House
Legislative
Analysis
Section

House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

CHILD SUPPORT COLLECTION ENFORCEMENT REMEDIES

House Bill 6004 (Substitute H-2)
Sponsor: Rep. Jim Howell

House Bill 6006 (Substitute H-2)
Sponsor: Rep. James Koetje

Committee: Civil Law and the Judiciary

House Bill 6008 (substitute H-3)
Sponsor: Rep. Doug Hart

Committee: Family and Children Services

First Analysis (5-23-02)

THE APPARENT PROBLEM:

Child support payments are ordered to ensure that the needs of children are adequately provided for even after the child's parents are no longer married. In many instances, child support payments represent a significant portion of a family's income. As such, child support payments contribute greatly toward the self-sufficiency of those families receiving support. The Urban Institute reports that for single-parent families, child support payments represent approximately 16 percent of family income. For children living in poverty, child support represents an average of 26 percent of a family's income. Families receiving public assistance receive little or no child support because they assign their right to child support to the state. For these families, child support payments represent 12 percent of a family's income. Further studies have indicated that child support supplements, rather than supplants, earnings.

Aside from the immediate financial benefits that child support payments provide families, the support payments also serve to foster a better relationship between noncustodial parents and their children. Often when parents do not pay the required support, they are unaware of the consequences that the lack of support has on their children. For a child, a lack of support often indicates that the paying parent does not care about his or her well being.

In recognition of the importance of child support, the Friend of the Court and the Office of Child Support may employ several enforcement remedies pursuant to the Support and Parenting Time Enforcement Act to ensure the collections of current and past due child support. The enforcement remedies include contempt proceedings, license suspension, the attachment of liens, and collecting past due support through state and federal income tax refunds.

The Support and Parenting Time Enforcement Act allows for liens to be attached to the property of a payer, as a means of collecting child support arrearages. Under current process, the Friend of the Court identifies, on an individual basis, cases in which the office will attach a lien. To enforce a lien, the Friend of the Court sends notices, conducts administrative reviews, and uses garnishments to obtain the payer's financials assets in accordance with judicial proceedings.

In addition, under the act, if a person is ordered to pay child support and fails or refuses to do so, and if an order withholding that person's income is inapplicable or unsuccessful, the court may be ordered to show cause before a court. If the person fails, the court may issue a bench warrant requiring that the person be brought before the court without unnecessary delay.

The act requires that if a bench warrant is issued, and the person is arrested, the person remain in custody unless he or she deposits a bond or cash of at least

$500 or 25 percent of the arrearage, whichever is greater. If a person arrested under a bench warrant cannot be brought before court within 24 hours, the payer may recognize for his or her appearance (that is, obligate himself or herself to appear) by leaving with the sheriff or deputy in charge of the county jail a bond or cash in the amount determined by the court.

If, after posting a bond or cash, the payer fails to appear before the court, fails to submit to the jurisdiction of the court, and fails to comply with an order of the court, the bond or cash is transmitted to the Friend of the Court or the State Disbursement Unit for payment of the arrearage to the recipient and for court costs.

Despite the availability of these enforcement remedies, a great number of parents continually do not meet their financial obligations. Last year, the Detroit News reported that 400,000 children did not receive the support that has been ordered to them. It was also reported that more than 670,000 families who are owed support have been forced onto state assistance. In a recent press conference, Governor John Engler and state Supreme Court Chief Justice Maura Corrigan reported that approximately one-third of the more than 800,000 child support orders involve parents who either do not make payments at all or on time. It is estimated that more than $6.3 billion in past due support is due to the children of the state.

It is believed that current procedures involving the Friends of the Court have become cumbersome and also have contributed, in part, to the state's inability to collect all of the ordered child support payments. Additionally, the sheer number of all domestic relations cases that the Friend of the Court handles continues to place great pressure on an already taxed system. In addition to the more than 800,000 child support orders, the family court is bogged down with divorce proceedings and custody and parenting time proceedings. Last year, there were more than 267,000 filed cases with the family court, which accounted for more than 70 percent of all cases within the circuit court. The large caseloads alone greatly inhibit caseworkers' ability to effectively assist each of the parties involved in a domestic relations matter in a timely manner. When cumbersome judicial and administrative procedures are added to each case, the result is a Friend of the Court system mired in maze of bureaucratic red tape and legal minutiae, which is difficult to navigate.

