



Michigan Supreme Court

State Court Administrative Office

Friend of the Court Bureau

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MEMORANDUM

DATE: February 12, 2015

TO: Friends of the Court
cc: Chief Circuit Judges
Presiding Family Division Judges
Circuit Court Administrators
Family Division Administrators

FROM: Steven D. Capps

RE: New Child Support Laws

During the Legislature's final sessions of 2014, it passed 23 bills relating to child support. Following is a short summary of the new laws that may impact courts and friends of the court (FOC) and the actions that the State Court Administrative Office's (SCAO) Friend of the Court Bureau (FOCB) and the Department of Human Services' (DHS) Office of Child Support (OCS) anticipate taking to implement them.

2014 PA 377 – Criminal Nonpayment of Support (effective 3-17-15)

The Act made two changes to the Michigan Penal Code. The first provision changed the former requirement that a prerequisite to prosecution was that the defendant had appeared in or received notice by personal service in the defendant's child support case. The new requirement simply states that the court must have had personal jurisdiction over the defendant in the defendant's child support case. Although the court may have personal jurisdiction over the defendant because the defendant appeared in or received notice by personal service, the new provisions would also allow the prosecution to proceed when the court in the child support case exercised jurisdiction through other forms of service (such as substitute service over a person avoiding service).

The second change clarified that the court does not have to enter a separate restitution order for the amount of unpaid support. Instead, the restitution order will require the defendant to comply with the underlying child support order. This change allows the FOC to continue to collect the past due amount using all state and federal child support remedies, and maintains the child support distribution priority instead of the restitution distribution priority. The changes allow the

criminal court to order additional terms and conditions to bring the defendant into compliance with the child support order. The Act also clarified that the court may order other amounts as restitution in addition to child support when they are appropriate.

Anticipated Action: The FOCB will amend its Criminal Nonpayment of Support Policy.

2014 PA 378 – Support and Parenting Time Enforcement Act MCL 552.601 et. seq. (effective 3-17-15)

Change of Address

The Act amended subsection (3)(9) to allow the FOC to change the address at which mail is served if the FOC or the DHS determines that the current address is incorrect. The address must be changed pursuant to guidelines established by the SCAO or the Supreme Court. The current law allows the FOC to change an address only after mail is *returned* as undeliverable. The new law allows the OCS to submit queries to the National Change of Address Database maintained by the United States Postal Service to determine whether the address is still valid and, if it is not valid, obtain a new address to which mail is deliverable. The new statute will allow the FOC to change addresses after the current court rule is amended to reflect the new statutory requirements.

Anticipated Action: The FOCB will propose amendments of MCR 3.203. If the rule is amended, the SCAO will update its guidelines for changing addresses.

Contempt

Section 31 was amended to revise the procedural requirements for initiating contempt proceedings. The former law stated that the FOC must file a petition for an order to show cause if a payer did not pay child support. The new law allows the Supreme Court to determine the procedure, which may involve different ways of scheduling hearings and compelling the person's appearance. Until the court rules are amended, the current rules require a petition and order to show cause.

Section 31 also allows the court to initiate proceedings to enforce a conditional commitment order when the FOC informs the court that the contemnor has failed to satisfy the court's conditions. That proceeding may be initiated by issuing a warrant for the contemnor's arrest to bring the contemnor before the court to answer the failure to satisfy a condition.

Sections have been rearranged to clarify that the court may only order a motor vehicle rendered immobile in connection with a warrant.

Section 32 was amended to provide that the FOC may accept a voluntary surrender of a person for whom a warrant has been issued, and either accept the bond or arrange for a prompt hearing before the court.

Section 33 was amended to consolidate all bases for contempt in one section instead of multiple sections. As a result, section 35 was repealed. The section also now allows the court to impose a jail sentence that is conditioned not only on the payment of support, but also on compliance with terms and conditions that constitute due diligence to continue to obey the order.

In addition to sanctions for contempt, the court may apply any other enforcement remedy authorized under the Support and Parenting Time Enforcement Act or the Friend of the Court Act.

Section 33 also was amended to clarify that the court may impose conditions when placing a person under the FOC supervision that include, *but are not limited to*, those specifically stated in the statute. Formerly, the statute appeared to limit the conditions to those stated in the statute.

Finally, Section 33 corrects the presumption that a person has currently available resources from a weekly amount (four weeks) to a monthly amount to match the support payment cycle.

Section 36 was amended to allow the court to assess the actual costs of enforcing a spousal support only order.

