

HOUSE BILL No. 4542

March 23, 2005, Introduced by Reps. Robertson, Brandenburg, Pastor, Garfield, Marleau and Byrnes and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 165 (MCL 750.165), as amended by 2004 PA 570.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 165. (1) If the court orders an individual to pay support
2 for the individual's former or current spouse, or for a child of
3 the individual, and the individual does not pay the support in the
4 amount or at the time stated in the order, the individual is guilty
5 of a felony ~~punishable by imprisonment for not more than 4 years or~~
6 ~~by a fine of not more than \$2,000.00, or both.~~ OR MISDEMEANOR, AS
7 PROVIDED IN THIS SECTION, PUNISHABLE BY IMPRISONMENT OR A FINE, OR
8 BOTH, AS PROVIDED IN THIS SECTION. AN INDIVIDUAL SHALL NOT BE
9 PROSECUTED UNDER THIS SECTION UNLESS 1 OR MORE OF THE FOLLOWING ARE

1 TRUE OF THAT INDIVIDUAL IN RELATION TO THE SUPPORT ORDER OR THE
2 ACTION IN WHICH THE SUPPORT ORDER WAS ISSUED:

3 ~~—— (2) This section does not apply unless the individual ordered~~
4 ~~to pay support appeared in, or received notice by personal service~~
5 ~~of, the action in which the support order was issued.~~

6 (A) THE INDIVIDUAL WAS APPREHENDED ON A BENCH WARRANT.

7 (B) THE INDIVIDUAL APPEARED AT A SHOW CAUSE HEARING.

8 (C) THE INDIVIDUAL MADE ANY VOLUNTARY OR INVOLUNTARY CHILD
9 SUPPORT PAYMENT.

10 (D) THE INDIVIDUAL RESPONDED TO A PLEADING.

11 (E) THE INDIVIDUAL OBJECTED TO A CHILD SUPPORT ENFORCEMENT
12 ACTION.

13 (F) THE INDIVIDUAL RECEIVED NOTICE BY PERSONAL SERVICE OR
14 CERTIFIED MAIL.

15 (2) IF AN INDIVIDUAL IS FOUND GUILTY OF VIOLATING SUBSECTION
16 (1) AND 1 OR MORE OF THE FOLLOWING APPLY, THE INDIVIDUAL IS GUILTY
17 OF A FELONY AND SHALL BE PUNISHED BY IMPRISONMENT FOR NOT MORE THAN
18 10 YEARS OR A FINE OF NOT MORE THAN \$15,000.00 OR 3 TIMES THE
19 UNPAID SUPPORT, WHICHEVER IS GREATER, OR BY BOTH IMPRISONMENT AND A
20 FINE:

21 (A) BEFORE THE INDIVIDUAL PETITIONED FOR MODIFICATION OR
22 REDUCTION OF THE SUPPORT ORDER AND RECEIVED A FINAL DETERMINATION
23 ON THE PETITION, THE PAST DUE SUPPORT TOTALED \$20,000.00 OR MORE.

24 (B) THE INDIVIDUAL FAILED TO PAY THE SUPPORT PRESCRIBED IN THE
25 COURT ORDER FOR LONGER THAN 5 YEARS.

26 (C) THE INDIVIDUAL'S PAST DUE SUPPORT TOTALS THE AMOUNT STATED
27 IN SUBSECTION (3)(A) AND THE INDIVIDUAL HAS 2 OR MORE PRIOR

1 CONVICTIONS UNDER THIS SECTION.

2 (3) IF AN INDIVIDUAL IS FOUND GUILTY OF VIOLATING SUBSECTION
3 (1) AND 1 OR MORE OF THE FOLLOWING APPLY, THE INDIVIDUAL IS GUILTY
4 OF A FELONY AND SHALL BE PUNISHED BY IMPRISONMENT FOR NOT MORE THAN
5 5 YEARS OR A FINE OF NOT MORE THAN \$10,000.00 OR 3 TIMES THE UNPAID
6 SUPPORT, WHICHEVER IS GREATER, OR BY BOTH IMPRISONMENT AND A FINE:

7 (A) BEFORE THE INDIVIDUAL PETITIONED FOR MODIFICATION OR
8 REDUCTION OF THE SUPPORT ORDER AND RECEIVED A FINAL DETERMINATION
9 ON THE PETITION, THE PAST DUE SUPPORT TOTALED \$3,000.00 OR MORE BUT
10 LESS THAN \$20,000.00.

