



Michigan Supreme Court

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

FROM: Daniel J. Wright

RE: SCAO Administrative Memorandum 2006-03
Review and Modification of Child Support Orders

State and federal laws require the friend of the court (FOC) to review child support orders periodically to ensure that the ordered amount reflects the parties' evolving financial circumstances and their children's needs. Michigan's law was modified in 2005 to change FOC child support review and modification procedures.¹ MCL 552.517-552.517b.

A. Mandatory Triennial Reviews

Michigan law requires the FOC to review a child support order once every 36 months in the following circumstances:

1. *If a Child is Supported by Public Assistance*

If the child is being supported in whole or in part by public assistance, the FOC must review the support order every 36 months unless the Department of Human Services (DHS) has given notice that good cause exists not to review the order and neither party has requested a review.

2. *If a Child is Supported by Medical Assistance*

If the child is receiving Medicaid, the FOC must review the support order every 36 months unless the order already requires health care coverage for the child and neither party has requested a review or DHS has given notice that good cause exists not to review the order and neither party has requested a review.

¹ Michigan IV-D Action Transmittal [2005-037](#) describes review and modification functionality in MiCSES.

3. ***At the Request of a Party or Another State***

Either party or another state may request a support review every 36 months.² A party seeking a more frequent review must either file a motion directly with the court, or provide evidence to the FOC that a substantial change has occurred that merits an additional review (see section B. *Additional FOC Reviews*).

B. Additional FOC Reviews

Michigan law requires the FOC to review a support order more frequently than every 36 months if there are reasonable grounds to believe the order should be reviewed, or if a party demonstrates a “substantial change in circumstances.”³

1. ***Reasonable Grounds to Modify Order***

The FOC must review an order on its own initiative if there are “reasonable grounds” to believe that the amount of child support ordered should be modified. MCL 552.517(1)(b) defines “reasonable grounds” as any of the following:

a. *Changes in custody not ordered by the court.*

SCAO recommends determining if the change in custody not ordered by the court is expected to be permanent or long-term. The FOC should also determine if other provisions in the order should be reviewed.⁴

A review for this purpose is separate from the requirements in MCL 552.605d, which requires the FOC to abate child support when a child moves into the payer’s home,⁵ and allows the FOC to redirect support to a person who has become “legally responsible” for the child.

b. *Increased or decreased needs of the child.*

The law does not define “increased or decreased needs of the child.” Therefore, the circuit court may want to establish a policy for the FOC office to follow when considering a review for this purpose.

c. *Probable access to dependent health care coverage.*

If the FOC believes that health care coverage is available to a party and the order does not include a provision for health care coverage, the FOC must review the order.

d. *Receipt of public assistance.*

Public assistance is defined as cash assistance provided under the Social Welfare Act, which includes family independence program benefits, state

² Federal law requires parties with IV-D cases to receive notice of their right to a support review every three years. 42 USC 666(a)(10). Michigan IV-D Action Transmittal [2005-37](#) describes the review notice functionality of the Michigan Child Support Enforcement System (MiCSES).

³ If the FOC denies a review request, the party can file a motion directly with the court.

⁴ For example, the parenting time provisions in the order may no longer be appropriate.

⁵ [SCAO Administrative Memorandum 2005-04](#) explains the administrative redirect/abate procedures in MCL 552.605d.

family assistance, state disability assistance, child development and care assistance, or food stamps.⁶

e. Receipt of unemployment or worker's compensation.

A case in which a party has cyclical, or anticipated, unemployment periods due to the nature of the job or industry may not require a review during each layoff. If the support order already accounted for the cyclical nature of the job, including a provision in the order could guide the FOC office in determining when a review in these circumstances is necessary.

f. Incarceration or release from incarceration for a term of more than one year.

