income or incarcerated parents, and unfairly penalize those who are trying their best to meet their obligations.

Supporting Argument

House Bill 4775 (S-1) would limit the retroactivity of support payments ordered under the Paternity Act by removing the six-year time limit, and permitting support to be ordered only from the date the paternity claim was filed, unless the payer avoided service of the claim or threatened or coerced the mother not to file the claim. Under the current law, retroactive support can impose a significant financial burden that the father

cannot realistically pay all at once. Furthermore, the instant arrearage is subject to the surcharge. Also, a father may be ordered to pay years of support for a child he might never have known about. While a father can be expected to provide support to his child from birth, it is unreasonable to expect that support if he is not informed of the child's birth for many years afterward.

Supporting Argument

House Bill 4776 (S-1) would define the term "de novo hearing" so that the hearing conducted in court would be based, in part, on the record of a referee hearing. This change would streamline the process used to settle a dispute regarding custody, parenting time, or child support, and relieve some of the burden of trying the case before a judge.

Referees play an essential role in the order modification process, handling tens of thousands of domestic relations hearings every year. Judges alone simply cannot preside over all hearings guaranteed under the Support and Parenting Time Enforcement Act due to the sheer volume. The bill would significantly reduce the costs of litigation to the parties and reduce delays in entry of orders, while preserving a party's right to have his or her issues heard before a judge if he or she cannot accept a referee's proposed resolution.

Response: The bill fundamentally would change the process used to resolve a dispute among parties regarding child support, parenting time, or custody. By defining a de novo hearing as something other than a true de novo hearing, the bill would create a situation in which referees' decisions could be "rubberstamped", raising serious due process concerns. A referee, who has less training and fewer credentials than a judge, should not make binding decisions.

Supporting Argument

House Bill 4792 (S-1) appropriately would make a distinction between "deadbeat" and "deadbroke" parents. According to Senate Committee testimony, two-thirds of payers with past-due support obligations fall into the latter category. They are not trying deliberately to avoid paying; they simply cannot meet the sizable past-due obligations, pay the surcharge, and meet their current payment obligations. The bill would provide a mechanism similar to

Chapter 13 bankruptcy debt reorganization and permit the compromising of past-due amounts with the consent of the person to which the obligation was owed. Under the bill, the burden would be on the payer to justify to the court the need for a payment plan and to comply with the plan.

Response: Under the bill, a delinquent payer potentially could have the arrearage waived. Such a policy would not be in the best interest of the children to whom the support technically belongs.

Opposing Argument

House Bill 4773 (S-1) would delete a requirement that members of the State Advisory Committee be members of a county citizen advisory committee, and instead require only that the FOC Bureau give preference to citizen committee members. Only about 30 citizen advisory committees exist; therefore, the candidate pool for the State Advisory Committee is small. To increase the candidate pool, however, the Bureau should focus on creating more committees at the county level, rather than consider candidates who are not on citizen committees.

Opposing Argument

Under House Bill 4776 (S-1), the formation of a citizen advisory committee in each county would be voluntary, rather than mandatory. Although a required committee presents some Headlee concerns, counties should not be rewarded for not following the law.

Legislative Analyst: Julie Koval

FISCAL IMPACT

House Bill 4772 (S-1)

It appears that the bill would have no fiscal impact on the Family Independence Agency. The Family Independence Agency, being the IV-D Agency under the Social Security Act, may incur some indeterminate administrative costs if it chooses to initiate contempt proceedings regarding a source of income.

The bill would have no fiscal impact on the judiciary.

House Bill 4773 (S-1)

The bill would have no fiscal impact on the Family Independence Agency.

The bill could decrease administrative costs for the FOC due to the proposed decrease in the frequency of required reviews and the potential ability to impute for the calculation of child support.

House Bill 4774 (S-3)

The bill would reduce State revenue by an unknown amount by establishing circumstances under which overdue support payments would be exempt from surcharge assessments. It is unknown how many cases would meet the criteria for an exemption from the surcharge assessment, or the amount of money associated with those cases.

House Bill 4775 (S-1)

The bill would have no fiscal impact on the Family Independence Agency or on the Judiciary.

House Bill 4776 (S-1)

It appears that the bill would have no fiscal impact on the Family Independence Agency. The bill would have no fiscal impact on the Judiciary.

House Bill 4792 (S-1)

It appears that the bill would have an indeterminate fiscal impact on the FIA. The provision of additional case information not available via the automated system could result in some small additional administrative costs. The FOC also could face increased administrative costs related to monitoring payment plans.

Fiscal Analyst: Constance Cole
Bethany Wicksall

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.