To better enable the Friend of the Court and the Office of Child Support to collect current and past due child support payments, Governor Engler and Chief Justice Corrigan recently announced a number of proposed reforms to the Friend of the Court system. These reform efforts are designed to clarify and strengthen existing law, and centralize and streamline procedures taken to enforce orders, both of which will better enable the local Friend of the Court Offices to refocus their resources, improve service, and increase child support collections.

THE CONTENT OF THE BILLS:

House Bill 6004 would amend the Support and Parenting Time Enforcement Act (MCL 552.602 et al.).

Address Changes. The act requires a payer or payee to notify the Friend of the Court of any changes in his or her residential or mailing address within 21 days. The bill would require notification of any changes within 14 days.

Support Orders. The bill would require all support orders to be stated in monthly amounts payable on the first of each month in advance. A support obligation that is not paid by the last day of the month in which it accrues would be past due. If the amount were not stated as a monthly amount, it would be converted to a monthly amount using the formula established by the State Court Administrative Office.

In addition, under the bill, if a support order took effect on a day other than the first day of the month, the monthly amount would be prorated based on the daily amount for that month. However, a monthly support order would not be prorated for the last month in which the order is in effect.

Under the bill, if the state's Title IV-D agency [currently the Office of Child Support (OCS) within the Family Independence Agency] received a support payment that, at the time of its receipt, exceeded a payer's support amount plus an amount payable under an arrearage payment schedule, the IV-D agency would apply that excess amount against the payer's total arrearage accrued under all support orders under which that payer is obligated. If a balance remained, the IV-D agency would either immediately disburse that amount to the recipient (if the payer designates that balance as additional support) or retain the balance and disburse it to the payee when the balance is payable as support.

Liens. Under the act, any amount of support past due constitutes a lien against the payer's real and personal

property, with certain exceptions. The bill would add that a lien against past due support would be subordinate to a prior perfected lien. In addition, before a lien was perfected, the IV-D agency would notify the payer of the imposition of the lien, and that his or her real property could be encumbered or seized if an arrearage accrues in an amount greater than the amount of periodic support payments. Furthermore, the IV-D agency or another person required to provide notice would provide the notification by paper, unless the person to be notified agreed to notification via another means. The IV-D agency or other person would complete and preserve proof of service in a manner similar to proof of service requirements under Michigan Court Rules.

Under the act, the Office of the Friend of the Court has the responsibility for imposing and perfecting a lien against child support arrearages. The bill would transfer this authority to the state's IV-D agency. Under the act, the Friend of the Court may perfect a lien on the real or personal property of a payer when the amount of the arrearage exceeds the amount of support payable for one year. The bill would allow the IV-D agency to perfect a lien when the arrearage exceeds two times the monthly amount of support. The IV-D agency would perfect a lien for an arrearage in the same manner in which another lien on similar property is perfected.

The bill would delete certain provisions pertaining to perfecting a lien in a case in which the support order was issued prior to August 10, 1998 (the effective date of the original section). The act requires the Friend of the Court to notify the payer when the lien has been perfected, and allows the payer 21 days after the date of the notification to request a review on the lien and proposed action. In addition, the Friend of the Court must schedule review within 14 days of the request. The bill would allow the payer 14 days to request a review, and would require that the review be conducted within 7 days of the request.

Financial Assets. Under the bill, if a payer's financial assets held in a financial institution were subject to a lien and an arrearage had accrued that exceeded two times the monthly amount of support, the IV-D agency could levy a lien against the payer's financial assets held by a financial institution. To levy a lien against the financial assets, the IV-D agency would notify the institution of the lien and levy, and direct the institution to freeze the payer's financial assets held at that financial institution. The OCS would, in consultation with the State Court Administrative Office, develop the form for the notification. The notification would include the levy amount; information that allows the financial institution to connect the payer with his or her financial assets; any IV-D agency contact information; and statements that explain the rights and responsibilities of the payer and the financial institution. The IV-D agency could withdraw a levy any time before the circuit court considered or heard the matter in an action. The IV-D agency would notify the payer and the financial institution of the withdrawal, at which time the financial institution would release the payer's financial assets.

Financial Institution Obligations. The bill states that a financial institution would not incur any obligation or liability to a depositor, account holder, or other person because it furnished information relating to a lien, or because it failed to disclose to a depositor, account holder, or other person that the name of a person was included in the information provided. In addition, the financial institution would not incur any obligation or liability to the IV-D agency or another person for an error or omission made in good faith.