Section 37 was amended to allow the court to enforce due diligence requirements. Formerly, the court could find that a payer failed to exercise due diligence, but could only impose incarceration as a sanction if the court ordered a purge payment that was within the payer's ability to pay. Now, the court can impose incarceration as a sanction to compel the payer to exercise due diligence that is within the payer's ability to perform.

Section 37 also was amended to create a conditional incarceration requirement – sometimes referred to as *pay or stay*. If a contemnor has the ability to obtain resources by exercising due diligence, the court may order the payer to pay one or more specific payments in the future or be incarcerated until the person makes the payments. The options available are:

- The court may order the person to pay a certain amount or be committed to jail. If the payer fails to pay, the court must hold a hearing to determine why the payer did not make the payment and whether the payer has the ability to pay before committing the person to jail.
- The court may order commitment, but may stay the order conditioned upon the payer making the payments.
- The court may order a maximum term of commitment and reduce that maximum for each complying payment the payer makes.

Section 37 also allows the court to enter similar orders to enforce due diligence, including allowing the court to incarcerate a payer with the right to leave jail to comply with due diligence conditions.

Section 44 was amended to eliminate the statutory procedure for setting a parenting time or custody contempt hearing in favor of the Supreme Court establishing those procedures. The amendment also allows the FOC to attach a copy of the allegations a person claims constitute a denial of parenting time instead of incorporating them into a pleading. If a bench warrant issues for a person's failure to appear, the court may now also order his or her vehicle immobilized.

Anticipated Action: The FOCB will propose amendments of MCR 3.208 to create new procedures for contempt proceedings. The FOCB will propose amending the order after hearing on show cause forms to reflect the new due diligence provisions. The FOCB will amend its contempt chart and memo.

2014 PA 379 – Revised Uniform Reciprocal Enforcement of Support Act (effective 3-17-15)

Fee Consolidation Corrections

In an earlier session, when the Legislature consolidated all fee provisions in the Revised Judicature Act, it failed to include one fee. The Act repeals that fee.

2014 PA 380 – Support and Parenting Time Enforcement Act (effective 3-17-15)

Redirection

The amendments change the requirement for redirecting support. Previously support could be redirected to the person *legally* responsible for the child. Now, support can be redirected to the person who is *providing* the care and support to the child. This provision allows a redirection when a person obtains public assistance for a child so that the person can assign the support to the state.

Anticipated Action: The FOCB will revise its redirection memo.

2014 PA 388 – McCauley-Traxler-Law-Bowman-McNeely Lottery Act (effective 3-22-15)

The Act eliminates provisions requiring that intercepted lottery payments be sent to the local FOC office for distribution and requiring the FOC to report arrearage balances for purposes of intercepting lottery payments. These functions are now performed by The Michigan State Disbursement Unit (MiSDU) and the Michigan Child Support Enforcement System (MiCSES). The Act further clarifies responsibilities of the Department of Treasury and Lottery Bureau concerning the intercept process.

Anticipated Action: Change in OCS, Department of Treasury, and Lottery Bureau internal procedures.

2014 PA 381 – Office of Child Support Act (effective 3-17-15)

Allocation and Distribution of Child Support

The Act makes the OCS responsible for determining how child support payments are allocated and distributed. Formerly, there was no statutory authority for making this determination. MCR 3.208 directed the State Court Administrator to develop guidelines for allocation and distribution because payments were formerly collected and disbursed locally by FOC offices. Now that payments are made centrally to a unit controlled by the executive branch, the executive branch will determine these issues.

Requirements: The FOCB will propose amendments of MCR 3.208.

2014 PA 382 – Friend of the Court Act (effective 3-17-15)

Friend of the Court Accounting and Payment Responsibilities

The FOC Act was amended to confirm that the MiSDU now processes payments and distributions. Local FOC offices retain the option of accepting payments from support payers, but must forward the payments to MiSDU for final processing.

Credit Reporting

The Act also was amended to move responsibility for credit reporting from the SCAO and the FOC to the IV-D Agency. This move is designed to facilitate automated reporting through the MiCSES, which is under the control of the OCS in the executive branch.

Anticipated Action: The FOCB will retract its Credit Reporting Memorandum when the OCS introduces its new guidelines.

Alternative Dispute Resolution

The amendments correct some drafting errors in previous laws by making a clearer distinction between statutory mediation and other alternative dispute resolution. They also provide that alternative dispute resolution plans must have a domestic violence screening component.