The FOC must initiate a support review within 14 days after learning that a payer has been incarcerated after being criminally convicted and sentenced to serve more than one year, or released from incarceration.⁷ The FOC may receive the information from various sources, such as a party or relative, or through automated data matching. Michigan IV-D Action Transmittal [2005-038](#) provides guidance on entering and viewing incarceration status on the Michigan Child Support Enforcement System (MiCSES).⁸

If a person is incarcerated for non-payment of support, the FOC should review the order, and allow the court to decide whether granting relief from the support order is equitable.

SCAO has developed the following forms for incarcerated payers to use to request a support review:

[Prisoner Motion to Modify Support](#) (FOC109)

[Prisoner Information Addendum](#) (FOC110)

2. *Substantial Change in Circumstances*

State and federal laws allow a party to request a support review more frequently than every 36 months if the party provides proof of a “substantial change in circumstances.”⁹ This term is not defined in state or federal law, but may be the same or similar type of changed circumstances that would warrant a “reasonable grounds” review. In addition to the conditions defined in the reasonable grounds section of this administrative memorandum, SCAO recommends conducting a review when a party provides proof of any of the following:

- a. A health issue affecting a party's ability to earn income (a permanent or long term disability or injury, a lengthy hospital stay, etc).

⁶ A Medicaid-only case does not require a review under this section.

⁷ Individuals sentenced to prison, not jail, will fall within this group.

⁸ FOC offices may verify the status of a prisoner through the Offender Tracking Information System (OTIS): <http://www.state.mi.us/mdoc/asp/otis2.html>.

⁹ Michigan law states that the review must occur when there is evidence of a substantial change in circumstances “as set forth in the child support formula guidelines.” However, the guidelines do not define what constitutes a substantial change in circumstances. MCL 552.517b(9).

- b. Significantly increased or decreased wages.¹⁰
- c. Call to active military duty (See *4. Party Called to Active Military Duty*).
- d. Significant changes in the medical expenses of a party.
- e. Changes in the physical, mental, or educational needs of a child.
- f. A significant change in financial circumstances due to a modification of the payer's other support obligations.

3. *Order Lacks Provision for Health Care Coverage*

If a support order lacks provisions for health care coverage, the statute requires the FOC to file a motion to modify the order to require that one or both parents obtain or maintain health care coverage for the children, in either of the following circumstances:

- a. Either parent has health care coverage available, as a benefit of employment, for the benefit of the child at a reasonable cost.
- b. Either parent is self-employed, maintains health care coverage for himself or herself, and can obtain health care coverage for the child at a reasonable cost.

SCAO Administrative Memorandum [2005-03](#) outlines policies and procedures to assist FOC offices in determining and enforcing medical support provisions.

4. *Party Called to Active Military Duty*

If the office receives information that a party has been called to active military duty, the FOC may initiate a review to determine if support should be modified during the party's term of duty. The FOC should request wage information from both the civilian employer and the military, as some employers continue to compensate their employee during his or her term of service.

The federal Servicemembers Civil Relief Act (SCRA), signed into law December 19, 2003, placed new requirements on courts concerning servicemembers. For information on the SCRA and its requirements, please see the [SCAO Servicemembers Civil Relief Act Memorandum](#).

¹⁰ Courts may want to establish limits on non-mandatory review requests from parties, such as a minimum change in income, to avoid receiving requests each time a party gets new employment with relatively minor income changes.

C. Summary of FOC Review Procedures

1. *Determine Whether to Conduct a Review*

The FOC has 14 days from the time it receives a review request to determine whether the order is due for review. If the case is not eligible for a review (if it has been less than 36 months since the last review and there is no evidence of a substantial change in circumstances), the office must send a notice of the denial to the parties, which includes the reason for the denial.¹¹ If the FOC determines the case is due for review, the office has 180 days to complete the review and obtain a modification. MCL 552.517(2).

2. *Notify Parties of Support Review*

The review process starts with the FOC sending notice to the parties requesting financial information. For support modification purposes, the [2004 Michigan Child Support Formula](#) (MCSF) states that net income should be determined from actual tax returns whenever possible. This will more accurately determine actual taxes paid and identify other types of income. Other forms of income verification include paycheck stubs or W-2 statements. The FOC may also request income information directly from the employer by sending [SCAO form FOC 22](#) (Employer's Disclosure of Income and Health Insurance Information) to the party's last known employer.