Further, a financial institution would not incur any obligation or liability for freezing, blocking, placing a hold upon, forwarding, or otherwise dealing with a person's financial assets in response to a lien or levy imposed. In addition, a financial institution would not be obligated to block, freeze, place a hold upon, or forward a person's financial assets until it received notice of the levy.

Notification Received by the Financial Institution. When a financial institution received notice of a levy on a payer's financial assets, the institution would be required to freeze those assets. The financial institution would only freeze those assets up to the amount of the levy. If the financial institution received the notice before noon, the freeze would be executed the first business day after the business day on which the notice was received. If the notice were received at noon or later, the freeze would be executed on the second business day after the business day on which the notice was received. After the freeze was executed, the financial institution would notify the payer and the IV-D agency. The financial institution would include a copy of the IV-D agency notice in its notice to the payer.

Challenges to the levy. A payer whose financial assets were levied, or a person with an interest in the assets, could challenge the levy by submitting a written challenge to the IV-D agency within 14 days after the financial institution sends the payer a copy of the IV-D agency notice. The challenge would be governed by the provisions of the act, and would not

be subject to the Administrative Procedures Act of 1969 (Public Act 306 of 1969).

If the IV-D agency received a written challenge within the time required, the agency would notify the financial institution of the challenge and, within seven days, review the case with the challenger. The IV-D agency would only consider a mistake in the payer's identity, the amount of support past due, or another mistake of fact. If the agency determined that a mistake had indeed occurred, it would have to do one of the following:

- If there were a mistake in the payers identity or the payer did not owe past due support in an amount equal to or greater than the monthly amount of support, the agency would have to notify the financial institution and the payer that the levy was released.

- If the payer did owe past due support equal to or greater than the monthly amount, but the amount in the notice is more than the payer owes, the agency would notify the payer of the corrected amount.

- If there were a mistake in fact other than those listed above, the agency would have to take any appropriate action.

If the payer, or interested person, disagreed with the agency's review determination, he or she could file an action in the circuit court that issued the original support order. The payer, or interested person, would have to file the action within 14 days after the agency send notice of its determination. In addition, the payer, or interested person, would have to notify the IV-D agency of the action. If an action were not filed within the required time, the IV-D agency would notify the financial institution and direct it to act in accordance with the agency's review determination. If the act were filed within the required time, the agency would notify the financial institution and direct it to act in accordance with the court's decision.

Financial Institution Responsibilities. A financial institution that received notice of a levy would forward money in the amount past due as stated in the notice (or the corrected amount) to the State Disbursement Unit (SDU) and any information necessary to identify the payer. Money would be forwarded not before the next day and not after the seventh day after one of the following takes place:

- The financial institution notifies the payer and the IV-D agency that the payer's financial assets are frozen and has yet to receive, within 21 days after the financial institution sent the notices, a notice from the IV-D agency that the payer has challenged the levy.

- The financial institution receives, within the time limit required, a notice from the IV-D agency that the payer has challenged the levy and receives another notice from the agency directing the financial institution to act in accordance with either the agency's review determination or the court's decision.

If the financial institution would be required to convert one or more financial assets to cash, in order to forward sufficient funds to the SDU, the institution would convert the assets and assess any resulting fees, costs, or penalties against the payer. If the payer did not have sufficient assets to pay the amount past due and any additional fees and other costs, the financial institution could deduct the fees, costs, and penalties and forward to remaining balance to the SDU.

Circuit Court Proceeding. If an action was filed with the circuit court within the required time limit, the circuit court would review the matter de novo (anew; a second time). The court's review would not be limited to mistakes of fact. The court would only address the appropriateness of the levy, and whether the levy amount is correct. The circuit court would not consider any evidence that is related to custody, parenting time, or the amount of the support order, and any other information that is not related to the levy against a payer's financial assets. Furthermore, the circuit court could not modify a support order. The bill specifies that a court finding regarding a monthly or past due support amount would not modify the underlying support order.

Disbursement of Funds. If, after a financial institution forwarded money to the SDU, all of the money was returned to the payer because of a mistake of fact or court order, the IV-D agency would reimburse the payer for any fees, costs, or penalties that were assessed by the financial institution. In addition, if the amount of the past due support the payer owed under all support orders subject to levy was more than the amount a financial institution forwarded to the SDU, the SDU would allocate the money on a proportional basis to all support orders subject to the levy.

