

# Legislative Analysis



## MILITARY SERVICE: CHILD SUPPORT

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**Senate Bill 1128 with House committee amendments**

**Sponsor: Sen. Valde Garcia**

**House Committee: Family and Children Services**

**Senate Committee: Families and Human Services**

### **First Analysis (9-12-06)**

**BRIEF SUMMARY:** The bill would amend the Support and Parenting Time Enforcement Act to allow a temporary modification of a child support order if a payer were called into emergency military service that reduced his or her income. (A "payer" is a person ordered by the circuit court to pay child support. "Emergency military service" refers to a member of the Reserve Unit or National Guard Unit called into activity duty for more than 30 days.)

**FISCAL IMPACT:** The bill would have no direct fiscal impact on the state or local units of government.

### **THE APPARENT PROBLEM:**

With the changing structure of the U.S. Armed Forces, the military increasingly relies on reserve units and the National Guard to contribute to the national defense, including major combat operations. Historically, such forces rarely played an active role in armed conflicts, but beginning with Operation Desert Storm in the 1990s and continuing to the present wars in Iraq and Afghanistan, reserve units frequently have been called into active service for a year or more at a time. In some cases, the units are sent overseas, or they may serve in a support capacity in the United States. Reserve soldiers who are called into active duty often take a cut in pay, since their military salaries frequently are less than their civilian income (although some employers offer supplemental pay to help compensate for the loss). Evidently, some individuals who pay child support and are called into active duty struggle to make their support payments, which were calculated based on their civilian income. It has been suggested that reserve soldiers, when called up for emergency military service, be allowed to request a temporary modification of their child support payment to reflect their military salaries. Legislation has been introduced to address this issue.

### **THE CONTENT OF THE BILL:**

The bill would amend the Support and Parenting Time Enforcement Act to allow a temporary modification of a child support order if a payer were called into emergency military service that reduced his or her income. (A "payer" is a person ordered by the circuit court to pay child support. "Emergency military service" refers to a member of the Reserve Unit or National Guard Unit called into activity duty for more than 30 days.)

Under the bill, a payer who is called into emergency military service could submit to the Office of the Friend of the Court a written request for a military service adjustment of a support obligation along with information showing all military and civilian pay. A military

adjustment would be made based on the relationship between the person's income during military service and income on which support was ordered.

A payer would not be eligible for a military service adjustment before the date the Friend of the Court received the request. If the payer requested an adjustment on or before 56 days from the date he or she was called to emergency military service, however, the adjustment would have to take effect on the date emergency military service began. The adjustment would continue until 35 days after the service ended.

Upon receiving a request for a military service adjustment, the Friend of the Court would calculate the adjustment and notify all parties of the following: the amount of the adjustment; that they could object to the adjustment within 21 days; and the place and manner for filing objections.

If a party objects to the adjustment, the Friend of the Court would have to schedule a meeting between the parties to be held on the payer's return from emergency military service to attempt to resolve the dispute. If the parties could not reach an agreement, then the FOC would have to do one or more of the following: set a hearing before a judge or referee to determine whether the adjustment should be modified or set aside, or conduct a support review upon the payer's return from emergency military service, in which case the notice of adjustment would have to be treated as a petition for modification of support for determining an effective date for the modification.

If a party again objected to the adjustment, the adjustment would have to continue until the objection was resolved or until 35 days after the payer's emergency military service ends, whichever is sooner.

The hearing, meeting, or review would be held when the payer returned from emergency military service.

MCL 552.615

#### ***HOUSE COMMITTEE AMENDMENTS:***

The House Committee on Family and Children Services adopted three amendments. Primarily, the amendments appear to require that the Friend of the Court, when there is an objection to a support adjustment, first schedule a meeting between the two parties to attempt to resolve the dispute and then, if that does not work, to either set a hearing before a judge or referee or conduct a support review.

Some of the information in this analysis is derived from the Senate Fiscal Agency's analysis of the Senate-passed version, dated 5-5-06.

#### ***ARGUMENTS:***

##### ***For:***

Supporters say that the make up of military personnel has changed significantly because National Guard Members and reserve military personnel are regularly being called into emergency military service. They serve our country often with great sacrifice. Most often the military member experiences a decrease in compensation, and those who pay child

support should not be burdened with having to pay more than their fair amount. The bill ensures fairness by allowing a proportionate reduction in child support based on the reduced income of the soldier or sailor. The process established by the bill recognizes the burden on departing military personnel to get their affairs in order on short notice before going on active duty.

***Response:***

Under the bill, if a party objects to the reduction in child support, no action would be taken on that objection until after the payer finishes emergency military service. This offers the custodial parent little voice in the matter.

***Against:***

Critics testified before the committee that reducing support by a fraction proportionate to the amount of pay gained or lost would not be in accordance with the Michigan Child Support Formula—a formula which determines support amounts by using a matrix and applying the actual income of both parents. Usage of the Michigan Child Support Formula is mandated by Section 5 of the Friend of the Court Act. This act stems from the Federal Child Support Enforcement Amendments of 1984. When this formula is used to calculate support, any increase or decrease in the income of either parent would not have a proportionate effect on the amount of support due. The bill, as written, would bypass the usage of this formula, ignoring federal and state legislation.

The bill also addresses objections to the proposed support adjustment. On its option, the Friend of the Court could schedule a hearing before a judge *or referee*. Critics say that under MCR 3.214(E)(4) objections to a referee's recommendation are to be heard by a judge. Domestic matters, like child support, are judicial matters and must be decided judicially. Referees cannot adjudicate matters, they can only make written recommendations to judges. As written, the bill would allow a referee to make binding determinations regarding support adjustments and give them authority that exceeds what is currently prescribed in the Friend of the Court Act.

***POSITIONS:***

Department of Human Services supports the bill. (9-6-06)

Family Law Section-State Bar supports the bill. (9-6-06)

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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.