

Legislative Analysis



CHILD SUPPORT AMNESTY PROGRAM

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House Bill 4654 as passed by the House
Sponsor: Rep. Alexander Lipsey

House Bill 5259 as passed by the House
Sponsor: Rep. John Stahl

House Bill 5262 as passed by the House
Sponsor: Doug Hart

Committee: Family and Children Services
Second Analysis (4-7-04)

BRIEF SUMMARY: The bills would implement a child support amnesty program that would waive criminal penalties for overdue child support for a limited time if payers comply with the program.

FISCAL IMPACT: The fiscal impact of the bills on the state is likely to be insignificant.

THE APPARENT PROBLEM:

Child support payments are ordered to ensure that the needs of children are adequately provided for even after a child's parents are no longer together. In many cases, child support payments represent a significant portion of a family's income. As such, child support payments contribute greatly toward self-sufficiency of those families receiving support.

Despite the availability of numerous enforcement tools for the Office of Child Support, the several Friends of the Court, the Attorney General's office, and local prosecutors to use in ensuring compliance with support orders, a large number of parents do not meet their financial obligations. According to the attorney general's office, 650,000 children in the state do not receive the amount of support ordered for them and, of those, 400,000 do not receive any support whatsoever. In addition, the cumulative arrearage in the state is more than \$7 billion, of which more than \$3 billion is owed to the state as a reimbursement for social services (family independence assistance). Finally, the attorney general's office notes that there are more than 17,000 cases throughout the state in which a parent owes more than \$50,000, and there are more than 40,000 cases in the state's six largest counties (Wayne, Oakland, Macomb, Kent, Genesee, and Ingham) in which more than \$40,000 is owed.

Given the importance of child support to the child for whom support is ordered and that child's family, as well as the increasingly large cumulative child support arrearage, legislation has been introduced that would, in an attempt to encourage payers to pay past

due support, implement an amnesty program waiving criminal penalties for a payer who owes past due support and otherwise complies with the amnesty program.

THE CONTENT OF THE BILLS:

The bills would provide for a child support amnesty program. All three bills provide that a payer would not be eligible to participate in the amnesty program if, prior to seeking to participate, prosecution has been initiated under the Michigan Penal Code for the failure to pay child support or the payer has been arrested on criminal warrant or bench warrant related to the support obligation. House Bills 5259 and 5261 are tie-barred to House Bill 4654, which is, in turn, tie-barred to those two bills.

House Bill 4654 - Child Support Act

The bill would amend the Office of Child Support Act (MCL 400.233b) to provide for a child support arrearage amnesty program. The amnesty program, which would waive all criminal and civil penalties as a result of nonpayment of the required support, would be for a period of at least 90 days as set by the Office of Child Support, ending before seven months after the bill's effective date.

To be eligible for the amnesty program, the delinquent payer would have to make a written request for a waiver and make a payment in a lump sum for the entire amount of past support or in installments. In order to be eligible to pay past due support in installments, the payer would have to submit 50 percent of the past due support with the request for a waiver, and pay the remaining balance within 90 days after the start of the program.

The Office of Child support would have to notify potential participants at least 60 days prior to the start of the amnesty program. The notice could be included in scheduled notices or posted on the Internet.

House Bill 5259 - Friend of the Court Act

The bill would amend the Friend of the Court Act (MCL 552.511) to require the Office of Child Support, within the Family Independence Agency, to comply with the child support amnesty program established by House Bill 4654.

House Bill 5262 - Michigan Penal Code

The bill would amend the Michigan Penal Code (MCL 750.161a) to specify that if an individual is participating in the child support amnesty program established by House Bill 4654, prosecution for the failure to pay such support could not be initiated during the amnesty period. The bill would also specify that a payer who makes full payment of past due support during the amnesty period would not be prosecuted for failing to pay support that had been due before the start of the amnesty period. However, this would not apply beginning six months after the bill's effective date.

BACKGROUND INFORMATION:

Earlier this session, the House passed House Bill 4792, introduced by Representative John Garfield. That bill would amend the Support and Parenting Time Enforcement Act by permitting a payer who has an arrearage under a support order to file a motion with the circuit court for a payment plan to pay the arrearage and discharge other arrearages. At the time, some people argued that the amnesty program offered under House Bill 4654 could serve as an alternative to House Bill 4792.

Under House Bill 4792, the court would approve the plan if (1) the arrearage is owed to an individual payee and the payee consents to the plan (and does not consent to the plan out of fear, coercion, or duress) or (2) the arrearage is owed to the state or a political subdivision and the arrearage did not arise out of an action by the payer to avoid payment; the payer does not have the ability to pay the arrearage other than through the payment plan; the payment plan will pay a reasonable portion of the arrearage over a reasonable time, based on the payer's ability to pay; and the Office of Child Support has received notice of the payer's intent to petition the court and within 56 days executed a waiver consenting to the court plan. [By executing the waiver, the Office of Child Support would consent to a compromise of arrearages ordered by the court after considering the payer's motion. If the office does not consent to a compromise of arrearages, the office would notify the payer within 56 days].

