

SENATE BILL NO. 1091

September 09, 2020, Introduced by Senator BIZON and referred to the Committee on Families, Seniors, and Veterans.

A bill to amend 1982 PA 294, entitled
"Friend of the court act,"
by amending section 17 (MCL 552.517), as amended by 2019 PA 27, 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 use a procedure provided in section 17b to periodically
4 review the order, as follows:

5 (a) If a child is being supported in whole or in part by

1 public assistance, not less than once ~~each~~**every** 36 months unless
2 both of the following apply:

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

5 (ii) Neither party has requested a review.

6 (b) Upon receipt of a written request from either party.
7 Within 14 days after receipt of the review request, the office
8 shall determine whether the order is due for review. The office is
9 not required to act on more than 1 request received from a party
10 ~~each~~**every** 36 months.

11 (c) If a child is receiving medical assistance, not less than
12 once ~~each~~**every** 36 months unless either of the following applies:

13 (i) The order requires ~~provision of~~**providing** health care
14 coverage for the child and neither party has requested a review.

15 (ii) The office receives notice from the department that good
16 cause exists not to proceed with support action and neither party
17 has requested a review.

18 (d) If requested by the initiating state for a recipient of
19 services in that state under title IV-D, not less than once each 36
20 months. Within 14 days after receipt of a review request, the
21 office ~~shall~~**must** determine whether an order is due for review.

22 (e) At the direction of the court.

23 (f) At the initiative of the office, if there are reasonable
24 grounds to believe that the amount of child support awarded in the
25 judgment should be modified or that dependent health care coverage
26 should be modified, or both. Reasonable grounds to review an order
27 under this subdivision include any of the following:

28 (i) Temporary or permanent changes in the physical custody of a
29 child that the court has not ordered.

1 (ii) Increased or decreased need of the child.

2 (iii) Probable access by a parent to dependent health care
3 coverage that is accessible to the child and available at a
4 reasonable cost. Health care coverage is presumed accessible to the
5 child and presumed available at a reasonable cost if it meets the
6 guidelines provided in the child support formula developed by the
7 bureau under section 19.

8 (iv) Changed dependent health care coverage cost from the
9 amount used in the ~~prior~~**previous** child support order.

10 (v) Changed financial conditions of a recipient of support or
11 a payer, including ~~any of the following:~~

12 ~~(A) Application~~**application** for or receipt of public
13 assistance, unemployment compensation, or worker's compensation.

14 ~~(B) Incarceration or release from incarceration after a~~
15 ~~criminal conviction and sentencing to a term of more than 1 year.~~
16 ~~Within 14 days after receiving information that a recipient of~~
17 ~~support or payer is incarcerated or released from incarceration as~~
18 ~~described in this sub-subparagraph, the office shall initiate a~~
19 ~~review of the order.~~

20 (vi) That the order was based on incorrect facts.

21 (2) A review initiated by the office under subsection (1)(f)
22 does not preclude the recipient of support or payer from requesting
23 a review under subsection (1)(b).

24 (3) Within 180 days after determining that a review is
25 required under subsection (1), the office ~~shall~~**must** obtain a
26 modification of the order if appropriate.

27 (4) The office ~~shall~~**must** use the child support formula
28 developed by the bureau under section 19 in calculating the child
29 support award under section 17b.

1 (5) The office ~~shall~~**must** petition the court if modification
2 is determined to be necessary under section 17b unless either of
3 the following applies:

4 (a) The difference between the existing and projected child
5 support award is less than the minimum threshold for modification
6 of a child support amount as established by the formula.

7 (b) The court previously determined that application of the
8 formula was unjust or inappropriate and the office determines that
9 the facts of the case and the reasons for and amount of the ~~prior~~
10 **previous** deviation remain unchanged.

11 (6) The notice under section 17b(3) constitutes a petition for
12 modification of the support order and ~~shall~~**must** be filed with the
13 court.

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

19 (8) If a support order lacks provisions for health care
20 coverage, the office ~~shall~~**must** petition the court for a
21 modification to require that 1 or both parents obtain or maintain
22 health care coverage for the benefit of each child who is subject
23 to the support order when health care coverage is accessible to the
24 child and available at a reasonable cost. The office ~~shall~~**must** use
25 the guidelines provided for in the child support formula developed
26 by the bureau under section 19 to recommend which parent provides
27 health care coverage that is accessible to the child and available
28 at a reasonable cost. The office ~~shall~~**must** not petition the court
29 to require both parents to provide health care coverage under this

1 subsection unless both parents already provide coverage or both
2 agree to provide coverage. This subsection does not prevent the
3 court from exercising its discretion to order health care coverage
4 based on the child's needs or the parent's resources.