License Suspension. Under the act, the Friend of the Court may petition the court to suspend a payer's occupational, driver's, recreational, or sporting license if the arrearage is greater than the amount payable for six months. The bill would allow license

suspension, for a Friend of the Court case, if the arrearage were greater than the amount payable for two months of support. [Note: House Bill 6011 would allow parties to opt-out of the Friend of the Court system. If parties chose to opt-out, the Friend of the Court would not be required to enforce support orders. In this instance, the Friend of the Court would be required to petition the court to suspend a delinquent payer's license.]

In addition, the act requires the Friend of the Court to notify the payer that, among other things, the suspension order will be entered and sent to the licensing agency unless the payer responds by paying the arrearage or requesting a hearing within 21 days. The bill would require the payer to respond within 14 days.

House Bill 6006 would amend the Support and Parenting Time Enforcement Act (MCL 552.602 et al.). The bill would amend provisions relating to the issuance of bench warrants, bond requirements, and findings of contempt.

Bench Warrants. Under the act, if a person is ordered to pay support under a support order and fails or refuses to obey, and if an income withholding order is inapplicable or unsuccessful, a payee or the Friend of the Court may commence a civil contempt proceeding requiring the payee to show cause as to why he or she should not be held in contempt. If the person fails to appear, the court may issue a bench warrant requiring the person to be brought before the court to answer.

Under the bill, if a payer refused to appear at a show cause hearing, the court would be required to do one or more of the following:

- Find the payer in contempt for failure to appear.
- Find the payer in contempt for the reasons stated in the motion.
- Apply an enforcement remedy for failing to pay the required support.
- Issue a bench warrant for the payer's arrest requiring that the payer be brought before the court.
- Adjourn the hearing.
- Dismiss the order to show cause if the court determines that the payer is not in contempt.

If the court issued a bench warrant, it would have to state that the payer is subject to arrest if apprehended or detained anywhere in the state. In addition, the bill would require the payee to pay a cash performance bond (rather than a regular surety bond or cash) or he or she would be required to remain in custody until the time of the hearing.

The bill would require the court to state in the bench warrant the amount of the cash performance bond which, in the absence of substantial evidence to the contrary, the court would presume that the amount be set at not less than $500 or 25 percent of the arrearage, whichever is greater.

Under the act, if a payer arrested under a bench warrant cannot be brought before the court within 24 hours, the payer may recognize for his or her appearance by leaving with the sheriff or deputy a bond or cash in the amount stated on the bench warrant. The bill states that if a bench warrant was issued and the payer was arrested in the county that issued the bench warrant or in another county, the payer would be required to remain in custody until the hearing or until he or she provides an adequate cash performance bond. If the payer could not provide the cash performance bond, he or she would be entitled to a hearing within 48 hours (excluding weekends and holidays). The issues to be considered at the hearing would be limited to the payer's answer to the show cause order and, if the payer was found in contempt, to further proceedings related to his or her contempt. If the hearing could not be held within the required time, the court would review the amount of the cash performance bond to determine an amount that will ensure the payer's appearance and set a date for a hearing.

Cash Performance Bond. Under the bill, if the payer appeared at the time and place stated on the receipt issued to the payer by the sheriff upon payment of the cash performance bond, and the court determined that the payer owes an arrearage under the support order, the cash performance bond would be transmitted to the Friend of the Court or to the State Disbursement Unit (SDU) to be applied toward the arrearage and any costs owed to the court.

If the payer deposited a cash performance bond, the date of the hearing would be set within the time limit prescribed under Michigan Court rules. Again, the issues considered at the hearing would be limited to the payer's answer to the show cause order and, if the payer was found in contempt, to further proceedings related to his or her contempt. The bill adds that the court could set aside a finding of contempt if it found,

based on the hearing, that the payer is in compliance with the court's order or for other good cause shown.

Under the act, the court is required to determine the amount of the bond or cash that should be transmitted to the Friend of the Court or the SDU. The balance, if any, is transmitted to the payer. Under the bill the court would determine the amount of the cash performance bond that should be transmitted to the Friend of the Court or the SDU and to the county treasurer to pay for costs related to the hearing, issuance of the warrant, arrest, and further hearings. The balance, if any, would be paid to the person who posted the cash performance bond on the payer's behalf.

