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Senate Bills 1090 and 1091 (as introduced 9-9-20)

Sponsor: Senator John Bizon, M.D.

Committee: Families, Seniors, and Veterans

Date Completed: 9-9-20

### **CONTENT**

**Senate Bill 1090 would amend the Support and Parenting Time Enforcement Act to do the following:**

- Specify that if a child for whom support was payable under a support order was under court jurisdiction and placed in county-funded foster care the Department of Health and Human Services (DHHS) would be assigned the support.
- Require each support order the court entered or modified on and after one year after the bill's effective date to include statements specifying that if the payer will be incarcerated for 180 consecutive days or more and will not be able to pay support, the monthly amount of support payable under the order would have to be abated and would have to remain abated until the order was modified.
- Allow a party to a domestic relations matter for which there was not an open friend of the court (FOC) case to file a motion with the circuit court to request provisions proposed by Senate Bill 1091 apply when a payer would be incarcerated for 180 consecutive days or more with no ability to pay.

**Senate Bill 1091 would amend the Friend of the Court Act to do the following:**

- Delete a provision that specifies incarceration or release from incarceration after a criminal conviction and sentencing to a term of more than one year as a reasonable ground to review a support order following a change in financial conditions of a recipient or payer of the support order.
- Require the monthly amount of support payable under an order to be abated, effective the later of the bill's effective date or the date the payer became incarcerated for 180 consecutive days or more and did not have the ability to pay support.
- Require the FOC to send a notice of abatement to the payer and recipient of support that included the effective date of the abatement and reason to object.
- Specify that the payer and recipient of support would have 21 days to object to the notice of abatement based on mistake of fact or mistake of identity and prohibit the FOC from adjusting the records until after the 21 days.
- Require the FOC to conduct an administrative review after receiving an objection and, if it found a mistake of fact or mistake of identity, require the FOC to notify the payer and recipient of support of the administrative review determination and take action appropriate to the mistake.
- Specify that adjustments to the record could not exceed the payer's monthly amount of support and the past due support.

- **When the payer was released from incarceration, require the monthly amount of support payable under a support order to remain until the order was modified.**
- **Allow the State Court Administrative Office (SCAO) under the direction of the Supreme Court to implement a policy to assist offices of the FOC in implementing the abatement of support.**
- **Require the Michigan Department of Corrections (MDOC) and any local unit of government operating a jail to identify payers who were or would be incarcerated for 180 consecutive days or more and certain other information.**

Senate Bill 1091 would take effect one year after its enactment.

### **Senate Bill 1090**

#### **Support Payable Assignment**

Under the Act, each support order the court enters or modifies must include certain provisions. Among other things, the support order must include that if a child for whom support is payable under the order is under court jurisdiction and is placed in county-funded foster care, that support payable under the order is assigned to the funding county. Under the bill, if a child for whom support was payable under court jurisdiction and as placed in county-funded foster care, the support payable would be assigned to the DHHS.

(The Act defines "support order" as an order entered by the circuit court for the payment of support, whether a sum certain. "Support" means all the following: a) the payment of money for a child or a spouse ordered by the circuit court, whether the order is embodied in an interim, temporary, permanent, or modified order or judgment, and can include payment of the expenses of medical, dental, and other health care, child care expenses, and educational expenses; b) the payment of money ordered by the circuit court under the Paternity Act, which governs court proceedings to provide support for children born out of wedlock, for the necessary expenses connected to the mother's pregnancy or the birth of the child, or for the repayment of genetic testing expenses; c) a surcharge if ordered by a court.)

#### **Incarceration & Support Orders**

Under the bill, on and after one year after the bill's effective date, each support order the court entered or modified would have to include substantially the following statements:

- If the payer will be incarcerated for 180 consecutive days or more and will not have the ability to pay support, the monthly amount of support payable under the order must be abated, by operation of law, subject to Section 17f of the Friend of the Court Act.
- The monthly amount of support must remain abated until the order is modified.

The bill specifies that a support order entered before one year after the bill's effective date would be considered to include, by operation of law, the provisions stated above.

Under the bill, a party to a domestic relations matter for which there was not an open friend of the court case could file a motion with the circuit court when a payer would be incarcerated for 180 consecutive days or more with no ability to pay, to request the provisions of Section 17f(1) of the Friend of the Court Act apply. When the payer was released from incarceration, a party could file a motion with the circuit court to request that the provisions of Section 17f(9) of the Friend of the Court Act apply and that the order be modified. (Generally, "domestic relations matter" means a circuit court proceeding as to child custody, parenting time, child support, or spousal support, that arises out of litigation under a statute of the State.)

(Senate Bill 1091 would add Section 17f, 17f(1), and 17f(9) to the Friend of the Court Act and is described in detail below.)

### **Senate Bill 1091**

#### **Incarceration & Support Order Review**

Under the Friend of the Court Act, after a final judgement containing a child support order has been entered in a FOC case, the office of the FOC must use a procedure provided by the Act to review the order periodically. Among other reasons, the office may review the order on its own initiative if there are reasonable grounds to believe that the amount of child support awarded in the judgment should be modified or that dependent health care coverage should be modified, or both, the office must review the order.

