

HOUSE BILL No. 4773

May 28, 2003, Introduced by Reps. Condino, Lipsey, Voorhees and Vander Veen and referred to the Committee on Judiciary.

A bill to amend 1982 PA 294, entitled "Friend of the court act," by amending sections 17, 17b, and 19 (MCL 552.517, 552.517b, and 552.519), sections 17 and 17b as amended by 2002 PA 571 and section 19 as amended by 2002 PA 569.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 17. (1) After a final judgment containing a child
2 support order has been entered in a friend of the court case, the
3 office shall periodically review the order, as follows:

4 (a) If a child is being supported in whole or in part by
5 public assistance, not less than once each ~~24~~ 36 months unless
6 both of the following apply:

7 (i) The office receives notice from the department that good
8 cause exists not to proceed with support action.

9 (ii) Neither party has requested a review.

1 (b) At the initiative of the office, if there are reasonable
2 grounds to believe that the amount of child support awarded in
3 the judgment should be modified or that dependent health care
4 coverage is available and the support order should be modified to
5 include an order for health care coverage. Reasonable grounds to
6 review an order under this subdivision include temporary or
7 permanent changes in the physical custody of a child that the
8 court has not ordered, increased or decreased need of the child,
9 probable access by an employed parent to dependent health care
10 coverage, or changed financial conditions of a recipient **of**
11 **support** or a payer ~~of child support~~ including, but not limited
12 to, application for or receipt of public assistance, unemployment
13 compensation, or worker's compensation; **or incarceration or**
14 **release from incarceration after a criminal conviction and**
15 **sentencing to a term of more than 1 year. Within 14 days after**
16 **receiving information that a recipient of support or payer is**
17 **incarcerated or released from incarceration as described in this**
18 **subsection, the office shall initiate a review of the order. A**
19 **review initiated by the office under this subdivision does not**
20 **preclude the recipient of support or payer from requesting a**
21 **review under subdivision (d).**

22 (c) At the direction of the court.

23 (d) ~~(e)~~ Upon receipt of a written request from either
24 party. Within ~~15~~ 14 days after receipt of the review request,
25 the office shall determine whether the order is due for review.
26 The office is not required to investigate more than 1 request
27 received from a party each ~~24~~ 36 months.

1 **(e)** ~~-(d)-~~ If a child is receiving medical assistance, not
 2 less than once each ~~-24-~~ **36** months unless either of the following
 3 applies:

4 (i) The order requires provision of health care coverage for
 5 the child and neither party has requested a review.

6 (ii) The office receives notice from the ~~department~~ **family**
 7 **independence agency** that good cause exists not to proceed with
 8 support action and neither party has requested a review.

9 **(f)** ~~-(e)-~~ If requested by the initiating state for a
 10 recipient of services in that state under title IV-D, not less
 11 than once each ~~-24-~~ **36** months. Within ~~-15-~~ **14** days after receipt
 12 of a review request, the office shall determine whether an order
 13 is due for review.

14 (2) Within 180 days after determining that a review is
 15 required under subsection (1), the office shall send notices as
 16 provided in section ~~-17b(2) and (3)-~~ **17b**, conduct a review, and
 17 obtain a modification of the order if appropriate.

18 (3) The office shall use the child support formula developed
 19 by the bureau under section 19 in calculating the child support
 20 award. ~~-If the office determines from the facts of the case that~~
 21 ~~application of the child support formula would be unjust or~~
 22 ~~inappropriate, or that income should not be based on actual~~
 23 ~~income earned by the parties, the office shall prepare a written~~
 24 ~~report that includes all of the following:~~

25 ~~— (a) The support amount, based on actual income earned by the~~
 26 ~~parties, determined by application of the child support formula~~
 27 ~~and all factual assumptions upon which that support amount is~~

1 based.

2 ~~—— (b) An alternative support recommendation and all factual~~
 3 ~~assumptions upon which the alternative support recommendation is~~
 4 ~~based.~~

5 ~~—— (c) How the alternative support recommendation deviates from~~
 6 ~~the child support formula.~~

7 ~~—— (d) The reasons for the alternative support recommendation.~~

8 ~~—— (e) All evidence known to the friend of the court that the~~
 9 ~~individual is or is not able to earn the income imputed to him or~~
 10 ~~her.~~

11 (4) The office shall petition the court if modification is
 12 determined to be necessary ~~under subsection (3)~~ unless either
 13 of the following applies:

14 (a) The difference between the existing and projected child
 15 support award is within the minimum threshold for modification of
 16 a child support amount as established by the formula.