Findings of Contempt. Under the act, the court may find a person in contempt if it determines that the person is in arrears and that the payer has the capacity to pay out of currently available resources all or a portion of the amount due under the support order. The court may also find a person in contempt if it determines that the payer is in arrears and that by the exercise of diligence that payer could have the capacity to pay all or a portion of the amount under the support order and that the payer fails or refuses to do so.

In either case, upon finding a payer in contempt the court may enter an order suspending an occupational license, driver's license, or recreational or sporting license (if the payer holds such a license) if the payer is in noncompliance with an order for payment of the arrearage. However, the court cannot order the suspension of a license unless the court finds that the payer were to accrue an arrearage in an amount greater than the amount payable for six months under the support order. The bill would amend this provision to allow the suspension of a license for an arrearage in an amount greater than the amount payable for two months under the support order.

Under the act, if the court finds a payer in contempt, the court may order the payer to participate in a work activity. The bill would delete a provision that prohibits the court from ordering a payer to participate in a work activity unless the payer's arrearage is under a child support order and a child who is the subject of that order is receiving financial assistance under the Title IV of the federal Social Security Act.

Under the act, an unemployed payer committed to a county jail who finds employment must be released from jail if the payer is self-employed and has completed two consecutive weeks at his or her employment; or if the payer is employed, completes two consecutive weeks of employment, and an income withholding order is in effect. Under the bill, the court could (but would not be required to) release a payer who is unemployed, if the payer is self-employed, completes two consecutive weeks of employment, and makes a support payment as required by the court.

House Bill 6008 would amend the Office of Child Support Act (MCL 400.231 et al.) to add new duties to the Office of Child Support and centralize enforcement procedures.

The bill adds that the OCS would provide discovery and support for support enforcement activities as provided in the Support and Parenting Time Enforcement Act (Public Act 296 of 1982). In addition, the OCS would implement safeguards against the unauthorized use or disclosure of case record information that are designed to protect the privacy rights of the parties as specified in the federal Social Security Act and that are consistent with the use and disclosure standards provided under the Social Welfare Act (Public Act 280 of 1939). Finally, the OCS would centralize administrative enforcement remedies and develop and implement a centralized enforcement program to facilitate the collection of support for Friend of the Court cases.

The bill states that the OCS could centralize administrative enforcement procedures for services provided under Title IV-D of the federal Social Security Act. In addition, the OCS could centralize the enforcement activities for Friend of the Court cases, based on criteria established by the OCS and the State Court Administrative Office, including, but not limited to, cases in which arrearages are greater than or equal to the amount of support payable for one year. Each Friend of the Court office would provide the OCS with any information necessary to identify cases eligible for enforcement, in addition to case information necessary for the office to pursue enforcement remedies.

The OCS's centralized enforcement could include any enforcement remedy under the Support and Parenting Enforcement Act; contracting with a public or private collection agency; contracting with a public or private locator service; publishing a delinquent payer's name; or entering into a local or regional agreement with a law enforcement agency or prosecutor.

In addition, the OCS would be required to develop a system to track each case selected for centralized

enforcement so that the appropriate Friend of the Court office can be identified. The OCS would process collections that resulted from the centralized enforcement through the State Disbursement Unit (SDU) and, for the purpose of child support incentive collections, would credit those collections to the appropriate Friend of the Court office.

The added ability of the OCS to centralize enforcement procedures would not limit the office's ability to enter into agreements for support enforcement with a Court Family Services Office, law enforcement agency, prosecutor, governmental unit, or private entity as that ability existed prior to the enactment of the bill.

Effective dates. All of the bills would take effect June 1, 2003.

BACKGROUND INFORMATION:

Related Legislation. These bills are part of a larger package of bills intended to reform the Friend of the Court system (see House Bills 6004 to 6012, 6017, and 6020). The goal of the package is to streamline procedures and improve services so as to enhance the collection of child support.

Similar Legislation. House Bill 6006 is similar to House Bill 5206, introduced by Representative Whitmer. House Bill 5206, which passed the House of Representatives, would also amend provisions in the Support and Parenting Time Enforcement Act related to the issuance of bench warrants. The bill would require a person arrested under a bench warrant for a child support arrearage to provide cash in the amount stated on the warrant (at least $500 or 25 percent of the arrearage, whichever is greater) in order to be released from custody.

The bill would also increase the time period for holding a show cause hearing (if a payer does not provide cash and remains in custody) from within 48 hours after the arrest, to within 72 hours after the arrest. The bill would also require a payer to attend a fatherhood, motherhood, or parental responsibility class, if he or she were arrested after a bench warrant had been issued.

