

HOUSE BILL No. 6571

October 15, 2008, Introduced by Rep. LeBlanc and referred to the Committee on Families and Children's Services.

A bill to amend 1982 PA 294, entitled
"Friend of the court act,"
by amending sections 17, 17b, and 19 (MCL 552.517, 552.517b, and
552.519), as amended by 2004 PA 207, and by adding section 17f.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 17. (1) After a final judgment containing a child support
2 order has been entered in a friend of the court case, the office
3 shall periodically review the order, as follows:

4 (a) If a child is being supported in whole or in part by
5 public assistance, not less than once each 36 months unless **THE**
6 **ORDER HAS BEEN ADJUSTED WITHIN THE PREVIOUS 36 MONTHS UNDER SECTION**
7 **17F OR UNLESS** both of the following apply:

8 (i) The office receives notice from the department that good
9 cause exists not to proceed with support action.

1 (ii) Neither party has requested a review.

2 (b) At the initiative of the office, if there are reasonable
3 grounds to believe that the amount of child support awarded in the
4 judgment should be modified or that dependent health care coverage
5 is available and the support order should be modified to include an
6 order for health care coverage. Reasonable grounds to review an
7 order under this subdivision include temporary or permanent changes
8 in the physical custody of a child that the court has not ordered,
9 increased or decreased need of the child, probable access by an
10 employed parent to dependent health care coverage, or changed
11 financial conditions of a recipient of support or a payer
12 including, but not limited to, application for or receipt of public
13 assistance, unemployment compensation, or worker's compensation; or
14 incarceration or release from incarceration after a criminal
15 conviction and sentencing to a term of more than 1 year. Within 14
16 days after receiving information that a recipient of support or
17 payer is incarcerated or released from incarceration as described
18 in this subsection, the office shall initiate a review of the
19 order. A review initiated by the office under this subdivision does
20 not preclude the recipient of support or payer from requesting a
21 review under subdivision (d).

22 (c) At the direction of the court.

23 (d) Upon receipt of a written request from either party.
24 Within 14 days after receipt of the review request, the office
25 shall determine whether the order is due for review. The office is
26 not required to investigate ~~more than 1 request received from a~~
27 ~~party each~~ **IF WITHIN THE PREVIOUS 36 months THE PARTY HAS REQUESTED**

1 **AN ADJUSTMENT OR THE ORDER HAS BEEN ADJUSTED UNDER SECTION 17F.**

2 (e) If a child is receiving medical assistance, not less than
3 once each 36 months unless ~~either~~ **1 OR MORE** of the following

4 ~~applies~~ **APPLY:**

5 (i) The order requires provision of health care coverage for
6 the child and neither party has requested a review.

7 (ii) The office receives notice from the family independence
8 agency that good cause exists not to proceed with support action
9 and neither party has requested a review.

10 **(iii) THE ORDER HAS BEEN ADJUSTED WITHIN THE PREVIOUS 36 MONTHS**
11 **UNDER SECTION 17F.**

12 (f) If requested by the initiating state for a recipient of
13 services in that state under title IV-D, not less than once each 36
14 months, **UNLESS THE ORDER HAS BEEN ADJUSTED WITHIN THE PREVIOUS 36**
15 **MONTHS UNDER SECTION 17F.** Within 14 days after receipt of a review
16 request, the office shall determine whether an order is due for
17 review.

18 (2) Within 180 days after determining that a review is
19 required under subsection (1), the office shall send notices as
20 provided in section 17b, conduct a review, and obtain a
21 modification of the order if appropriate.

22 (3) The office shall use the child support formula developed
23 by the bureau under section 19 in calculating the child support
24 award.

25 (4) The office shall petition the court if modification is
26 determined **UNDER THIS SECTION** to be necessary unless either of the
27 following applies:

1 (a) The difference between the existing and projected child
2 support award is within the minimum threshold for modification of a
3 child support amount as established by the formula.

4 (b) The court previously determined that application of the
5 formula was unjust or inappropriate and the office determines that
6 the facts of the case and the reasons **FOR** and amount of the prior
7 deviation remain unchanged.

