

HOUSE BILL No. 4776

May 28, 2003, Introduced by Reps. Howell, Voorhees and Vander Veen and referred to the Committee on Judiciary.

A bill to amend 1982 PA 294, entitled
"Friend of the court act,"
by amending sections 2, 7, and 19 (MCL 552.502, 552.507, and
552.519), section 2 as amended by 2002 PA 571, section 7 as
amended by 1996 PA 144, and section 19 as amended by 2002 PA 569,
and by adding section 7a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Bureau" means the state friend of the court bureau
3 created in section 19.

4 (b) "Centralizing enforcement" means the process authorized
5 under section 10 of the office of ~~the~~ child support act, 1971
6 PA 174, MCL ~~400.231 to~~ 400.240.

7 (c) "Chief judge" means the following:

8 (i) The circuit judge in a judicial circuit having only 1

1 circuit judge.

2 (ii) Except in the county of Wayne, the chief judge of the
3 circuit court in a judicial circuit having 2 or more circuit
4 judges.

5 (iii) In the county of Wayne, the executive chief judge of
6 the circuit court in the third judicial circuit.

7 (d) "Citizen advisory committee" means a citizen friend of
8 the court advisory committee established as provided in
9 section 4.

10 (e) "Consumer reporting agency" means a person that, for
11 monetary fees or dues, or on a cooperative nonprofit basis,
12 regularly engages in whole or in part in the practice of
13 assembling or evaluating consumer credit information or other
14 information on consumers for the purpose of furnishing consumer
15 reports to third parties, and that uses any means or facility of
16 interstate commerce for the purpose of preparing or furnishing
17 consumer reports. As used in this subdivision, "consumer report"
18 means that term as defined in section 603 of the fair credit
19 reporting act, title VI of the consumer credit protection act,
20 Public Law 90-321, 15 U.S.C. 1681a.

21 (f) "County board" means the county board of commissioners in
22 the county served by the office. If a judicial circuit includes
23 more than 1 county, action required to be taken by the county
24 board means action by the county boards of commissioners for all
25 counties composing that circuit.

26 (g) "Court" means the circuit court.

27 (h) "Current employment" means employment within 1 year

1 before a friend of the court request for information.

2 (i) "Custody or parenting time order violation" means an
3 individual's act or failure to act that interferes with a
4 parent's right to interact with his or her child in the time,
5 place, and manner established in the order that governs custody
6 or parenting time between the parent and the child and to which
7 the individual accused of interfering is subject.

8 (j) "De novo hearing" means a judicial consideration of a
9 matter based on the record of a previous hearing, including any
10 memoranda, recommendations, or proposed orders by the referee,
11 but may at the court's discretion be based in whole or in part on
12 evidence that was not introduced at a previous hearing.

13 (k) ~~-(j)-~~ "Department" means the family independence agency.

14 (l) ~~-(k)-~~ "Domestic relations matter" means a circuit court
15 proceeding as to child custody or parenting time, or child or
16 spousal support, that arises out of litigation under a statute of
17 this state, including, but not limited to, the following:

18 (i) 1846 RS 84, MCL 552.1 to 552.45.

19 (ii) The family support act, 1966 PA 138, MCL 552.451 to
20 552.459.

21 (iii) Child custody act of 1970, 1970 PA 91, MCL 722.21 to
22 722.31.

23 (iv) 1968 PA 293, MCL 722.1 to 722.6.

24 (v) The paternity act, 1956 PA 205, MCL 722.711 to 722.730.

25 (vi) Revised uniform reciprocal enforcement of support act,
26 1952 PA 8, MCL 780.151 to 780.183.

27 (vii) Uniform interstate family support act, 1996 PA 310,

1 MCL 552.1101 to 552.1901.

2 (m) ~~-(l)-~~ "Domestic relations mediation" means a process by
3 which the parties are assisted by a domestic relations mediator
4 in voluntarily formulating an agreement to resolve a dispute
5 concerning child custody or parenting time that arises from a
6 domestic relations matter.

7 (n) ~~-(m)-~~ "Friend of the court" means the person serving
8 under section 21(1) or appointed under section 23 as the head of
9 the office of the friend of the court.

10 (o) ~~-(n)-~~ "Friend of the court case" means a domestic
11 relations matter that an office establishes as a friend of the
12 court case as required under section 5a. The term "friend of the
13 court case", when used in a provision of this act, is not
14 effective until on and after ~~the effective date of section 5a~~
15 **December 1, 2002.**

16 (p) ~~-(o)-~~ "Income" means that term as defined in section 2 of
17 the support and parenting time enforcement act, 1982 PA 295,
18 MCL 552.602.

19 Sec. 7. ~~-(1) The chief judge may designate as referee the~~
20 ~~friend of the court; an employee of the office who is a member of~~
21 ~~the state bar of Michigan; or, under section 22, a member of the~~
22 ~~state bar of Michigan.~~

23 (1) ~~-(2)-~~ A referee may do all of the following:

24 (a) Hear all motions in a domestic relations matter, except
25 motions pertaining to an increase or decrease in spouse support,
26 referred to the referee by the court.

