

Legislative Analysis



ABATEMENT OF CHILD SUPPORT OBLIGATION DURING INCARCERATION

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Senate Bill 1090 (S-1) as reported from House committee
Senate Bill 1091 (S-1) as reported from House committee
Sponsor: Sen. John Bizon, M.D.
House Committee: Judiciary
Senate Committee: Families, Seniors and Veterans
Complete to 12-17-20

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Acts 348 and 349 of 2020)

BRIEF SUMMARY: Senate Bills 1090 and 1091 would respectively amend the Support and Parenting Time Enforcement Act and the Friend of the Court Act to abate, or suspend, child support responsibilities if the payer will be incarcerated for at least 180 consecutive days and will not have the ability to pay the support.

FISCAL IMPACT: Senate Bill 1090 would have an indeterminate fiscal impact on local circuit courts and a minimal fiscal impact on the Department of Health and Human Services (DHHS). Senate Bill 1091 would have an indeterminate fiscal impact on the state and on local friend of the court offices and none on DHHS. See **Fiscal Information**, below, for further discussion.

THE APPARENT PROBLEM:

According to testimony given before the House Judiciary committee, the bills would align Michigan law with a current federal rule that allows states to review child support orders when a noncustodial parent will be incarcerated for more than 180 calendar days.¹

THE CONTENT OF THE BILLS:

Senate Bill 1090 would provide that, starting one year after the bill takes effect, each support order the court enters or modifies must include the following statement:

If the payer will be incarcerated for 180 consecutive days or more and will not have the ability to pay support, the monthly amount of support payable under the order must be abated, by operation of law, subject to the provisions of SB 1091 (below).

A support order entered before the above time frame would be considered to include, by operation of law, the provisions described above.

Additionally, a party to a domestic relations matter that does not have an open friend of the court case could file a motion with the circuit court to request that the parameters described under “Applicability of abatement,” below, apply when a payer will be incarcerated for 180 consecutive days or more with no ability to pay. When the payer is released from incarceration, a party could file a motion to request that the parameters described under “Release from incarceration” apply and that the order be modified.

MCL 552.605d

¹ <https://ecfr.federalregister.gov/current/title-45/subtitle-B/chapter-III/part-303/section-303.8>

Senate Bill 1091 would remove a provision that allows the friend of the court to review a child support order for a changed financial condition related to incarceration or release from incarceration after a criminal conviction and sentencing to a term of more than one year.

The bill would add a new section to require the monthly amount of support payable under an order to be abated, by operation of law, when the payer becomes incarcerated for 180 consecutive days or more and will not have the ability to pay support. The bill would also set forth parameters for abatement and termination of abatement, or reinstatement.

Applicability of abatement

Under the bill, when the payer becomes incarcerated for 180 consecutive days or more, it would be presumed that the payer also would not have the ability to pay the monthly amount of support required under an order. However, if the payer does have the ability to pay support, then the abatement provisions would not apply. If the payer has income or assets, the friend of the court would instead have to initiate a review and modification under existing law.

Notice of abatement

The friend of the court would have to send notice of abatement to both the payer and recipient of support. The notice would have to include the effective date of the abatement and right to object. The payer and recipient would have 21 days to object in writing based on a mistake of fact or of identity. Additionally, the friend of the court would have to file the notice with the court and could not adjust the records to reflect the abatement until 21 days after notifying each party of the proposed action and each party's right to object. Any adjustments to the record could not exceed the payer's monthly amount of support and the past due support.

Objection to abatement

If an objection is received, the friend of the court could not adjust the records and would instead have to conduct an administrative review and consider only mistakes of fact or identity in its review.

If a mistake of fact or identity *is not* found, the friend of the court would have to notify the payer and recipient of the determination and that abatement must occur. The payer or recipient could object to the review determination by filing a motion in the circuit court that issued the support order within 21 days after the review determination notice. If a motion is not filed within 21 days, the friend of the court would have to adjust the record to reflect abatement. Any adjustments to the record could not exceed the payer's monthly amount of support and the past due support.