8 (5) The notice under section 17b(3) constitutes a petition for
9 modification of the support order and shall be filed with the
10 court.

11 (6) If the office determines there should be no change in the
12 order and a party objects to the determination in writing to the
13 office within 21 days after the date of the notice provided for in
14 section 17b(3), the office shall schedule a hearing before the
15 court.

16 (7) If a support order lacks provisions for health care
17 coverage, the office shall petition the court for a modification to
18 require that 1 or both parents obtain or maintain health care
19 coverage for the benefit of each child who is subject to the
20 support order if either of the following is true:

21 (a) Either parent has health care coverage available, as a
22 benefit of employment, for the benefit of the child at a reasonable
23 cost.

24 (b) Either parent is self-employed, maintains health care
25 coverage for himself or herself, and can obtain health care
26 coverage for the benefit of the child at a reasonable cost.

27 (8) The office shall determine the costs to each parent for

1 dependent health care coverage and child care costs and shall
2 disclose those costs in the recommendation under section 17b(3).

3 Sec. 17b. (1) ~~Child~~ **EXCEPT AS PROVIDED IN SECTION 17F, CHILD**
4 support orders entered after ~~the effective date of the 2004~~
5 ~~amendatory act that added subsection (8)~~ **JUNE 30, 2005** shall be
6 modified according to this section. For each support order entered
7 before ~~the effective date of the 2004 amendatory act that added~~
8 ~~subsection (8)~~ **JUNE 30, 2005**, the friend of the court office shall
9 provide notice to the parties of their right to a review under this
10 section as required by federal law. Notices under this subsection
11 may be placed in court orders as allowed by federal law.

12 (2) ~~The~~ **EXCEPT FOR PROCEEDINGS UNDER SECTION 17F, THE** friend
13 of the court office shall initiate proceedings to review support by
14 sending a notice to the parties. The notice shall request
15 information sufficient to allow the friend of the court to review
16 support, state the date the information is due, and advise the
17 parties concerning how the review will be conducted.

18 (3) After the information ~~in~~ **REQUESTED UNDER** subsection (2) is
19 due, but not sooner than 21 days or later than 120 days after the
20 date the notice is sent, the friend of the court office shall
21 calculate the **RECOMMENDED** support amount in accordance with the
22 child support formula and send a notice to each party and his or
23 her attorney, which shall include all of the following:

24 (a) The amount calculated for support.

25 (b) The proposed effective date of the support amount.

26 (c) Substantially the following statement: "Either party may
27 object to the recommended support amount. If no objection is filed

1 within 21 days ~~of~~ **AFTER** the date this notice was mailed, an order
2 will be submitted to the court incorporating the new support
3 amount." The notice also shall inform the parties of how and where
4 to file an objection.

5 (4) Twenty-one or more days from the date the notice required
6 by subsection (3) is sent, the friend of the court office shall
7 determine if an objection has been filed. If an objection has been
8 filed, the friend of the court shall set the matter for a hearing
9 before a judge or referee or, if the office receives additional
10 information with the objection, it may recalculate the support
11 amount and send out a revised notice in accordance with subsection
12 (3). If ~~no~~ **AN** objection is **NOT** filed, the friend of the court
13 office shall prepare an order, which the court shall enter if it
14 approves of the order.

15 (5) The friend of the court may schedule a joint meeting
16 between the parties to attempt to expedite resolution of support
17 issues in accordance with the guidelines ~~set forth in~~ **DEVELOPED**
18 **UNDER** section 19(3)(m). The joint meeting and proceedings following
19 the joint meeting are subject to the requirements of section 42a of
20 the support and parenting time enforcement act, MCL 552.642a.

21 (6) The following provisions apply to support review
22 proceedings under this section:

23 (a) A recommendation under subsection (3) shall state the
24 calculations upon which the support amount is based. If the friend
25 of the court office recommends a support amount based on imputed
26 income, the recommendation shall also state the amount that would
27 have been recommended based on the actual income of the parties if

1 the actual income of the parties is known. If income is imputed,
2 the recommendation shall recite all factual assumptions upon which
3 the imputed income is based.