Liens. Generally speaking, a lien is the right of a person who is owed money to claim an interest in the property of the person who owes him or her money. Property with a lien attached to it may be sold in order to pay that debt. This may make it difficult to sell the property, as any financial obligations to that property would have to be satisfied. As such, attaching a lien to property will not necessarily result in payment of support. In addition, if a lien were attached to a person's financial assets (such as a bank account), the obligor may be prohibited from using that property.

A lien notifies a person who may want to receive property from a person who owes money that another person has a claim on that property. When other persons or entities hold property for someone who owes money and they receive proper notice that a lien exists, they know that they should not transfer the property to another without release of the lien. Giving this notice is often called "perfecting" the lien. The Friend of the Court can only perfect a lien if the payer has an arrearage equal to the amount of support payable for one year. However, the Friend of the Court is not required to perfect a lien. The office may determine that the property value is too small, or that other enforcement tools will also effectively collect the support arrearage.

Liens can affect several different types of property, which control how the lien must be perfected. The Friend of the Court notifies the agency that is responsible for registering liens on that particular type of property. For instance, if a lien were placed against a payer's house, the Friend of the Court would notify the register of deeds in the appropriate county. If a lien were placed against a payer's car, the Friend of the Court would notify the secretary of state. Of course, before the Friend of the Court can perfect a lien, it has to have the information necessary to identify the property, such as an automobile's Vehicle Identification Number (VIN).

The use of liens as a child support enforcement mechanism is required under the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (42 U.S.C. 666). Under federal law, the state is required enact procedures under which liens arise by operation of law against real and personal property for amount of overdue support owed by a noncustodial parent who resides or owns property in the state. In addition, the state must accord full faith and credit to liens arising in other states, when the state agency, party, or other entity seeking to enforce such a lien complies with the procedural rules relating to recording or serving liens that arise within the state, except that such rules may not require judicial notice or hearing prior to the enforcement of such a lien. Provisions in the Support and Parenting Time Enforcement Act relating to liens were enacted with Public Act 334 of 1998.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, House Bill 6006 would have no fiscal impact. Fiscal information is not available on House Bills 6004 and 6008. (5-23-02).

ARGUMENTS:

For:

House Bill 6004 would strengthen the procedures for using liens and license suspensions as enforcement mechanisms. Under current law, the Friend of the Court is allowed to perfect a lien on real or personal property when the amount of the child support arrearage exceeds the amount of support payable for one year. In addition, the Friend of the Court may petition the court to suspend the payer's occupational, driver's, and recreational and sporting licenses when the arrearage exceeds the amount of support payable for six months. The bill would lower the threshold when these enforcement mechanisms would be invoked. The bill would allow the state's IV-D agency (the Office of Child Support) to perfect a lien when the amount of the arrearage equals the amount payable for two months of support. In addition, the bill would allow the Friend of the Court to petition for license suspension when that arrearage is equal to the amount payable for two months.

Standardizing the enforcement threshold at two months would allow the Friend of the Court to utilize whichever enforcement mechanism it deems appropriate for a particular case. For instance, if the Friend of the Court were unable to petition the court to suspend a payer's license, or if it were to determine that license suspension would be inappropriate, the office would have to wait six months (assuming the amount of the arrearage had not been paid down) until it would be able to attach a lien to a payer's property. During that six months, the arrearage continues to accrue. That is money required to be paid as child support, which does not reach a child in need.

Not only does the bill standardize the threshold for invoking certain enforcement remedies, the bill also lowers the threshold to only two months. Lowering the threshold would benefit everyone involved in a child support order. The two-month threshold allows enforcement tools to be utilized quickly before the amount of the arrearage becomes burdensome.

For most payers, an arrearage equal to two months of support is a manageable amount. As such, he or she is more likely to pay the arrearage than be subject to any of the enforcement mechanisms. It is believed by some, that some payers accrue an arrearage for five months and then pay the arrearage, because the payer knows that his or her license could be suspended when the arrearage equal six months of support. The two-month threshold would encourage the payer to stay up to date with his or her support payments.

Children for whom support has been ordered will most certainly benefit from a two-month threshold. For those families receiving child support, those payments represent a significant portion of their yearly income. When the arrearage is allowed to accrue for several months before any enforcement actions are taken, those families with children for whom support has been ordered are adversely affected. The two-month threshold allows officials to take appropriate action quickly, which ensures that children for whom support has been order will receive the support due to them in a timely manner.