17 (b) The court previously determined that application of the
 18 formula was unjust or inappropriate and the office determines
 19 ~~under subsection (3)~~ that the facts of the case and the reasons
 20 and amount of the prior deviation remain unchanged.

21 (5) ~~A petition for modification may be made at the same~~
 22 ~~time the parties are provided with notice under section 17b(3).~~
 23 ~~A hearing held on a proposed modification shall be scheduled no~~
 24 ~~earlier than 30 days after the date of the notice provided for in~~
 25 ~~section 17b(3).~~ **The notice under section 17b(3) constitutes a**
 26 **petition for modification of the support order and shall be filed**
 27 **with the court.**

1 (6) If the office determines there should be no change in
2 the order and a party objects to the determination in writing to
3 the office within 30 days after the date of the notice provided
4 for in section 17b(3), the office shall schedule a hearing before
5 the court.

6 (7) If a support order lacks provisions for health care
7 coverage, the office shall petition the court for a modification
8 to require that 1 or both parents obtain or maintain health care
9 coverage for the benefit of each child who is subject to the
10 support order if either of the following is true:

11 (a) Either parent has health care coverage available, as a
12 benefit of employment, for the benefit of the child at a
13 reasonable cost.

14 (b) Either parent is self-employed, maintains health care
15 coverage for himself or herself, and can obtain health care
16 coverage for the benefit of the child at a reasonable cost.

17 (8) The office shall determine the costs to each parent for
18 dependent health care coverage and child care costs and shall
19 disclose those costs in the ~~report~~ **recommendation** under section
20 ~~17b(4)~~ **17b(3)**.

21 Sec. 17b. ~~(1) Each party subject to a child support order~~
22 ~~shall be notified of the right to request a review of the order~~
23 ~~as provided in section 17, and the place and manner in which to~~
24 ~~make the request. For a friend of the court case, the notice~~
25 ~~shall be provided by the office or, pursuant to court rule, by~~
26 ~~the plaintiff, using the informational pamphlet required under~~
27 ~~section 5. The notice shall be sent to the party's last known~~

1 address.

2 ~~—— (2) The office shall notify each party of a review of a child~~
3 ~~support order under section 17 at least 30 days before the review~~
4 ~~is conducted. The notice shall request income, expense, or other~~
5 ~~information as needed from the party to conduct the review and~~
6 ~~shall specify the date by which that information is due. The~~
7 ~~notice shall be sent to each party to his or her last known~~
8 ~~address.~~

9 ~~—— (3) After a review of a child support order has been~~
10 ~~conducted, the office shall notify each party of a proposed~~
11 ~~increase or decrease in the amount of child support, a proposed~~
12 ~~modification to order health care coverage, or a determination~~
13 ~~that there should be no change in the order. Notice of an~~
14 ~~increase or decrease in child support or a modification to order~~
15 ~~health care coverage can be provided by or with a copy of the~~
16 ~~petition for modification. The notice shall also inform the~~
17 ~~parties of both of the following:~~

18 ~~—— (a) That the party may object to the proposed modification or~~
19 ~~determination that there should be no change in the order at a~~
20 ~~hearing before a referee or the court.~~

21 ~~—— (b) The time, place, and manner in which to raise~~
22 ~~objections.~~

23 ~~—— (4) The office shall make available to each party and his or~~
24 ~~her attorney a copy of the written report, transcript,~~
25 ~~recommendation, and supporting documents or a summary of~~
26 ~~supporting documents prepared or used by the office under~~
27 ~~section 17 before the court modifies a support order.~~

1 (1) Child support orders entered after the effective date of
2 the 2003 amendatory act that added subsection (8) shall be
3 modified according to this section. For each support order
4 entered before the effective date of the 2003 amendatory act that
5 added subsection (8), the friend of the court office shall
6 provide notice to the parties of their right to a review under
7 this section as required by federal law. Notices under this
8 subsection may be placed in court orders as allowed by federal
9 law.

10 (2) The friend of the court office shall initiate proceedings
11 to review support by sending a notice to the parties. The notice
12 shall request information sufficient to allow the friend of the
13 court to review support, state the date the information is due,
14 and advise the parties concerning how the review will be
15 conducted.