4 (b) The friend of the court office may impute income to a
5 party who fails or refuses to provide information requested under
6 subsection (2).

7 (c) At a hearing based on an objection to a friend of the
8 court office recommendation, the trier of fact may consider the
9 friend of the court office's recommendation as evidence to prove a
10 fact relevant to the support calculation ~~when~~ **IF** no other evidence
11 is presented concerning that fact, if the parties agree, or **IF** no
12 objection is made to its use for that purpose.

13 (7) The court shall not require proof of a substantial change
14 in circumstances to modify a child support order when support is
15 adjusted under section 17(1).

16 (8) A party may also file a motion to modify support. Upon
17 motion of a party, the court may only modify a child support order
18 upon finding a substantial change in circumstances, including, but
19 not limited to, health care coverage becoming newly available to a
20 party and a change in the support level under section ~~17(4)(a)~~
21 **17(7) (A)**.

22 (9) Notwithstanding any other provisions of this section, the
23 friend of the court office shall conduct a more frequent review of
24 the support order upon presentation by a party of evidence of a
25 substantial change in circumstances as set forth in the child
26 support formula guidelines.

27 **SEC. 17F. (1) EXCEPT AS PROVIDED IN SUBSECTION (3), A SUPPORT**

1 ORDER THAT ORDERS PERIODIC PAYMENTS SHALL INCLUDE A PROVISION THAT
2 EVERY 2 YEARS AFTER THE SUPPORT ORDER IS EFFECTIVE, THE SUPPORT
3 AMOUNT SHALL BE ADJUSTED BY 1 OF THE FOLLOWING COST-OF-LIVING
4 INDICES:

5 (A) THE MOST COMPREHENSIVE DETROIT-ANN ARBOR-FLINT CONSUMER
6 PRICE INDEX FOR ALL URBAN CONSUMERS FROM THE UNITED STATES
7 DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS.

8 (B) THE COMPREHENSIVE DETROIT-ANN ARBOR-FLINT CONSUMER PRICE
9 INDEX FOR URBAN WAGE EARNERS AND CLERICAL WORKERS FROM THE UNITED
10 STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS.

11 (C) ANOTHER CONSUMER PRICE INDEX FROM THE UNITED STATES
12 DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, THAT THE COURT
13 DETERMINES TO BE MORE APPROPRIATE.

14 (2) AN ADJUSTMENT UNDER SUBSECTION (1) SHALL BE CALCULATED BY
15 USING THE CUMULATIVE PERCENTAGE CHANGE IN THE APPLICABLE INDEX FOR
16 THE PERIOD SINCE THE SUPPORT WAS ESTABLISHED OR MOST RECENTLY
17 MODIFIED.

18 (3) THIS SECTION DOES NOT APPLY TO A SUPPORT ORDER IF THE
19 COURT DETERMINES THAT 1 OR MORE OF THE FOLLOWING APPLY:

20 (A) INCLUSION OF A COST-OF-LIVING ADJUSTMENT IN THE ORDER IS
21 INAPPROPRIATE BECAUSE THE PAYER'S OCCUPATION OR INCOME DOES NOT
22 PROVIDE FOR A COST-OF-LIVING ADJUSTMENT.

23 (B) THE PARTIES AGREE IN WRITING THAT INCLUSION OF A COST-OF-
24 LIVING ADJUSTMENT IN THE ORDER IS INAPPROPRIATE.

25 (C) THE SUPPORT ORDER CONTAINS A PROVISION, SUCH AS 1 OR MORE
26 STEP INCREASES, THAT HAS THE EFFECT OF A COST-OF-LIVING ADJUSTMENT.

27 (4) AN ADJUSTMENT TO SUPPORT UNDER THIS SECTION MAY BE MORE OR

1 LESS THAN THE ADJUSTMENT CALCULATED USING THE INDEX SELECTED IN THE
2 SUPPORT ORDER IF THE PARTIES AGREE IN WRITING OR IF ORDERED BY THE
3 COURT.