Against:

Notwithstanding the adverse affects a child support arrearage can have on a child, the two-month threshold for the enforcement proceedings is too strict, and certainly not practical. While House Bill 6004 attempts to crack down on those who purposefully fail to meet their financial obligations by allowing for enforcement procedures at an arrearage of two months, the bill will adversely impact those payers who make payments in good faith. In many instances, an arrearage accrues through no fault of the payer. Many problems stem from the state's child support enforcement computer system (CSES) or from the Friend of the Court offices themselves. At a minimum, the threshold to begin enforcement proceedings should be when the arrearage is equal to the amount of support payable for three months. At that point, any overdue payments due to the problems with the Friend of the Court or the CSES should be transmitted to the proper party.

For:

House Bill 6004 would also streamline the process for perfecting liens and suspending licenses. Under the act, the payer of child support is given 21 days, after being notified by the Friend of the Court of the lien, to either pay the arrearage in full or request a review. If a review is requested, the Friend of the Court has 14 days to schedule the review. The bill would shorten the process, by requiring the payer to

pay the arrearage or request a review within 14 days of the notification. In addition, the bill requires the Friend of the Court to conduct (not just schedule) the review within seven days. The act also states that unless the payer responds within 21 days of notification of license suspension, the suspension will be entered with the appropriate licensing agency. The compressed time requirements will ensure that the matter is resolved quickly, thereby ensuring that children receive their ordered support in a timely manner.

Response:

The shortened time requirements fail to provide payers with adequate due process. Reducing the time required of the payer to either pay the arrearage or request a hearing to 14 days does not afford the payer an adequate amount of time to obtain the required funds to pay the arrearage, nor does it enable to payer to obtain the information necessary to sufficiently protest the action.

For:

Prior to the enactment of Public Act 442 of 2000, an individual arrested on a bench warrant for a child support arrearage was required to pay "a sum of money" not exceeding the arrearage to ensure his or her appearance. Public Act 442 permitted a delinquent payer to pay a surety bond rather than a cash bond to ensure his or her appearance. However, the act seemed to confuse civil procedures and criminal procedures. Generally, for criminal cases, a bond ensures the person's appearance. For civil matters, the bond ensures the performance of a court order. By explicitly stating that a person is required to provide a cash performance bond, House Bill 6006 would clear up the confusion that resulted from Public Act 442 as to the true nature of the bonds issued.

For:

Child support payments are funds that help provide food, clothing, and other benefits to the children. The bench warrant process is initiated only after the delinquent payer accumulates several arrearages and is given ample opportunity to alleviate the problem, but continues to not pay the required child support. Often, the money involved in these cases is substantial as arrearages can accumulate for several years and reach upward in the tens of thousands of dollars. By merely posting an appearance bond, the delinquent payer continues to not take full responsibility for his or her financial obligations, and thereby not support his or her children, who are the ultimate beneficiaries for the support. Cash performance bonds, on the other hand, can be used by the Friend of the Court and be applied to the arrearage.

Against:

Allowing a person to only provide a cash performance bond may potentially result in greater support arrearages. In many instances, a person fails to pay child support, not because he or she chooses not to pay, but rather because he or she cannot afford to do so, or is simply unaware of the arrearage. If a person cannot provide the required amount, he or she will remain in jail, thus unable to go to work, and then may lose his or her job, resulting in an even larger arrearage in support.

For:

House Bill 6006 clarifies that bench warrants are valid throughout the state. Under current practice, many judges will issue bench warrants with a geographical limitation (such as a 25-mile radius). With billions of dollars in overdue child support due to the children in the state, the limitation sends the wrong message to delinquent payers and the children for whom support has been ordered. With a limitation in place, it appears that the court does not view overdue child support as matter worthy of proactive enforcement throughout the state. Placing such limitation on the bench warrant allows delinquent payers to continue to default on their financial obligations. The geographical limitation allows the arrearage to continue to accumulate, further punishing the children for whom support has been ordered.

Response:

The bill will not address problem of judges placing a geographical limitation on bench warrants for child support arrearages. In most instances, the limitation is set in place because many delinquent payers are not arrested in the county that issued the bench warrant and often it is too costly to transport an apprehended individual to the county that issued the bench warrant. To address this problem, counties should be given additional resources to be able to transport apprehended individuals. Furthermore, mandating statewide application of bench warrants could have some Headlee implications as well.