5 (9) The office ~~shall~~**must** determine the costs to each parent
6 for dependent health care coverage and child care costs and ~~shall~~
7 **must** disclose those costs in the recommendation under section
8 17b(3).

9 **Sec. 17f. (1) The monthly amount of support payable under an**
10 **order must be abated, by operation of law, effective the later of**
11 **the effective date of the amendatory act that added this section or**
12 **the date the payer becomes incarcerated for 180 consecutive days or**
13 **more and does not have the ability to pay support. The abatement**
14 **terminates according to subsection (9). Both of the following**
15 **apply:**

16 (a) It is presumed that the payer does not have the ability to
17 pay the monthly amount of support payable under an order.

18 (b) If the payer has the ability to pay support, the abatement
19 under this section does not apply.

20 (2) Notwithstanding section 17(1), if the payer has income or
21 assets, the friend of the court shall initiate a review and
22 modification according to sections 17 and 17b.

23 (3) The friend of the court must send a notice of abatement
24 according to this section to the payer and recipient of support.
25 The notice of abatement must include the effective date of the
26 abatement and reason to object. The notice of abatement must be
27 filed with the court. The payer and recipient of support have 21
28 days to object in writing based on mistake of fact or mistake of
29 identity.

1 (4) The friend of the court shall not adjust the records to
2 reflect the abatement under this section until 21 days after the
3 friend of the court notifies each party of the proposed action and
4 each party's right to object.

5 (5) Upon receipt of an objection, the friend of the court
6 shall not adjust the records as described in subsection (4). The
7 friend of the court shall conduct an administrative review and
8 consider only a mistake of fact or mistake of identity in its
9 review. If the friend of the court finds no mistake of fact or
10 mistake of identity, the friend of the court must notify the payer
11 and recipient of support of the administrative review determination
12 and that subsection (1) applies. The payer or recipient of support
13 may object to the review determination by filing a motion in the
14 circuit court that issued the support order within 21 days after
15 the review determination notice.

16 (6) If a motion is not filed in the circuit court within 21
17 days after the review determination notice, the friend of the court
18 must adjust the record to reflect the abatement under this section.

19 (7) If the friend of the court finds a mistake of fact or
20 mistake of identity during the administrative review required by
21 subsection (5), the friend of the court must notify the payer and
22 recipient of support of the administrative review determination and
23 take action appropriate to the mistake. The review determination
24 must be filed with the court.

25 (8) The adjustment to the record described in subsections (4)
26 and (6) cannot exceed the payer's monthly amount of support and the
27 past due support.

28 (9) When the payer is released from incarceration, the monthly
29 amount of support payable under the order remains abated until the

1 order is modified. Both of the following apply:

2 (a) Absent good cause to the contrary, a support payment under
3 a modified support order is due no sooner than the first day of the
4 first month following the 90th day after release from
5 incarceration.

6 (b) Notwithstanding any law to the contrary, a support payment
7 due under a modified support order entered after the 90th day after
8 release from incarceration, may be effective on the first day of
9 the first month following the 90th day after release from
10 incarceration. If the effective date is determined according to
11 this subsection, the amount of support for each month since the
12 effective date to the present date must be calculated using the
13 actual resources of each parent during each month.

14 (10) Upon learning the payer is released from incarceration,
15 the friend of the court must initiate a review within 30 days
16 according to subsections (2) to (9) of sections 17 and 17b.

17 (11) The state court administrative office under the
18 supervision and direction of the supreme court may implement a
19 policy to assist offices of the friend of the court in implementing
20 the abatement of support under this section. The state court
21 administrative office must develop forms for use by offices of the
22 friend of the court and parties to implement this section.

23 (12) The department of corrections and any local unit of
24 government operating a jail must provide the title IV-D agency with
25 the record necessary to identify payers who are or will be
26 incarcerated for 180 consecutive days or more, the crime for which
27 the payers are incarcerated, and any information or record that
28 assists in implementing this section as determined by the title IV-
29 D agency. As used in this subsection, "jail" means that term as

1 defined in section 62 of the corrections code of 1953, 1953 PA 232,
2 MCL 791.262.

3 Enacting section 1. This amendatory act takes effect 1 year
4 after the date it is enacted into law.