In addition to the above requirements, the court would also have to find that the establishment of the payment plan would be in the best interest of the parties and children involved in the matter. In addition, the court could require certain conditions in the payment plan (in addition to the payment of support) that it determines are in the best interest of a child, such as the payer's participation in a parenting program, drug or alcohol counseling, anger management classes, a batterer intervention program, and participating in a work program.

The court would be required to discharge any remaining arrearage if the payer completes the payment plan, and the court would be permitted to enter an order granting relief if the payer substantially completes the payment plan. However, the plan would have to include a requirement that any arrearage subject to the plan could be reinstated upon motion and hearing for good cause shown at any time.

The provisions added by the bill would not modify the right of a party to receive other child support credits nor prevent the court from correcting a support order under other applicable law or court rule. Finally, the Family Independence Agency would have to designate an office to receive service of a motion.

ARGUMENTS:

For:

The amnesty program is intended to encourage payers who have a child support arrearage to pay the ordered support without fear of civil and criminal penalties. While the

numerous enforcement tools provided to the several Friends of the Court, prosecuting attorneys, the attorney general, and the office of child support can be useful in ensuring compliance with support orders, they are, nonetheless, often inadequate. This is clearly evidenced by the number of children that do not receive any or the full amount of the required support and the total amount of past due support. While harsh civil and criminal penalties for the failure to pay child support often “force” payers into compliance, they can also deter many payers from entering into the child support system. Payers with significant arrearages aren’t likely to voluntarily enter into the child support system if they face the prospect of jail time. This makes collection of any support quite difficult.

In addition, the bills have one, largely unnoticed, consequence. Not only do the bills encourage payers to pay past support and remain current in their support obligations, they also encourage payers to remain active in the lives of their children. Once a payer accrues an arrearage, the likelihood of that payer staying involved in the life of his or her child is greatly diminished. The absence of that parent, particularly in the case of fathers, brings with it a host of other adverse consequences. If the amnesty program encourages payers to remain active in the lives of their children, that is a huge positive impact.

Response:

Generally speaking, there are two classes of payers who have past due support. The first class is the “deadbeat” parent. These are payers who have the financial wherewithal to meet their child support obligations, yet they simply abscond from their financial obligations to their children. The other class is the “deadbroke” parent, although these parents are generally considered to be “deadbeats” as well. Deadbroke parents are parents who would like to pay their child support obligations, yet they simply do not have the financial wherewithal to do so. The amnesty program offered under this package of bills does not really assist deadbroke parents. In June 2003, the *Lansing State Journal* noted that parents who earn less than \$20,000 per year owe nearly 75 percent of the state’s \$7 billion in past due child support. For the most part, these payers will not have the financial means to participate in the amnesty program. As written, the program requires a payer pay the entire past due amount at the time he or she signs up or pay in installments within 90 days. If the arrearage is even marginally significant, say \$5,000, how can the person afford that? If a payer could really pay off his or her support debt within 90 days, why hasn’t he or she done so already? In all actuality, this bill will enable true deadbeat parents to pay past due support and get off scot-free. The state’s problem with child support arrearages won’t go away by providing incentives to people who can afford to pay, but simply choose not to. Rather, real solutions must be crafted to provide assistance to payers who want to pay, but cannot do so. This bill doesn’t do that.

While the bill does have its merits, a better alternative to the bill would be the package of bills (House Bills 4773-4776, 4792) that already passed the House of Representatives in July 2003. Those bills seem better designed to address the plight of deadbroke parents (those who hold most of the arrearage), including the timeliness and necessity for reviews and modifications of support orders, the assessment of surcharges, the extent to which support orders accurately reflect current circumstances, the retroactive nature of support orders, and the flexibility afforded to judges and local Friends of the Court to work with parties involved in coming up with some sort of payment plan.

For instance, House Bill 4792 would allow parties to enter into an arrearage payment plan. The ability to establish a payment plan provides courts with added flexibility in working with the parties involved to make some progress in paying down arrearages (and, by extension, encouraging the continued involvement of the payer in the life of his or her child). The bill provides assurances that the payee would have to consent to the plan, and if the arrearages is owed to the state or a political subdivision, that the arrearage did not arise out of the actions of the payer to avoid payment, and that the payer *does not have the ability to pay down the arrearage absent establishment of the payment plan*. These bill provides assurances that the payment plans are not used by deadbeat parents to abscond from a large portion of their past due support.

POSITIONS:

The Family Independence Agency indicated that it is supportive of the bills. (2-18-04)

The Family Law Section of the State Bar Association indicated that it supports the bills. (2-18-04)

The Friend of the Court Association indicated that it supports the bills. (2-18-04)

Legislative Analyst: Mark Wolf
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■ 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.