27 (b) Administer oaths, compel the attendance of witnesses and

1 the production of documents, and examine witnesses and parties.

2 (c) Make a written, signed report to the court containing a
3 summary of testimony given, a statement of findings, and a
4 recommended order; or make a statement of findings on the record
5 and submit a recommended order.

6 (d) Hold hearings as provided in the support and parenting
7 time enforcement act, ~~Act No. 295 of the Public Acts of 1982,~~
8 ~~being sections 552.601 to 552.650 of the Michigan Compiled Laws~~
9 **1982 PA 295, MCL 552.601 to 552.650.** The referee shall make a
10 record of each hearing held.

11 (e) Accept a voluntary acknowledgment of support liability,
12 and review and make a recommendation to the court concerning a
13 stipulated agreement to pay support.

14 (f) Recommend a default order establishing, modifying, or
15 enforcing a support obligation in a domestic relations matter.

16 **(2) ~~(3)~~** If ordered by the court, or if stipulated by the
17 parties, a referee shall make a transcript, verified by oath, of
18 each hearing held. The cost of preparing a transcript shall be
19 apportioned equally between the parties, unless otherwise ordered
20 by the court.

21 ~~(4) A copy of each report, recommendation, transcript, and~~
22 ~~any supporting documents or a summary of supporting documents~~
23 ~~prepared or used by the friend of the court or an employee of the~~
24 ~~office shall be made available to the attorney for each party and~~
25 ~~to each of the parties before the court takes any action on a~~
26 ~~recommendation made under this section or section 5. In a child~~
27 ~~custody dispute, the parties shall be informed of whether a~~

1 ~~custody preference expressed by the child was considered,~~
2 ~~evaluated, and determined by the court, but the parties shall not~~
3 ~~be informed of the preference expressed by the child under~~
4 ~~section 3 of the child custody act of 1970, Act No. 91 of the~~
5 ~~Public Acts of 1970, being section 722.23 of the Michigan~~
6 ~~Compiled Laws. If a guardian is appointed for a child, the~~
7 ~~guardian shall be informed whether a custody preference expressed~~
8 ~~by the child was considered, evaluated, and determined by the~~
9 ~~court, and, if so, the preference expressed. The manner and time~~
10 ~~within which this material is made available shall be determined~~
11 ~~by supreme court rule.~~

12 (3) ~~—(5)—~~ The court shall hold a de novo hearing on any
13 matter that has been the subject of a referee hearing, upon the
14 written request of either party or upon motion of the court. The
15 request of a party shall be made within 21 days after the
16 recommendation of the referee is made available to that party.
17 ~~under subsection (4), except that a request for a de novo~~
18 ~~hearing concerning an order of income withholding shall be made~~
19 ~~within 14 days after the recommendation of the referee is made~~
20 ~~available to the party under subsection (4). Pending a de novo~~
21 ~~hearing, the referee's recommended order may be presented to the~~
22 ~~court for entry of an interim order as provided by supreme court~~
23 ~~rules. The interim order shall be served on the parties within 3~~
24 ~~days and shall be subject to review as provided under this~~
25 ~~subsection.~~

26 Sec. 7a. (1) A copy of each report, recommendation,
27 transcript, and any supporting documents or a summary of

1 supporting documents prepared or used by the friend of the court
2 or an employee of the office shall be made available to the
3 attorney for each party and to each of the parties before the
4 court takes any action on a recommendation by the office.

5 (2) In a child custody dispute, the parties shall be informed
6 of whether a custody preference expressed by the child was
7 considered, evaluated, and determined by the judge, referee, or
8 employee of the friend of the court. The parties shall not be
9 informed of the preference expressed by the child under section 3
10 of the child custody act of 1970, 1970 PA 91, MCL 722.23.

11 (3) If a guardian is appointed for a child, the guardian
12 shall be informed whether a custody preference expressed by the
13 child was considered, evaluated, and determined by the judge,
14 referee, or employee of the friend of the court, and, if so, the
15 preference expressed.

16 (4) The manner and time within which the information required
17 under this section is made available shall be determined by
18 supreme court rule.

19 Sec. 19. (1) The state friend of the court bureau is
20 created within the state court administrative office, under the
21 supervision and direction of the supreme court.

22 (2) The bureau shall have its main office in Lansing.

23 (3) The bureau shall do all of the following:

24 (a) Develop and recommend guidelines for conduct, operations,
25 and procedures of the office and its employees, including, but
26 not limited to, the following:

27 (i) Case load and staffing standards for employees who

1 perform domestic relations mediation functions, investigation and
2 recommendation functions, referee functions, enforcement
3 functions, and clerical functions.

4 (ii) Orientation programs for clients of the office.

5 (iii) Public educational programs regarding domestic
6 relations law and community resources, including financial and
7 other counseling, and employment opportunities.

8 (iv) Procedural changes in response to the type of grievances
9 received by an office.

10 (v) Model pamphlets and procedural forms ~~—, which~~ **that** shall
11 be distributed to each office.

