

FRIEND OF THE COURT ACT (EXCERPT)
Act 294 of 1982

552.517f Abatement of child support order upon incarceration of 180 days or more; notice; objection and administrative review; modification of order.

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

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

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

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

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

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

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

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

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

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

(9) When the payer is released from incarceration, the monthly amount of support payable under the order remains abated until the order is modified. Both of the following apply:

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

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

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

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

(12) The department of corrections and any local unit of government operating a jail must provide the title IV-D agency with the record necessary to identify payers who are or will be incarcerated for 180 consecutive days or more, the crime for which the payers are incarcerated, the payers' release date, and any information or record that assists in implementing this section as determined by the title IV-D agency. As used in this subsection, "jail" means that term as defined in section 62 of the corrections code of 1953, 1953 PA 232, MCL 791.262.

History: Add. 2020, Act 349, Eff. Dec. 30, 2021.