The child support review notice to the parties must state the date the information is due,¹² and advise the parties of how the review will be conducted.¹³ The FOC can make a recommendation *after 21 days but no later than 120 days* after the due date for the information. MCL 552.517b(3).

If a party fails or refuses to furnish the information, the FOC may do any of the following, based on the circumstances of the case:

a. *Send a second request for information.*

Although not required by law, the FOC may send a second request for information to the parties and extend the due date for the return of the information.

b. *Impute income.*

The FOC may impute income¹⁴ to a party who fails or refuses to provide information sufficient to allow the FOC to review support, or when a party shows a voluntary reduction of income or an unexercised ability to earn.

¹¹ A party whose review request is denied by the FOC can file a motion for modification directly with the court.

¹² The law does not specify a time limit for the parties to provide the information to the FOC, but states that the notice to the parties must include the date the information is due to the FOC. SCAO recommends the information be due within 21 days.

¹³ MiCSES will generate the Notice of Support Review, Employment Disclosure Form, and Case Questionnaire for cases that are eligible for a 36-month review.

¹⁴ Imputation of income is treating a party as having income or resources that the individual does not actually have. 2004 MCSF 2.10.

The MCSF provides guidance for imputing income, as well as conditions in which imputation would be inappropriate. 2004 MCSF 2.10. When considering whether to impute income, the FOC should consider the payer's employment experience, education level, physical and mental disabilities, the availability of employment, the prevailing wage in the region, special skills or training, and evidence that the person is able to earn the imputed income. There are many resources available to impute income. The federal minimum wage rate, prevailing wages in the community, and median income information are usually readily available from the [Census Bureau](#). In addition, there are websites that calculate average wages for professions in a given community.¹⁵

If the FOC recommends a support amount based on imputed income, the recommendation must also state the amount that would have been recommended based on the actual income if the actual income is known.¹⁶ The law requires the recommendation to recite all factual assumptions on which the imputed income is based. This recitation should be sufficient to allow the court to understand how income was imputed, and the parties to present evidence to counter (or support) the imputation, but need not be exhaustive. The recitation could be a numbered or bulleted list depending on the court's needs in using the recommendation.

c. Send Administrative Subpoena to Employer.

The FOC may issue an administrative subpoena requiring any public or private entity that employs or has employed a parent to provide current employment information that pertains to the parent and that is necessary for the review.¹⁷ MCL 552.518.

3. Conduct or Terminate the Review

Once the office has sufficient information to conduct the review, the FOC must calculate support based on the MCSF.¹⁸ MCL 552.505(1)(h). If the FOC initiates the review and does not receive financial information from either party, the FOC may terminate the review based on the lack of information. Reviews should not be terminated for lack of financial information in public assistance cases.

¹⁵ One such resource is www.salary.com. The website also performs cost-of-living conversions, which may be helpful for cases in which a party resides and/or is employed out of state. SCAO has not independently verified the accuracy of the data on this specific website, but rather offers it as one tool to assist FOC offices in imputing income when income is not known.

¹⁶ PA 207 of 2004 allows the FOC to impute income without knowing a party's actual income when that party fails or refuses to provide the information. [MCL 517b(6)(b)].

¹⁷ The administrative subpoena is a demand for information to a parent's employer or previous employer. FOC offices may not issue an administrative subpoena to other entities unless authorized by law. Pursuant to MCR 2.506, the court may issue a subpoena to require a witness to testify in open court and produce records and other documentation.

¹⁸ The software programs sometimes used to compute support (MarginSoft and Prognosticator) may produce disparate results from MiCSES because the tax calculations differ.

If a party requests a review and the non-requesting party does not provide the financial information, the FOC should not terminate the review.