11 (B) THE INDIVIDUAL FAILED TO PAY THE SUPPORT PRESCRIBED IN THE
12 COURT ORDER FOR LONGER THAN 3 YEARS BUT NOT LONGER THAN 5 YEARS.

13 (C) THE INDIVIDUAL'S PAST DUE SUPPORT TOTALS THE AMOUNT STATED
14 IN SUBSECTION (4)(A) AND THE INDIVIDUAL HAS 2 OR MORE PRIOR
15 CONVICTIONS UNDER THIS SECTION.

16 (4) IF AN INDIVIDUAL IS FOUND GUILTY OF VIOLATING SUBSECTION
17 (1) AND 1 OR MORE OF THE FOLLOWING APPLY, THE INDIVIDUAL IS GUILTY
18 OF A MISDEMEANOR AND SHALL BE PUNISHED BY IMPRISONMENT FOR NOT MORE
19 THAN 1 YEAR OR A FINE OF NOT MORE THAN \$2,000.00 OR 3 TIMES THE
20 UNPAID SUPPORT, WHICHEVER IS GREATER, OR BY BOTH IMPRISONMENT AND A
21 FINE:

22 (A) BEFORE THE INDIVIDUAL PETITIONED FOR MODIFICATION OR
23 REDUCTION OF THE SUPPORT ORDER AND RECEIVED A FINAL DETERMINATION
24 ON THE PETITION, THE PAST DUE SUPPORT TOTALED LESS THAN \$3,000.00.

25 (B) THE INDIVIDUAL FAILED TO PAY THE SUPPORT PRESCRIBED IN THE
26 COURT ORDER FOR LONGER THAN 90 DAYS BUT NOT LONGER THAN 3 YEARS.

27 (5) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, IF THE

1 PROSECUTING ATTORNEY INTENDS TO SEEK A SENTENCE UNDER SUBSECTION
2 (2)(C) OR (3)(C) BASED ON THE AMOUNT OF THE DEFENDANT'S PAST DUE
3 SUPPORT, THAT AMOUNT MAY BE DETERMINED AS OF ANY DATE ON OR AFTER
4 THE DATE THE WARRANT WAS ISSUED FOR THE DEFENDANT'S ARREST, AND
5 UNTIL AND INCLUDING THE DATE OF THAT ARREST. IF, BEFORE THE
6 WARRANT WAS ISSUED, A PETITION FOR MODIFICATION OF THE DEFENDANT'S
7 SUPPORT WAS FILED WITH THE COURT AND A FINAL DETERMINATION ON THE
8 PETITION REDUCES THE DEFENDANT'S PAST DUE SUPPORT, OR IF THE COURT
9 REDUCES THE DEFENDANT'S PAST DUE SUPPORT UNDER SECTION 3B OF THE
10 SUPPORT AND PARENTING TIME ENFORCEMENT ACT, 1982 PA 295, MCL
11 552.603B, THE AMOUNT OF PAST DUE SUPPORT FOR THE PURPOSE OF THIS
12 SUBSECTION IS THAT REDUCED AMOUNT.