The amendments remove many statutory qualifications for persons who conduct alternative dispute resolution and instead, allow the SCAO to establish qualifications based on the type of ADR offered. This allows the SCAO to consider alternative qualifications when the FOC office is in a location that has a shortage of training for certain skill sets that can be overcome by other qualifications [see e.g., Administrative Order 1985-5 (G).] The amendments provide that mediation and alternative dispute resolution are confidential as provided by court rule.

Anticipated Action: The SCAO will establish mediator qualifications. The SCAO will propose a court rule to establish different types of ADR and to determine the level of confidentiality for different types of ADR.

Compensation for Attorney Assisting Friend of the Court and Grievance Reporting

The amendments change the grievance-reporting requirement from biannually to annually and clarify that appointment of an attorney for the FOC and his or her compensation is a judicial determination and not one to be made by the county board of commissioners.

2014 PA 364 – Paternity Act (effective 3-17-15)

2014 PA 365 – Genetic Parentage Act (effective 3-17-15)

2014 PA 366 – Summary Support and Paternity Act (effective 3-17-15)

2014 PA 409 – Acknowledgment of Parentage Act (effective 3-30-15)

Paternity Establishment

These Acts all address new ways to establish paternity.

2014 PA 409 expands the list of individuals who may serve as witness for an acknowledgement of parentage to include a witness who is a legally competent adult employed by a hospital, publicly funded or licensed health clinic, pediatric office, friend of the court, prosecuting attorney, court, department of human services, department of community health, county health agency, county records department, head start program, local social services provider, county jail, or state prison. The reason for the change is that it has been hard to find notaries to witness the acknowledgment, and the individuals named in the new act are likely not to have an interest in the matter but work in places where a person may commonly decide to acknowledge paternity.

Anticipated Action: The OCS will work with the Department of Community Health to determine whether new acknowledgment forms are necessary.

2014 PA 365 creates the Genetic Parentage Act. The Act provides that parents who wish to establish a child's paternity may take a genetic test by an accredited laboratory and, if the test establishes a likelihood of paternity greater than 99 percent, the man is conclusively determined to be the child's father. Either the father or mother must request IV-D services to be eligible to use the Act to establish paternity. The parents must also sign a form agreeing to the testing that explains the rights and consequences involved in using the Act. The consequences are generally the same as signing an acknowledgment of parentage. If a test determines paternity, the IV-D program arranging the testing must file a report and form with the state registrar similar to the acknowledgment of parentage.

Requirements: The OCS will determine whether to create a new consent form and summary report form.

2014 PA 364 amends the Paternity Act to match its provisions to the Genetic Parentage Act. Formerly, in a paternity case, the test results showing a 99 percent or greater likelihood of paternity created a presumption of paternity, but the local prosecutor was required to file a motion for summary disposition to establish paternity. Now, if the test indicates a likelihood of paternity of 99 percent or more, paternity is established without further action.

Anticipated Action: The OCS will determine whether a new summary report form is necessary.

2014 PA 366 creates the Summary Support and Paternity Act. The Act provides that the IV-D agency may commence an action for support, or paternity and support, by filing a statement (much like an affidavit or general testimony form in interstate cases) with the court. The IV-D agency then serves a copy of the statement on the party from whom support is sought. The party must answer the statement within 21 days. If the statement seeks to establish paternity, the only way to answer is by showing that a previous action excluded him as the father or through genetic testing. A genetic test exclusion ends the matter. A probability of paternity of 99 percent or more conclusively establishes paternity. If the party does not answer, the issue of paternity is deemed admitted. The party may also acknowledge paternity in writing.

If paternity has already been established (presumption through marriage, order of filiation, acknowledgment, or genetic testing), the person may defend by showing that the underlying basis for alleging his paternity is not true (e.g., there was no marriage at the child's conception or birth, there was not an acknowledgment, there was no genetic test, or the person served is not the same person as the person named in the statement).

The Act requires the parties to provide information to the IV-D agency so that it can apply the child support formula. The parties may consent to the amount of support. If not, the IV-D agency shall calculate support and send out a notice (just like it does today for support modifications). If a party objects, the court will hold a hearing to determine support. If a party does not object, the court will generally enter an order incorporating the amount recommended.

The Act has provisions to compel the mother's and child's appearance for genetic testing.

The Act has several unique provisions to increase effectiveness:

- Counties may enter into agreements to provide services offered under the Act regionally.
- Service may be by ordinary mail provided that the party responds.
- Multiple notices can be combined into single documents.
- Service may be conducted using technology if it is allowed by court rule.
- Parties may waive service of notices and may consent to bypass some procedures.
- Technology may be substituted for physical file information.
- Agencies may enter into agreements to perform functions for each other (e.g., support specialists might obtain information on behalf of the prosecutor or the FOC, or even obtain a consent order).

