

TO: ATTORNEYS PRACTICING DOMESTIC RELATIONS LAW

The following summary was prepared by the State Court Administrator's Office (SCAO) regarding recently enacted Domestic Relations Laws. Updated SCAO forms are or have been created.

Significant Legislative Changes

Custody & Parenting Time Investigation Changes

MCL 552.505(1)(g) limits FOC custody and parenting time investigations to cases in which the court orders an investigation. Additionally, if an order exists, this subsection requires the court to first find proper cause or a change in circumstances before ordering a change in custody or parenting time. SCAO will modify forms, instructions, brochures, and other documents to inform litigants.

Effective immediately, FOC offices should initiate custody or parenting time investigations only when ordered by the court. Before ordering an FOC office to investigate custody or parenting time dispute, the court must first find whether proper cause or a change of circumstances exists.

SCAO will create and issue a fee schedule to cover investigation costs. After the fee schedule is established, MCL 552.505(3) will allow FOC offices to charge parties who request an investigation or who bring a frivolous action for the costs of the investigation. The fees will be deposited into the FOC (215) Fund. Since the statute only permits fees based on SCAO standards, offices cannot charge fees for investigations until SCAO releases its standards and fee schedule.

Surcharges on Past-due Support

Effective December 31, 2009, MCL 552.603a(4)-(6) eliminates the automatic accrual of a surcharge on past-due support obligations. If a court finds that a payer willfully failed to pay, the court can require a payer to pay a surcharge, but that order cannot be effective until January 1, 2011. SCAO will issue a new policy to supersede Administrative Memorandum 1998-09, and modify any corresponding materials that address the surcharge issue.

MiCSES Payment Records

MCL 552.603(13) states that MiCSES records detailing charges, payments, and missed payments are considered prima facie evidence of the amount due without additional foundation when introduced in support enforcement proceedings.

No Proration at Order's End

MCL 552.605b(3) changes the date that a support obligation ends to the last day of a month specified in the support order, regardless of the minor child's actual graduation or emancipation date. Once ordered, offices will not prorate amounts for the last month of a child support obligation. SCAO will modify the Uniform Support Order to correspond with this change, and issue a policy to provide further direction. Courts should determine the approximate month that the child(ren) will graduate from high school (or the actual month the child turns 18, if after the expected month of high school graduation) and set support to end on the last day of that month.

Payment Plans Discharging Arrears

Changes to MCL 552.605e removed the requirement that the repayment period under the payment plan be tied to the poverty guidelines. The statute now permits the court to establish an arrears payment plan to pay a reasonable portion of the arrears over a reasonable time period, based on a payer's ability to pay. Motions must be served on the Office of Child Support (OCS) at least 56 days before an arrears payment plan hearing, to allow the State an opportunity to object. The SCAO will review forms and existing policy for potential changes.

Income Withholding

Fines, Fees, Costs, and Nonsupport Collections

Income withholding notices will direct sources of income to withhold the amount required to meet the payments ordered for support, service fees, fines, costs, and sanctions, and to defray arrearages under MCL 552.609(2)-(3). This allows offices to collect fees, fines, and costs through income withholding after the child support order is no longer in effect. Separate income withholding notices must be sent for support and fees payable through the MiSDU and for fines, costs and sanctions which may be paid directly to the FOC or other court office.

Withholding Limits

Effective March 28, 2010, MCL 552.608 limits the maximum withholding to 50 percent of the payer's net disposable earnings, and eliminates graduated amounts based on the payer's arrears and current family status.

Labor Organizations

Under MCL 552.609(1), labor organizations that assign a member to work must forward a copy of an income withholding notice served on the labor organization to the actual employer. The FOC can send income withholding notices to labor organizations and expect that the labor organization will forward the income withholding notice to the employee's current employer.

License Suspension

Issuing a license suspension

MCL 552.628 removes the need to petition the court before suspending a state-issued driver's license when the account shows at least two months of arrears and an income withholding notice is not applicable or otherwise has failed to generate regular payments. MCL 552.631(1)(c) permits the FOC to suspend an occupational, driver's, recreational or sporting license if a payer fails to appear for a show cause hearing, and MCL 552.645(2)(b) allows a court to order a license suspension order due to a parenting time violation. To reinstate the license, the FOC must verify that the license clearance fee was paid in full, and is required to provide a certificate to the payer stating that the payer is in compliance with the support and/or parenting time order.

Issuing process

MCL 552.630 speeds up the license suspension process by eliminating the 14-day delay after service of the suspension order on the party. FOC offices can immediately notify licensing agencies of ordered suspensions immediately after the order enters.

Notice of Suspension to Secretary of State

The FOC office will now send notice of a parent's failure to comply with a support or parenting time order to the Michigan Secretary of State when the parent fails to appear for a hearing, fails to respond to a notice of proposed suspension, or when the court determines that the payer's driver's license should be suspended.

Rescinding a license suspension

Following an order to reinstate a driver's license, MCL 552.630, 552.645(2)(b), and 257.321c require the licensee to pay a \$45 license suspension clearance fee to the clerk of the court (\$15 distributed to the Secretary of State and \$30 to the Friend of the Court fund). Parents also may owe additional fees directly to the licensing agency.

After verifying that the parent paid this fee, the FOC must provide a certificate to the licensee for the parent to take to the secretary of state stating that the parent is in compliance with the order. SCAO will issue updated forms for use in the near future.

Contempt Remedy Alternatives

Jail Alternatives

If a court finds a parent in contempt for failure to comply with a support order, or for violation of a custody or parenting time order, the court has the option to order:

FOC Supervision (Probation): The FOC may place the parent under the supervision of the FOC office for a fixed term with conditions of compliance. The court will need to establish protocols for those payers placed on supervision, and consider resource availability or possibly contract with other local agencies already providing similar services.

Jail alternative (tether or other technology): MCL 552.633 allows the court to use jail alternatives. Alternatives may include placing a non compliant parent on a tether, or requiring the parent to participate in counseling or other services.

Warrant Alternatives

If a parent fails to appear at a support enforcement hearing, the court may order any jail alternative listed above, and may order that a law enforcement agency render any vehicle owned by the payer temporarily inoperable by booting or other similar method.

Setting Bonds on Parenting Time Bench Warrants

Under MCL 552.644(5) if a parent has been arrested for failure to appear at a show cause hearing for a parenting time violation, if the court cannot immediately hold the hearing, the court must set bond in an amount the court deems necessary to secure the parent's appearance.