16 (3) After the information in subsection (2) is due, but not
17 sooner than 21 days after the date the notice is sent, the friend
18 of the court office shall calculate the support amount in
19 accordance with the child support formula and send a notice to
20 each party and his or her attorney, which shall include all of
21 the following:

22 (a) The amount calculated for support.

23 (b) The proposed effective date of the support amount.

24 (c) Substantially the following statement: "Either party may
25 object to the recommended support amount. If no objection is
26 filed within 21 days of the date this notice was mailed, an order
27 will be submitted to the court incorporating the new support

1 amount." The notice also shall inform the parties of how and
2 where to file an objection.

3 (4) Twenty-one or more days from the date the notice required
4 by subsection (3) is sent, the friend of the court office shall
5 determine if an objection has been filed. If an objection has
6 been filed, the friend of the court shall set the matter for a
7 hearing before a judge or referee or, if the office receives
8 additional information with the objection, it may recalculate the
9 support amount and send out a revised notice in accordance with
10 subsection (3). If no objection is filed, the friend of the
11 court office shall prepare an order which the court shall enter
12 if it approves of the order.

13 (5) The friend of the court may schedule a joint meeting
14 between the parties to attempt to expedite resolution of support
15 issues as provided in section 42a of the support and parenting
16 time enforcement act, 1982 PA 295, MCL 552.642a.

17 (6) The following provisions apply to support review
18 proceedings under this section:

19 (a) A recommendation under subsection (3) shall state the
20 calculations upon which the support amount is based. If the
21 friend of the court office recommends a support amount based on
22 imputed income, the recommendation shall also state the amount
23 that would have been recommended based on the actual income of
24 the parties if the actual income of the parties is known. If
25 income is imputed, the recommendation shall recite all factual
26 assumptions upon which the imputed income is based.

27 (b) The friend of the court office may impute income to a

1 party who fails or refuses to provide information requested under
2 subsection (2).

3 (c) At a hearing based on an objection to a friend of the
4 court office recommendation, the trier of fact may consider the
5 friend of the court office's recommendation as evidence to prove
6 a fact relevant to the support calculation when no other evidence
7 is presented concerning that fact, if the parties agree or no
8 objection is made to its use for that purpose.

9 (7) The court shall not require proof of a substantial change
10 in circumstances to modify a child support order when support is
11 adjusted under section 17(1).

12 (8) A party may also file a motion to modify support. Upon
13 motion of a party, the court may only modify a child support
14 order upon finding a substantial change in circumstances,
15 including, but not limited to, health care coverage becoming
16 newly available to a party and a change in the support level
17 under section 17(4)(a).

18 Sec. 19. (1) The state friend of the court bureau is
19 created within the state court administrative office, under the
20 supervision and direction of the supreme court.

21 (2) The bureau shall have its main office in Lansing.

22 (3) The bureau shall do all of the following:

23 (a) Develop and recommend guidelines for conduct, operations,
24 and procedures of the office and its employees, including, but
25 not limited to, the following:

26 (i) Case load and staffing standards for employees who
27 perform domestic relations mediation functions, investigation and

1 recommendation functions, referee functions, enforcement
2 functions, and clerical functions.

3 (ii) Orientation programs for clients of the office.

4 (iii) Public educational programs regarding domestic
5 relations law and community resources, including financial and
6 other counseling, and employment opportunities.

7 (iv) Procedural changes in response to the type of grievances
8 received by an office.

9 (v) Model pamphlets and procedural forms, which shall be
10 distributed to each office.

11 (vi) A formula to be used in establishing and modifying a
12 child support amount and health care obligation. The formula
13 shall be based upon the needs of the child and the actual
14 resources of each parent. The formula shall establish a minimum
15 threshold for modification of a child support amount. The
16 formula shall consider the child care and dependent health care
17 coverage costs of each parent. The formula shall include
18 guidelines for setting and administratively adjusting the amount
19 of periodic payments for overdue support, including guidelines
20 for adjustment of arrearage payment schedules when the current
21 support obligation for a child terminates and the payer owes
22 overdue support.

23 (b) Provide training programs for the friend of the court,
24 domestic relations mediators, and employees of the office to
25 better enable them to carry out the duties described in this act
26 and supreme court rules. After September 30, 2002, the training
27 programs shall include training in the dynamics of domestic

1 violence and in handling domestic relations matters that have a
2 history of domestic violence.