However, if a mistake of fact or identity *is* found, the friend of the court would have to notify the payer and recipient of the review determination and take action appropriate to the mistake. Additionally, the review determination would have to be filed with the court.

Release from incarceration

After the payer is released from incarceration, the monthly amount of support would remain abated until the order is modified. Support payments would resume no sooner than the first day of the first month following the ninetieth day after release from incarceration, and any payment not made after that date could be calculated using the actual resources of each parent during each month.

Upon learning that the payer is released from incarceration, the friend of the court would have to initiate a review within 30 days according to existing law.

Miscellaneous provisions

The State Court Administrative Office (SCAO), under the direct supervision and direction of the Michigan Supreme Court, could implement a policy to assist offices of the friend of the court in implementing the abatement of support. SCAO would have to develop forms for use by offices of the friend of the court and parties to implement the above provisions.

Finally, the Department of Corrections and any local unit of government operating a *jail* would have to provide the Title IV-D agency with the record necessary to identify payers who are or will be incarcerated for 180 consecutive days or more, the crime for which the payers are incarcerated, the payer's release date, and any information or record that assists in implementing the above provisions as determined by the Title IV-D agency.

Jail would mean a facility operated by a local unit of government for the detention of persons charged with, or convicted of, criminal offenses or ordinance violations, or persons found guilty of civil or criminal contempt, or a facility that houses prisoners for up to one year under an agreement authorized under 1861 PA 164.²

MCL 552.517 and proposed MCL 552.517f

The bills are tie-barred to one another, which means that neither could take effect unless both were enacted.

HOUSE COMMITTEE ACTION:

The House Judiciary committee reported the Senate-passed versions of the bills without amendment.

FISCAL INFORMATION:

Senate Bill 1090 would have an indeterminate fiscal impact on local circuit courts. Provisions in the bill would result in increased caseloads for local circuit courts due to an increase in filing motions related to child support abatements and termination of abatements post-incarceration. It is likely that existing resources could cover any increase in costs.

The bill would have minimal fiscal impact on DHHS. The Bureau of Child Support within DHHS administers the collection and distribution of child support payments and helps administer the establishment and enforcement of child support orders. The bill's provisions would not change the current role and responsibilities of DHHS and would have no significant fiscal impact on the department.

Senate Bill 1091 would have an indeterminate fiscal impact on the state and on local friend of the court offices. An increase in child support-related motions would result in increased workloads for friend of the court offices responsible for conducting administrative reviews, sending notices of child support abatement, adjusting child support records to reflect

² <http://legislature.mi.gov/doc.aspx?mcl-791-262>

abatements, conducting reviews when motions are objected to, and conducting reviews post-incarceration. SCAO would be required to develop forms for use by friend of the court offices and involved parties to implement provisions of the bill. It is likely that existing resources could cover any increase in costs.

The bill would have no fiscal impact on DHHS.

ARGUMENTS:

For:

Supporters of the bills argued that reliable and consistent child support payments are crucial not only in successfully fulfilling child support obligations under a court order, but also for the future success of the child. In recognition of the diminishment of earning capacity during and after incarceration, the bills would allow courts to redetermine the individual's ability to pay the required child support and give the individual time to start earning income after incarceration. These provisions would provide a better chance for child support obligations to be satisfied when an individual is incarcerated.

Against:

Concerns were raised in House committee testimony that the bills would allow individuals to circumvent their child support obligations by continuously and intentionally going to jail. If the individual were incarcerated for more than 180 days each time, then he or she would not have to pay the child support owed under the court order.

POSITIONS:

The following entities indicated support for the bills (12-2-20):

- Department of Health and Human Services
- Michigan Office of Child Support
- Citizens for Prison Reform
- Michigan County Social Services Association
- American Civil Liberties Union of Michigan
- National Association of Social Workers, Michigan Chapter
- Safe and Just Michigan

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