4 (5) AN ADJUSTMENT TO SUPPORT UNDER THIS SECTION IS EFFECTIVE
5 AS FOLLOWS:

6 (A) IF THE SUPPORT IS BEING PAID TO THE TITLE IV-D AGENCY, ON
7 MAY 1.

8 (B) IN CASES TO WHICH SUBDIVISION (A) DOES NOT APPLY, ON THE
9 DATE PROVIDED IN THE SUPPORT ORDER.

10 (6) THE TITLE IV-D AGENCY, IF THE SUPPORT IS BEING PAID TO THE
11 AGENCY, OR THE RECIPIENT OF SUPPORT, IN ALL OTHER CASES, SHALL SEND
12 NOTICE OF A PROPOSED ADJUSTMENT UNDER THIS SECTION TO THE PAYER 21
13 DAYS OR MORE BEFORE THE PROPOSED EFFECTIVE DATE OF THE ADJUSTMENT.
14 THE NOTICE SHALL CONTAIN ALL OF THE FOLLOWING:

15 (A) THE PROPOSED ADJUSTED SUPPORT AMOUNT.

16 (B) THE PROPOSED EFFECTIVE DATE.

17 (C) THE PROCEDURE TO CONTEST THE ADJUSTMENT UNDER SUBSECTION

18 (7).

19 (7) A PAYER SHALL DO BOTH OF THE FOLLOWING TO CONTEST A
20 PROPOSED ADJUSTMENT UNDER THIS SECTION:

21 (A) FILE A MOTION CONTESTING THE ADJUSTMENT WITH THE CLERK OF
22 THE COURT AND OBTAIN A DATE FOR A HEARING ON THE MOTION BEFORE A
23 JUDGE OR REFEREE.

24 (B) SERVE THE MOTION AND A NOTICE OF HEARING BY FIRST CLASS
25 MAIL ON THE RECIPIENT OF SUPPORT AND, IF THE NOTICE UNDER
26 SUBSECTION (6) WAS SENT BY THE TITLE IV-D AGENCY, ON THE TITLE IV-D
27 AGENCY.

1 (8) AT A HEARING ON A MOTION CONTESTING A PROPOSED ADJUSTMENT
2 UNDER THIS SECTION, IF THE PAYER PROVES THAT HIS OR HER INCOME HAS
3 NOT CHANGED SUFFICIENTLY TO PAY THE ADJUSTED SUPPORT, THE JUDGE OR
4 REFEREE MAY ORDER THAT THE SUPPORT NOT BE ADJUSTED, OR THAT IT BE
5 ADJUSTED BY A SMALLER AMOUNT. OTHERWISE, THE PROPOSED ADJUSTED
6 SUPPORT AMOUNT IS EFFECTIVE ON THE PROPOSED EFFECTIVE DATE AS
7 STATED IN THE NOTICE UNDER SUBSECTION (6).

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

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

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

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

16 (i) Case load and staffing standards for employees who perform
17 domestic relations mediation functions, investigation and
18 recommendation functions, referee functions, enforcement functions,
19 and clerical functions.

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

21 (iii) Public educational programs regarding domestic relations
22 law and community resources, including financial and other
23 counseling, and employment opportunities.

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

26 (v) Model pamphlets and procedural forms, that shall be
27 distributed to each office.

(vi) A formula to be used in establishing and modifying a child support amount and health care obligation. **ALL OF THE FOLLOWING APPLY TO THE FORMULA:**

(A) The formula shall be based upon the needs of the child and the actual resources of each parent.

(B) The formula shall establish a minimum threshold for modification of a child support amount.

(C) The formula shall consider the child care and dependent health care coverage costs of each parent.

(D) **THE FORMULA SHALL INCLUDE GUIDELINES FOR MAKING COST-OF-LIVING ADJUSTMENTS UNDER SECTION 17F.**

(E) The formula shall include guidelines for setting and administratively adjusting the amount of periodic payments for overdue support, including guidelines for adjustment of arrearage payment schedules ~~when~~ **IF** the current support obligation for a child terminates and the payer owes overdue support.