3 (c) Gather and monitor relevant statistics.

4 (d) Annually issue a report containing a detailed summary of
5 the types of grievances received by each office, and whether the
6 grievances are resolved or outstanding. The report shall be
7 transmitted to the legislature and to each office and shall be
8 made available to the public. The annual report required by this
9 subdivision shall include, but is not limited to, all of the
10 following:

11 (i) An evaluative summary, supplemented by applicable
12 quantitative data, of the activities and functioning of each
13 citizen advisory committee during the preceding year.

14 (ii) An evaluative summary, supplemented by applicable
15 quantitative data, of the activities and functioning of the
16 aggregate of all citizen advisory committees in the state during
17 the preceding year.

18 (iii) An identification of problems that impede the
19 efficiency of the activities and functioning of the citizen
20 advisory committees and the satisfaction of the users of the
21 committees' services.

22 (e) Develop and recommend guidelines to be used by an office
23 in determining whether or not parenting time has been wrongfully
24 denied by the custodial parent.

25 (f) Develop standards and procedures for the transfer of part
26 or all of the responsibilities for a case from one office to
27 another in situations considered appropriate by the bureau.

1 (g) Certify domestic relations mediation training programs as
2 provided in section 13.

3 (h) Establish a 9-person state advisory committee, serving
4 without compensation except as provided in subsection (4),
5 composed of the following members, ~~each of whom is~~ **giving**
6 **preference to** a member of a citizen advisory committee:

7 (i) Three public members who have had contact with an office
8 of the friend of the court.

9 (ii) Three attorneys who are members of the state bar of
10 Michigan and whose practices are primarily domestic relations
11 law. Not more than 1 attorney may be a circuit court judge.

12 (iii) Three human service professionals who provide family
13 counseling.

14 (i) Cooperate with the office of child support in developing
15 and implementing a statewide information system as provided in
16 the office of child support act, 1971 PA 174, MCL 400.231 to
17 400.240.

18 (j) Develop and make available guidelines to assist the
19 office of the friend of the court in determining the
20 appropriateness in individual cases of the following:

21 (i) Imposing a lien or requiring the posting of a bond,
22 security, or other guarantee to secure the payment of support.

23 (ii) Implementing the offset of a delinquent payer's state
24 income tax refund.

25 (k) Develop and provide the office of the friend of the court
26 with all of the following:

27 (i) Form motions, responses, and orders for use by an

1 individual in requesting the court to modify his or her child
2 support, custody, or parenting time order, or in responding to a
3 motion for modification without the assistance of legal counsel.

4 (ii) Instructions on preparing and filing the forms,
5 instructions on service of process, and instructions on
6 scheduling a support, custody, or parenting time modification
7 hearing.

8 (iii) **Guidelines for imputing income for the calculation of**
9 **child support.**

10 (l) Develop guidelines for, and encourage the use of, plain
11 language within the office of the friend of the court including,
12 but not limited to, the use of plain language in forms and
13 instructions within the office and in statements of account
14 provided as required in section 9.

15 (m) In consultation with the domestic violence prevention and
16 treatment board created in section 2 of 1978 PA 389,
17 MCL 400.1502, develop guidelines for the implementation of
18 section 41 of the support and parenting time enforcement act,
19 **1982 PA 295**, MCL 552.641, that take into consideration at least
20 all of the following regarding the parties and each child
21 involved in a dispute governed by section 41 of the support and
22 parenting time enforcement act, **1982 PA 295**, MCL 552.641:

23 (i) Domestic violence.

24 (ii) Safety of the parties and child.

25 (iii) Uneven bargaining positions of the parties.

26 (4) The state advisory committee established under subsection
27 (3)(h) shall advise the bureau in the performance of its duties

1 under this section. The bureau shall make a state advisory
2 committee report or recommendation available to the public.
3 State advisory committee members shall be reimbursed for their
4 expenses for mileage, meals, and, if necessary, lodging, under
5 the schedule for reimbursement established annually by the
6 legislature. A state advisory committee meeting is open to the
7 public. A member of the public attending a state advisory
8 committee meeting shall be given a reasonable opportunity to
9 address the committee on any issue under consideration by the
10 committee. If a vote is to be taken by the state advisory
11 committee, the opportunity to address the committee shall be
12 given before the vote is taken.

13 (5) The bureau may call upon each office of the friend of the
14 court for assistance in performing the duties imposed in this
15 section.