The Act also provides for custody and parenting time determinations as the parties agree or after a review and recommendation from the FOC and court order.

Anticipated Action: The FOCB will convene a workgroup to develop forms and perhaps a court rule addressing the new form of action.

2014 PA 367 – Paternity Act (effective 3-17-15)

2014 PA 368 – Revocation of Paternity Act (effective 3-17-15)

2014 PA 369 – The Family Support Act (effective 3-17-15)

2014 PA 370 – Uniform Interstate Family Support Act (effective 3-17-15)

2014 PA 371 – Revised Uniform Reciprocal Enforcement of Support Act (effective 3-17-15)

2014 PA 372 – The Emancipation of Minors Act (effective 3-17-15)

Transfer of Prosecuting Attorney Duties

The amendments allow the prosecuting attorney and the DHS to transfer the duties assigned to the prosecuting attorney by the Acts to one of the following:

- The FOC, if the chief circuit judge also approves.
- An attorney employed or contracted for by the county.
- An attorney employed or contracted for by the DHS.

The transfer is not required. All transfers to the FOC require the consent of the chief judge, the OCS, and the prosecuting attorney if the FOC was not already conducting establishment proceedings on the date the act became effective.

Anticipated Action: The FOCB will work with the OCS to develop guidelines for offices that want to transfer duties within their county.

2014 PA 374 – Revocation of Paternity Act (effective 3-17-15)

2014 PA 376 – Revocation of Paternity Act (effective 3-17-15)

Revocation of Genetic Paternity Establishment

2014 PA 376 amended The Revocation of Paternity Act to provide procedures for setting aside a determination of paternity based on genetics (Genetic Parentage Act, Paternity Act as amended, and Summary Support and Paternity Act). The tests may be challenged in the action in which the tests are being used to establish paternity or support, or by an original action. A person may challenge DNA test results on the basis that the original tests were inaccurate, the man could not have supplied the genetic material to conceive the child (e.g., the alleged father lived on another continent, never met the mother, and there was no possibility that his semen could have been involved in the conception), or a person exists with identical DNA (e.g., a twin or triplet is the father).

2014 PA 374 amended the Revocation of Paternity Act to clarify that the court must make a best-interests determination before entering an order setting aside paternity. The clarification addresses appellate decisions that reached different conclusions when a father's paternity was established under the Acknowledgment of Parentage Act.

Anticipated Action: The FOCB will modify its Revocation of Paternity Act memo. The OCS will modify its Revocation of Paternity Act policy.

2014 PA 373 – Support and Parenting Time Enforcement Act (effective 3-17-15)

Specialty Court for Child Support

2014 PA 373 amends the Support and Parenting Time Enforcement Act to create an alternative contempt track for persons who have difficulty making support payments due to a documented medical condition, a documented psychological disorder, substance abuse, illiteracy, homelessness, a temporary curable condition that the payer has difficulty controlling without assistance, or unemployment lasting longer than 27 weeks. The statute provides that the individual and the court may consent to placing the payer into the alternative contempt track to create a plan to address the payer's conditions. The payer may remain in the track for up to one year on probation. The court may incarcerate the payer for up to 45 days to compel performance and up to 10 days as punishment for failure to comply with the plan. The plan may provide for modification of support and discharge of arrears due the state.

A court must submit a plan for approval by the SCAO if it wants to use the alternative contempt track. Because the traditional contempt statute as it was recently amended, mirrors some of the alternative contempt track provisions, the alternative contempt track may be more useful as an alternative to criminal nonpayment of support or criminal contempt.

Anticipated Action: None at this time.

2014 PA 375 – Social Welfare Act (effective January 1, 2016)

Preassistance cooperation

2014 PA 375 amends the Social Welfare Act to allow the DHS to deny benefits under the Family Independence Program to a person who fails without good cause to comply with child support requirements. The amendments define good cause to include situations in which an effort to establish paternity or assign or obtain child support would harm the child or create a danger of physical or emotional harm to the child or recipient.

Anticipated Action: None at this time.

2014 PA 532 – Revised Judicature Act (effective April 14, 2015)

Fees

2014 PA 532 amends the Revised Judicature Act to change the former judgment entry fee (\$80 when custody or parenting time is determined or modified, and \$40 when only support is determined or modified) to a filing fee. The fee is in addition to any other filing or motion fee and is collected at filing unless the filing is a consent judgment or order.

Anticipated Action: The SCAO will draft a new fee memo.