



Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

EMPLOYED DELINQUENT SUPPORT PAYERS; REQUIRE WORK RELEASE

House Bill 4404 as passed by the House Second Analysis (4-25-97)

Sponsor: Rep. Ted Wallace
Committee:Judiciary

THE APPARENT PROBLEM:

The collection of child and spousal support has become an issue of increasing concern at both the state and federal level. And as a result, a wide variety of laws and regulations have been created in an attempt to increase noncustodial parents' compliance with their court-ordered support obligations. Currently, under the Support and Parenting Time Enforcement Act, a court may find a person who has been required to pay support in contempt if the court finds that the individual is in arrears in his or her support payments and the court is satisfied that the payer has either failed to make his or her support payments in spite of having the resources to have done so, or could have paid all or part of the arrearage had he or she made a diligent effort. If the court finds a payer in contempt, the court may, among other things, have the payer jailed. The court then has the discretion to grant the payer the privilege of leaving jail during the hours and with the supervision the court determined necessary for the payer to go to and return from his or her place of employment or to seek employment.

Since placing a delinquent payer in jail makes it is even less likely that he or she will be making any court-ordered support payments and runs the risk of causing the payer to lose his or her job (if he or she has one), it has been suggested that, under certain circumstances, courts should be required to place delinquent payers who have been found in contempt and jailed for failure to pay support on work release.

THE CONTENT OF THE BILL:

House Bill 4404 would amend the Support and Parenting Time Enforcement Act to require the court to place certain individuals who were jailed for failing to pay support obligations on work release. The court would be required to place a jailed, delinquent payer on work release so that the payer could continue his or her employment, if the delinquent payer proved both: 1) that he or she was currently employed by someone other than himself or herself, and 2) that there was an income withholding order in effect to secure the payer's payment of the support obligation. In such cases, the

bill would also require the court to inform the office of the friend of the court of the payer's place of employment.

The bill's provisions would take effect July 1, 1997.

MCL 552.633, 552.635, and 552.639

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill's requirements could increase administrative costs for the state by an indeterminate amount. (4-14-97)

ARGUMENTS:

For:

The bill will help to improve the compliance of delinquent payers of child and spousal support by giving jailed delinquent payers an opportunity to continue working and thereby keep their jobs and pay support. Hopefully, working payers who have not revealed their employment will be willing to reveal their employment and have withholding orders put in place in order to be placed on work release rather than remain in jail without work release.

For:

Since the practice of jailing noncustodial parents for failure or inability to make support payments is an unfair recollection of the debtor's prison system, any provisions that make an effort to correct the harm done by this practice are welcome. However, required work release should also be extended to those noncustodial parents with responsibilities to children that are in their custody; for example, second families. In addition, release should be granted for the noncustodial parent's scheduled parenting time periods.

Against:

The bill does not provide judges with any discretion regarding the placement of payers on work release. There are cases in which a delinquent payer could meet

House Bill 4404 (4-25-97)

the criteria provided in the bill and still not be a good candidate for work release. The bill would serve its purpose better if it required the court to consider work release for those payers and to state reasons for refusal on the record.

Against:

Although it makes sense to condition work release on the payer's payment of support, the bill's provision requiring that a jailed delinquent payer be placed on work release if he or she has a job with an existing withholding order will be self-limiting. Those payers who have jobs that are subject to withholding orders are not the payers that are sent to jail for contempt; if money is being withheld and payments made, then the payer will not be in contempt.

POSITIONS:

The Friend of the Court Association supports the concept of allowing the court to place certain jailed delinquent payers on work release. (4-15-97)

The Capitol Area Fathers for Equal Rights supports the concept of the bill, but believes its provisions should be expanded. (4-16-97)

Analyst: W. Flory

■ 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.