12 (vi) A formula to be used in establishing and modifying a
13 child support amount and health care obligation. The formula
14 shall be based upon the needs of the child and the actual
15 resources of each parent. The formula shall establish a minimum
16 threshold for modification of a child support amount. The
17 formula shall consider the child care and dependent health care
18 coverage costs of each parent. The formula shall include
19 guidelines for setting and administratively adjusting the amount
20 of periodic payments for overdue support, including guidelines
21 for adjustment of arrearage payment schedules when the current
22 support obligation for a child terminates and the payer owes
23 overdue support. **The formula shall include guidelines for**
24 **deviating from the formula.**

25 (b) Provide training programs for the friend of the court,
26 domestic relations mediators, and employees of the office to
27 better enable them to carry out the duties described in this act

1 and supreme court rules. After September 30, 2002, the training
2 programs shall include training in the dynamics of domestic
3 violence and in handling domestic relations matters that have a
4 history of domestic violence.

5 (c) Gather and monitor relevant statistics.

6 (d) Annually issue a report containing a detailed summary of
7 the types of grievances received by each office, and whether the
8 grievances are resolved or outstanding. The report shall be
9 transmitted to the legislature and to each office and shall be
10 made available to the public. The annual report required by this
11 subdivision shall include, but is not limited to, all of the
12 following:

13 (i) An evaluative summary, supplemented by applicable
14 quantitative data, of the activities and functioning of each
15 citizen advisory committee during the preceding year.

16 (ii) An evaluative summary, supplemented by applicable
17 quantitative data, of the activities and functioning of the
18 aggregate of all citizen advisory committees in the state during
19 the preceding year.

20 (iii) An identification of problems that impede the
21 efficiency of the activities and functioning of the citizen
22 advisory committees and the satisfaction of the users of the
23 committees' services.

24 (e) Develop and recommend guidelines to be used by an office
25 in determining whether or not parenting time has been wrongfully
26 denied by the custodial parent.

27 (f) Develop standards and procedures for the transfer of part

1 or all of the responsibilities for a case from one office to
2 another in situations considered appropriate by the bureau.

3 (g) Certify domestic relations mediation training programs as
4 provided in section 13.

5 (h) Establish a 9-person state advisory committee, serving
6 without compensation except as provided in subsection (4),
7 composed of the following members, each of whom is a member of a
8 citizen advisory committee:

9 (i) Three public members who have had contact with an office
10 of the friend of the court.

11 (ii) Three attorneys who are members of the state bar of
12 Michigan and whose practices are primarily domestic relations
13 law. Not more than 1 attorney may be a circuit court judge.

14 (iii) Three human service professionals who provide family
15 counseling.

16 (i) Cooperate with the office of child support in developing
17 and implementing a statewide information system as provided in
18 the office of child support act, 1971 PA 174, MCL 400.231 to
19 400.240.

20 (j) Develop and make available guidelines to assist the
21 office of the friend of the court in determining the
22 appropriateness in individual cases of the following:

23 (i) Imposing a lien or requiring the posting of a bond,
24 security, or other guarantee to secure the payment of support.

25 (ii) Implementing the offset of a delinquent payer's state
26 income tax refund.

27 (k) Develop and provide the office of the friend of the court

1 with all of the following:

2 (i) Form motions, responses, and orders for use by an
3 individual in requesting the court to modify his or her child
4 support, custody, or parenting time order, or in responding to a
5 motion for modification without the assistance of legal counsel.

6 (ii) Instructions on preparing and filing the forms,
7 instructions on service of process, and instructions on
8 scheduling a support, custody, or parenting time modification
9 hearing.

10 (l) Develop guidelines for, and encourage the use of, plain
11 language within the office of the friend of the court including,
12 but not limited to, the use of plain language in forms and
13 instructions within the office and in statements of account
14 provided as required in section 9.

15 (m) In consultation with the domestic violence prevention and
16 treatment board created in section 2 of 1978 PA 389,
17 MCL 400.1502, develop guidelines for the implementation of
18 section 41 of the support and parenting time enforcement act,
19 **1982 PA 295**, MCL 552.641, that take into consideration at least
20 all of the following regarding the parties and each child
21 involved in a dispute governed by section 41 of the support and
22 parenting time enforcement act, **1982 PA 295**, MCL 552.641:

23 (i) Domestic violence.

24 (ii) Safety of the parties and child.

25 (iii) Uneven bargaining positions of the parties.

26 (4) The state advisory committee established under subsection
27 (3)(h) shall advise the bureau in the performance of its duties

1 under this section. The bureau shall make a state advisory
2 committee report or recommendation available to the public.
3 State advisory committee members shall be reimbursed for their
4 expenses for mileage, meals, and, if necessary, lodging, under
5 the schedule for reimbursement established annually by the
6 legislature. A state advisory committee meeting is open to the
7 public. A member of the public attending a state advisory
8 committee meeting shall be given a reasonable opportunity to
9 address the committee on any issue under consideration by the
10 committee. If a vote is to be taken by the state advisory
11 committee, the opportunity to address the committee shall be
12 given before the vote is taken.

13 (5) The bureau may call upon each office of the friend of the
14 court for assistance in performing the duties imposed in this
15 section.