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BILL



ANALYSIS

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House Bill 5372 (Substitute H-1 as passed by the House)

House Bill 5373 (as passed by the House)

Sponsor: Representative John Garfield (H.B. 5372)

Representative Mike Nofs (H.B. 5373)

House Committee: Judiciary

Senate Committee: Families and Human Services

Date Completed: 11-30-04

CONTENT

House Bills 5372 (H-1) and 5373 would amend the Support and Parenting Time Enforcement Act and the Michigan Penal Code, respectively, to require a person to be imprisoned until his or her arraignment or preliminary examination, if he or she were arrested for the felony of nonpayment of support, unless the person deposited a cash bond.

The bills are tie-barred to each other.

House Bill 5372 (H-1)

Under Section 31 of the Support and Parenting Time Enforcement Act, if a person fails or refuses to pay support as ordered, a support recipient or the Office of the Friend of the Court may commence a civil contempt proceeding by filing a petition for an order to show cause why the payer should not be held in contempt. If the payer fails to appear, the court must find him or her in contempt, apply an enforcement remedy, adjourn the hearing, dismiss the show cause order, or issue a bench warrant for the payer's arrest.

If the court issues a bench warrant, the court must order that the payer, upon arrest, remain in custody until the hearing unless he or she deposits a cash performance bond, in the manner required by Section 32 of the Act. The bond must be at least \$500 or 25% of the arrearage, whichever is greater. At its discretion, the court may set the bond at up to 100% of the arrearage and add the amount of costs related to the hearing, issuance of the warrant, arrest, and further hearings.

(Under Section 32, if a bench warrant is issued and the payer is arrested, he or she must remain in custody until there is a hearing or the payer posts an adequate cash performance bond. If the payer cannot post a bond in the amount stated in the bench warrant, he or she is entitled to a hearing within 48 hours, excluding weekends and holidays. Section 32 also provides for the form of the bond receipt, the payer's failure to appear, and transmission and deposit of the bond.)

Under the bill, if a payer were arrested on a felony warrant for the nonpayment of support under Section 165 of the Penal Code, the court would have to require that the payer, upon arrest, remain in custody until the preliminary examination, unless he or she deposited a cash performance bond as required by Section 32. Upon notification that a payer who had

an outstanding bench warrant had been arrested or arraigned on a felony warrant for nonpayment, the court would have to order recall of the bench warrant. (Under Section 165 of the Penal Code, if a court orders an individual to pay support for his or her child or former or current spouse, and the individual does not pay the support in the amount or at the time stated in the order, he or she is guilty of a felony.)

The bill also provides that, if a person who was ordered to pay support were imprisoned and did not have the resources to pay, for 180 days after he or she was released from imprisonment, no additional surcharge on the support could accrue, no bench warrant or order to show cause for failure to pay support could be authorized, and no prosecution under Section 161, 165, or 167 of the Penal Code could be initiated.

(Section 161 makes it a felony for a person to abandon his or her spouse or children under age 17 without providing necessary and proper shelter, food, care, and clothing for them. It also is a felony if a person of sufficient ability fails, neglects, or refuses to provide necessary and proper shelter, food, care, and clothing for his or her spouse or children under 17. Under Section 167, an individual is a disorderly person if he or she refuses or neglects to support his or her family and has the ability to do so. Being a disorderly person is a misdemeanor.)

House Bill 5373

The bill would amend Section 165 of the Penal Code to require an individual, upon being arrested for the felony of nonpayment of support, to remain in custody until the arraignment unless he or she deposited a cash bond of at least \$500 or 25% of the arrearage, whichever was greater. If the individual remained in custody, the court would have to address the amount of the bond at the arraignment and at the preliminary exam. Except for good cause shown on the record, the court would have to order the bond to be continued at not less than \$500 or 25% of the arrearage, whichever was greater. At its discretion, the court could set the bond at up to 100% of the arrearage and add to that amount the costs that the court may require under Section 31 of the Support and Parenting Time Enforcement Act.

The court would have to specify that the cash bond amount be entered into the Law Enforcement Information Network. If a bench warrant under Section 31 of the Support and Parenting Time Enforcement Act were outstanding for an individual when he or she was arrested for violating Section 165 of the Penal Code, the court would have to notify the court handling the civil support case that the bench warrant had to be recalled.

MCL 552.631 (H.B. 5372)
750.165 (H.B. 5373)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

To the extent that the bills would increase the number of people held in local jails before arraignment or preliminary examination, the bills would increase local corrections costs which vary by county.

Fiscal Analyst: 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.