(b) Provide training programs for the friend of the court, domestic relations mediators, and employees of the office to better enable them to carry out the duties described in this act and supreme court rules. After September 30, 2002, the training programs shall include training in the dynamics of domestic violence and in handling domestic relations matters that have a history of domestic violence.

(c) Gather and monitor relevant statistics.

(d) Annually issue a report containing a detailed summary of the types of grievances received by each office, and whether the grievances are resolved or outstanding. The report shall be

1 transmitted to the legislature and to each office and shall be made
2 available to the public. The annual report required by this
3 subdivision shall include, but ~~is~~ not **BE** limited to, all of the
4 following:

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

8 (ii) An evaluative summary, supplemented by applicable
9 quantitative data, of the activities and functioning of the
10 aggregate of all citizen advisory committees in the state during
11 the preceding year.

12 (iii) An identification of problems that impede the efficiency
13 of the activities and functioning of the citizen advisory
14 committees and the satisfaction of the users of the committees'
15 services.

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

19 (f) Develop standards and procedures for the transfer of part
20 or all of the responsibilities for a case from one office to
21 another in situations considered appropriate by the bureau.

22 (g) Certify domestic relations mediation training programs as
23 provided in section 13.

24 (h) Establish a 9-person state advisory committee, serving
25 without compensation except as provided in subsection (4), composed
26 of the following members, giving preference to a member of a
27 citizen advisory committee:

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

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

6 (iii) Three human service professionals who provide family
7 counseling.

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

11 (j) Develop and make available guidelines to assist the office
12 of the friend of the court in determining the appropriateness in
13 individual cases of the following:

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

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

18 (k) Develop and provide the office of the friend of the court
19 with all of the following:

20 (i) Form motions, responses, and orders for use by an
21 individual in requesting the court to modify his or her child
22 support, custody, or parenting time order, ~~or~~ in responding to a
23 motion for modification, **OR IN GIVING A NOTICE OR MAKING AN**
24 **OBJECTION UNDER SECTION 17F** without the assistance of legal
25 counsel.

26 (ii) Instructions on preparing and filing the forms,
27 instructions on service of process, and instructions on scheduling

1 a support, custody, or parenting time modification hearing **OR A**
2 **HEARING UNDER SECTION 17F.**

3 (iii) Guidelines for imputing income for the calculation of
4 child support.

5 (l) Develop guidelines for, and encourage the use of, plain
6 language within the office of the friend of the court including,
7 but not limited to, the use of plain language in forms and
8 instructions within the office and in statements of account
9 provided as required in section 9.

10 (m) In consultation with the domestic violence prevention and
11 treatment board created in section 2 of 1978 PA 389, MCL 400.1502,
12 develop guidelines for the implementation of section 41 of the
13 support and parenting time enforcement act, MCL 552.641, that take
14 into consideration at least all of the following regarding the
15 parties and each child involved in a dispute governed by section 41
16 of the support and parenting time enforcement act, MCL 552.641:

17 (i) Domestic violence.

18 (ii) Safety of the parties and child.

19 (iii) Uneven bargaining positions of the parties.

20 (4) The state advisory committee established under subsection
21 (3)(h) shall advise the bureau in the performance of its duties
22 under this section. The bureau shall make a state advisory
23 committee report or recommendation available to the public. State
24 advisory committee members shall be reimbursed for their expenses
25 for mileage, meals, and, if necessary, lodging —under the schedule
26 for reimbursement established annually by the legislature. A state
27 advisory committee meeting is open to the public. A member of the

1 public attending a state advisory committee meeting shall be given
2 a reasonable opportunity to address the committee on any issue
3 under consideration by the committee. If a vote is to be taken by
4 the state advisory committee, the opportunity to address the
5 committee shall be given before the vote is taken.

6 (5) The bureau may call upon each office of the friend of the
7 court for assistance in performing the duties imposed in this
8 section.