For:

House Bill 6006 would delete a provision in current law that allows a payer to provide a bond for his or her appearance if a court hearing cannot be held within 24 hours. In many instances, if the payer cannot be brought to court within the 24 hours, he or she is free to go without providing a bond. Under the bill, the payer would be required to remain in custody

until there is a hearing or the payer posts an adequate cash performance bond. This ensures that the payer will receive a hearing or, if the person posts bond, he or she is not released without any payment to the court.

For:

The current law requires that a hearing to be held within 48 hours if the apprehended payer does not post bond. Under House Bill 6006, this 48-hour time period would not include weekends and holidays. This potentially requires the hearing to be held within 96 hours. If the arrest were to occur on a Thursday or Friday, the hearing would not have to take place until after the weekend. This provision is very important as many arrests are made on weekends or outside of the jurisdiction that issued the bench warrant. Often, it is difficult to transport a person from the arresting jurisdiction to the court that issued the bench warrant within the time constraints, especially if the arrest occurred on a weekend. This, too, has resulted in the release of debtors without any payment to the court. Allowing for the extra time provides the county that issued the bench warrant time to transport the person to be brought before the court.

For:

It has been estimated that child support arrearages in the state have exceeded $6 billion. Clearly, the current system at collecting these arrearages has not fulfilled its mission. House Bill 6008 would allow the Office of the Child Support to 'centralize' the enforcement remedies of cases that have been in arrearage for more than one year. The centralization of enforcement remedies in these cases will reduce the administrative burdens encumbered by the Friend of the Court when enforcing child support orders. This will allow the Friend of the Court to spend more time to proactively pursue child support collections. Furthermore, a centralized location can improve the collection of child support when parties live in different counties.

Under current practice, any centralization of enforcement activities requires a county-by-county agreement. This process has led to a disparate application of an enforcement remedy. Centralization will standardize enforcement procedures and bring about consistency and a uniform application of these enforcement remedies throughout the state.

Response:

The Friend of the Court should be given more ability to determine which cases should be selected for the centralized enforcement proceedings.

Against:

The centralization of enforcement activities will open the door to privatization. If these services are provided outside of the Friend of the Court system, it will not have the information necessary to properly enforce child support orders through the judicial process. According to committee testimony, there have been instances where a private company has collected support on behalf of a person, but did not pay the intended recipient. In other instances, the Friend of the Court was not notified of any collections, and the office went forward with enforcement procedures despite the fact that money had indeed been collected. Furthermore, studies vary on the true effectiveness of contracting out child support enforcement programs. In many instances private entities are no more, and in some cases less, cost-effective than traditional public agencies at collecting child support.

The privatization of such services can seriously compromise the services provided by the Friend of the Court as privatization would likely result in the loss of jobs. Already, the Friend of the Court generates more complaints than any other governmental agency. Current problems with the Friend of the Court will increase significantly as jobs and services are lost to private entities. Furthermore, local remedies that are currently employed by each Friend of the Court office provide each party involved in a child support matter with fair and personalized service. Friend of the Court caseworkers understand the nature of each case, and may be able to 'encourage' payers to pay, rather than forcing them to pay, which goes well beyond providing financial assistance to a child. Private entities, however, are not in the business to be fair. This problem is made worse by the compressed time requirements in other bills in the package. As a result, the due process in these enforcement matters is seriously compromised.

Response:

To label the bill as "privatization" is really a misnomer. The use of private entities would be one of several means to centralize enforcement remedies. This is not a way to centralize individual cases. Furthermore, the OCS would only get involved in cases with an arrearage of at least one year. In these cases, the Friend of the Court has failed to meet its obligation to collect child support payments. Any additional resources that would be provided by the OCS would only serve to enhance the collection of these support arrearages.

Against:

House Bill 6008 would give additional duties to the FIA. Given the "early out" retirement plan, it would be unwise, at this point, to give additional responsibilities to an already overburdened FIA.

POSITIONS:

The Family Independence Agency supports the bills. (5-22-02)

The Friend of the Court Association supports the concept of the bills. (5-22-02)

Dads of Michigan is supportive of House Bill 6008 and opposes House Bills 6004 and 6006. (5-22-02)

The Association for Children for Enforcement of Support (ACES) supports House Bills 6004 and 6006, and opposes House Bill 6008. (5-22-02)

The American Federation of State, County, and Municipal Employees opposes House Bill 6008.

Analyst: M. Wolf

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.