The Act specifies that reasonable grounds to review an order under the Act include, among other things, changed financial conditions of a recipient of support or payer, including incarceration or release from incarceration after a criminal conviction and sentencing to a term of more than one year. Within 14 days after receiving information that a recipient of support or payer is incarcerated or released from incarceration as described above, the office must initiate a review of the order. The bill would delete this provision as a reasonable ground to review an order.

Under the bill, the monthly amount of support payable under an order would have to be abated, by operation of law, effective the later of the bill's effective date or the date the payer became incarcerated for 180 consecutive days or more and did not have the ability to pay support. The abatement would terminate as described below. Both of the following would apply:

- It would be presumed that the payer did not have the ability to pay the monthly amount of support payable under an order.
- If the payer had the ability to pay support, the abatement would not apply.

Notwithstanding the requirement that the office periodically review an order after a final judgement containing a child support order through procedures prescribed in the Act, if the payer had income or assets, the bill would require the FOC to initiate a review and modification as prescribed by the Act.

#### **Notice of Abatement**

The bill would require the FOC to send a notice of abatement according to the bill's provisions to the payer and recipient of support. The notice would have to be filed with the court and would have to include the effective date of the abatement and reason to object. The payer and recipient of support would have 21 days to object in writing based on mistake of fact or mistake of identity. The FOC could not adjust the records to reflect the abatement until 21 days after the FOC notified each party of the proposed action and each party's right to object.

Under the bill, after receiving an objection, the FOC could not adjust the records described above. The FOC would have to conduct an administrative review and consider only a mistake of fact or mistake of identity in its review. If the FOC found no mistake of fact or mistake of identity, the FOC would have to notify the payer and the recipient of support of the administrative review determination and that the bill's requirements related to abatement of the monthly amount of support payable as a result of incarceration for 180 consecutive days would apply.

The payer or recipient of support could 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. If a motion were not filed in the circuit court within 21 days after the review determination notice, the FOC could adjust the record to reflect the abatement.

If the FOC found a mistake of fact or mistake of identity during the administrative review required by the bill, the FOC would have to notify the payer and recipient of support of the administrative review determination and take action appropriate to the mistake. The review determination would have to be filed with the court.

#### Release from Incarceration & Support Orders

Under the bill, the adjustments to the record described above could not exceed the payer's monthly amount of support and the past due support. When the payer was released from incarceration, the monthly amount of support payable under the order would remain until the order was modified. Both of the following would apply:

- Absent good cause to the contrary, a support payment under a modified support order would be due no sooner than the first day of the first month following the 90<sup>th</sup> day after release from incarceration.
- Notwithstanding any law to the contrary, a support payment due under a modified support order entered after the 90<sup>th</sup> day after release from incarceration could be effective on the first day of the first month following the 90<sup>th</sup> day after release from incarceration, and if the effective date were determined accordingly, the amount of support for each month since the effective date to the present date would have to be calculated using the actual resources of each parent during each month.

The bill would require the FOC to initiate a review according to provisions of Section 17 and 17b of the Act after learning the payer was released from incarceration. (Section 17 and 17b of the Friend of the Court Act generally govern the review of support orders after final judgment.)

The SCAO under the direction of the Supreme Court could implement a policy to assist offices of the FOC in implementing the abatement of support as proposed by the bill. The SCAO would have to develop forms for use by offices of the FOC and parties to implement this assistance.

Under the bill, the MDOC and any local unit of government operating a jail would have to provide the Title IV-D agency with the record necessary to identify payers who were or would be incarcerated for 180 consecutive days or more, the crime for which the payers were incarcerated, and any information on record that could assist in implementing this requirement as determined by the Title IV-D agency. (The Department of Health and Human Services' Office of Child Support is the Title IV-D agency in Michigan.)

(The bill specifies that "jail" would mean that term as defined in Section 62 of the Corrections Code: a facility that is operated by a local unit of government for the detention of individuals charged with, or convicted of, criminal offenses or ordinance violations; individuals found guilty of civil or criminal contempt; or a facility that houses prisoners pursuant to an agreement authorized under Public Act 164 of 1861 for not more than 1 year.)

MCL 552.605d (S.B. 1090)  
552.517 et al. (S.B. 1091)

Legislative Analyst: Tyler VanHuyse

## **FISCAL IMPACT**

Under the bills, there is no fiscal impact on the DHHS as current policies and procedures allow for modifications to child support orders. The bills generally would automate existing manual processes. To the extent that the proposed changes increased child support collections, the State could increase its share of Federal child support incentive payments.

The bills would have a minor, negative fiscal impact on circuit courts, FOC offices and the SCAO. The bills likely would increase slightly the volume of motion filings in child support matters. They also likely would increase the amount of administrative reviews the FOC conducts to an unknown degree. The bills would require SCAO to develop forms to accommodate the bill's requirements for related motion filings and actions required of the FOC. These requirements could increase administrative costs for circuit courts, FOC offices, and SCAO, but these increases likely would be minor and would be absorbed with existing resources.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.