4. *Sending Review Results Notice*

Once support has been calculated, the FOC must send the parties notice containing all of the information below.¹⁹ This notice constitutes a motion for modification of the support order and must be filed with the court.²⁰ MCL 552.517(5). No filing fee may be charged. The notice must include:

- a. *The amount calculated for support.*
- b. *The calculations upon which the support amount is based.*²¹
- c. *The proposed effective date of the support amount.*
State and federal law prohibit retroactive modification of support orders. The proposed effective date cannot be earlier than the date the proposed change is sent to the parties, unless the court orders otherwise.
- d. *The right to file an objection .*
The notice must inform the parties that they may object to the FOC recommendation within 21 days, and if neither party objects, an order will be submitted to the court incorporating the new support amount.
- e. *How and where to file an objection.*
Some FOC offices may prefer that objections be sent to the court clerk. Other offices may prefer receiving the objection so they may attempt to resolve the objection without requiring a hearing.
- f. *Assumptions for imputed income.*
If income is imputed, all factual assumptions upon which the imputed income is based.

A review-results letter recommending no change in support must be filed with the court if objections are to be sent to the clerk. If objections are processed by the FOC office, the review-results letter recommending no change in support is only required to be filed with the court upon receiving an objection from either party. Counties should follow their normal objection processes.

¹⁹ The [Notice of Support Review Results](#) in MiCSES may be used for this purpose.

²⁰ This is the administrative aspect of the review process. Before 2004 PA 207 was enacted, each support recommendation was set for a judicial hearing, even if the parties agreed to the recommendation.

²¹ A summary of the information, such as that on the MiCSES printout, is sufficient. The FOC is not required to provide a party with the other party's financial documentation (tax returns, wage statements, etc.)

5. *Objection to FOC Recommendation*

If a party files a timely objection to a recommendation, the FOC may do any of the following:

a. Schedule the matter before a judge or referee.

At a hearing, the court may consider the FOC's recommendation as evidence to prove a fact relevant to the support calculation when no other evidence is presented, if the parties agree or neither party objects to its use.

b. Recalculate support.

If a party includes additional information with the objection, the FOC may recalculate support and send out a new recommendation.²²

c. Schedule a joint meeting with the parties.

2004 PA 207 expanded the joint meeting process to include child support disputes.²³ MCL 552.642a governs joint meeting requirements and procedures. The purpose of the joint meeting is to reach an agreement and avoid a hearing. If an agreement is reached, the FOC records the information in writing and provides a copy to the parties. If the parties cannot reach an agreement, the FOC should schedule a hearing.

6. *No Objection Filed*

If the FOC recommends no change in the amount of support and there is no objection, the office may terminate the review without further action.

If the FOC recommendation includes a change in support and no objection is timely received, the FOC prepares an order consistent with the recommendation, which the court shall enter if it approves the order.²⁴ Only contested recommendations must be scheduled for a hearing.

D. *Deviation*

Michigan law presumes that the MCSF sets appropriate levels of support. However, in some cases, the amount established by the MCSF may be unjust or inappropriate given the special circumstances in the case. The court may enter an order that deviates from the MCSF if the court determines from the facts of the case that application of the MCSF would be unjust or inappropriate. The MCSF lists circumstances to consider for deviation, such as if a parent is incarcerated and without income or assets. [2004 MCSF 1.04(D)] When deviating, the law requires the court to set forth in writing or on the record all of the following:²⁵

²² The objection period would then be extended to 21 days from the date the revised recommendation is sent.

²³ The joint meeting process was authorized by law in 2002 to resolve custody and parenting time disputes in an informal setting. 2004 PA 207 expands the use of the process to child support issues. MCL 552.517b(5).

²⁴ If the court declines to enter the order, the FOC should schedule a hearing, which would proceed as a contested matter.

²⁵ The law allows the court to enter an order agreed to by the parties and that deviates from the MCSF if the deviation requirements are met. MCL 552.605(3).