13 (6) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK A SENTENCE
14 UNDER SUBSECTION (2)(C) OR (3)(C) BASED UPON THE DEFENDANT HAVING 1
15 OR MORE PRIOR CONVICTIONS, THE PROSECUTING ATTORNEY SHALL INCLUDE
16 ON THE COMPLAINT AND INFORMATION A STATEMENT LISTING THE PRIOR
17 CONVICTION OR CONVICTIONS. THE EXISTENCE OF THE DEFENDANT'S PRIOR
18 CONVICTION OR CONVICTIONS SHALL BE DETERMINED BY THE COURT, WITHOUT
19 A JURY, AT SENTENCING OR AT A SEPARATE HEARING FOR THAT PURPOSE
20 BEFORE SENTENCING. THE EXISTENCE OF A PRIOR CONVICTION MAY BE
21 ESTABLISHED BY ANY EVIDENCE RELEVANT FOR THAT PURPOSE, INCLUDING,
22 BUT NOT LIMITED TO, 1 OR MORE OF THE FOLLOWING:

23 (A) A CERTIFIED COPY OF THE JUDGMENT OF CONVICTION.

24 (B) A TRANSCRIPT OF A PRIOR TRIAL, PLEA-TAKING, OR SENTENCING.

25 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

26 (D) THE DEFENDANT'S STATEMENT.

27 (7) IF THE SENTENCE FOR A CONVICTION UNDER THIS SECTION IS

1 ENHANCED BY 1 OR MORE PRIOR CONVICTIONS, THOSE PRIOR CONVICTIONS
2 SHALL NOT BE USED TO FURTHER ENHANCE THE SENTENCE FOR THE
3 CONVICTION UNDER SECTION 10, 11, OR 12 OF CHAPTER IX OF THE CODE OF
4 CRIMINAL PROCEDURE, 1927 PA 175, MCL 769.10, 769.11, AND 769.12.

5 (8) ~~-(3)-~~ Unless the individual deposits a cash bond of not
6 less than \$500.00 or 25% of the arrearage, whichever is greater,
7 upon arrest for a violation of this section, the individual shall
8 remain in custody until the arraignment. If the individual remains
9 in custody, the court shall address the amount of the cash bond at
10 the arraignment and at the preliminary examination and, except for
11 good cause shown on the record, shall order the bond to be
12 continued at not less than \$500.00 or 25% of the arrearage,
13 whichever is greater. At the court's discretion, the court may set
14 the cash bond at an amount not more than 100% of the arrearage and
15 add to that amount the amount of the costs that the court may
16 require under section 31(3) of the support and parenting time
17 enforcement act, 1982 PA 295, MCL 552.631. The court shall specify
18 that the cash bond amount be entered into the L.E.I.N. If a bench
19 warrant under section 31 of the support and parenting time
20 enforcement act, 1982 PA 295, MCL 552.631, is outstanding for an
21 individual when the individual is arrested for a violation of this
22 section, the court shall notify the court handling the civil
23 support case under the support and parenting time enforcement act,
24 1982 PA 295, MCL 552.601 to 552.650, that the bench warrant may be
25 recalled.

26 (9) ~~-(4)-~~ The court may suspend the sentence of an individual
27 convicted under this section if the individual files with the court

1 a bond in the amount and with the sureties the court requires. At a
2 minimum, the bond must be conditioned on the individual's
3 compliance with the support order. If the court suspends a sentence
4 under this subsection and the individual does not comply with the
5 support order or another condition on the bond, the court may order
6 the individual to appear and show cause why the court should not
7 impose the sentence and enforce the bond. After the hearing, the
8 court may enforce the bond or impose the sentence, or both, or may
9 permit the filing of a new bond and again suspend the sentence. The
10 court shall order a support amount enforced under this section to
11 be paid to the clerk or friend of the court or to the state
12 disbursement unit.

13 (10) ~~—(5)— As used in this section, —"state disbursement unit"~~
14 ~~or "SDU" means the entity established in section 6 of the office of~~
15 ~~child support act, 1971 PA 174, MCL 400.236.—~~ **"PRIOR CONVICTION"**
16 **DOES NOT INCLUDE A CONVICTION FOR A VIOLATION OF SUBSECTION (4)(B).**