1. The child support amount determined by the MCSF.
2. How the child support order deviates from the MCSF.
3. The value of property or other support awarded instead of the payment of child support, if applicable.
4. The reasons why application of the MCSF would be unjust or inappropriate. [MCL 552.605]

Recent changes to the statute leave it unclear whether the FOC has authority to recommend a deviation from the MCSF. Below are the two pertinent sections in the law.

- a. MCL 552.517(3) previously allowed the FOC to make a recommendation that deviates from the MCSF if the MCSF result would be unjust or inappropriate. 2004 PA 207 eliminated the language authorizing FOC deviation.
- b. MCL 552.505(h) requires the FOC to investigate and make a written report and recommendation regarding child support when ordered by the court. This section states that the MCSF must be used as a guideline in recommending child support, but if the FOC determines that the result would be unjust or inappropriate, the report must also include an alternative support recommendation and other factors supporting the reason for the deviation.

Courts may want to consider establishing local procedures instructing their FOC office how and under what circumstances to alert the court that a recommendation based on the MCSF may be unjust or inappropriate, or that a deviation is recommended.²⁶ Because the MCSF contains deviation criteria, and FOC offices are required to use the MCSF, a court could reasonably conclude that deviation actually may be a MCSF recommendation. Alternatively, a court may conclude that deciding whether special circumstances warrant deviation is more appropriate for the judge than the FOC.

E. Terminating a Support Review

The FOC may terminate a review process by notifying the parties and explaining the reason for the termination and how to file an objection.²⁷ Either party may object to the termination within 21 days. Grounds for terminating a review may include:

1. Insufficient information exists to conduct the review.
2. Good cause exists not to proceed.

²⁶ For example, a local policy should require the FOC to prepare two recommendations when asking the court to deviate from the MCSF (one based on the MCSF and one recommending deviation).

²⁷ The [Termination of Support Review Notice](#) in MiCSES may be used for this purpose.

3. A review was conducted for that party within the last 36 months.
4. Michigan no longer has jurisdiction to modify the order.

F. Orders Not Qualified for FOC Review

1. *Orders in which support is “reserved” or “held in abeyance.”*
Michigan law defines a support order as “... an order entered by the circuit court for a payment of support in a sum certain, whether in the form of a lump sum or a periodic payment.” MCL 552.502a(j). Thus, an order reserving support or holding it in abeyance is not a support order and cannot be reviewed unless it includes a review requirement.²⁸ If the court intends for the order to be periodically reviewed, a support order of “\$0” is a sum certain and would qualify for a review.
2. *Cases in which the court has allowed the parties to opt out of FOC participation.*
The FOC does not have the authority to review a support order if there is an “opt out” order in the case. A party who has opted out of FOC services and subsequently requests an FOC review must apply for Title IV-D services to open or reopen the IV-D case.
3. *Interim or Temporary Orders.*
The periodic review requirements are only applicable after a *final* judgment containing a child support order has been entered. MCL 552.517(1). However, the same review and modification procedures may be used to establish or modify a temporary order referred to the FOC.
4. *Medical Support Only Case.*
Federal regulations require state Title IV-D plans to provide services to non-Title-IV-A Medicaid recipients.²⁹ The single exception to this requirement is a situation in which the recipient specifically requests only medical support services. 45 CFR 302.33. Thus, an order that contains medical support provisions but is silent on child support is not subject to the requirements for an FOC review. A support amount must be established by court order before the amount can be eligible for review by the FOC. If no support is to be paid, SCAO recommends including a \$0 amount for support to allow the order to be reviewed later.

If a court or FOC has questions, please contact Kelly Howard at (517) 373-8671 or howardk@courts.mi.gov or Steve Capps at (517)-373-4835 or cappss@courts.mi.gov.

²⁸ For example, an order may state that the FOC should review support when the payer becomes employed, or after a certain number of days. In the absence of a review requirement in the order, a party who seeks support can either contact a Support Specialist or file a motion directly with the court to initiate a child support order.

²⁹ A non-Title-IV-A Medicaid recipient receives Medicaid without Family Independence Program benefits.