

FRIEND OF THE COURT ENFORCEMENT OF DOMESTIC RELATIONS ORDERS



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OFFICE OF THE FRIEND OF THE COURT

Enforcement of Domestic Relations Orders

Child Support

The friend of the court office must begin support enforcement action when past due child support reaches an amount equal to one month or more of support. The friend of the court will enforce a child support order without a complaint or a request by the payee. The most common form of child support collection is income withholding in which the court orders a payer's employer(s) to deduct court ordered child support payments from the payer's wages. If income withholding is not successful (which sometimes occurs when a payer is not employed, receives payments "under the table," or is self employed), the friend of the court office may petition the court for an order requiring the payer to "show cause" (explain) why the payer should not be found in contempt of court for failing to pay support that the court has ordered. The friend of the court office also may use other enforcement remedies, some of which are discussed in this brochure.

Parenting Time

The friend of the court office is required to provide enforcement services for parenting time (visitation). The friend of the court office must begin enforcement of a parenting time order when it receives a written statement containing specific facts showing a violation of the parenting time order. This statement should include dates, times, and other important information about denied parenting time.

A party has the right to request assistance from the friend of the court office to prepare a written complaint about parenting time. If the friend of the court office believes that the parenting time order has been violated, the office may do one or more of the following:

1. Apply the local make-up parenting time policy.
2. Schedule a contempt of court hearing.
3. Refer the parties to a mediator (a neutral third party) if the parties agree to mediation (a process to facilitate communication between the parties).
4. Schedule a joint meeting at the friend of the court office that may result in a written agreement or a recommended order.
5. Petition the court for a change in the existing parenting time order.

Other Enforcement Remedies

Various laws enable the friend of the court office to employ enforcement remedies to encourage parents to follow court orders. These include:

Surcharge on Child Support

MCL 552.603a states:

"(1) For a friend of the court case, as of January 1 and July 1 of each year, a surcharge shall be added to support payments that are past due as of those dates. The surcharge shall be calculated at 6-month intervals at an annual rate of interest equal to 1% plus the average interest rate paid at auctions of 5-year United States treasury notes during the 6

months immediately preceding July 1 and January 1, as certified by the state treasurer. The amount of the surcharge shall not compound. The amount shown as due and owing on the records of the friend of the court as of January 1 and July 1 of each year shall be reduced by an amount equal to 1 month's support for purposes of assessing the surcharge. A surcharge under this subsection shall not be added to support ordered under the paternity act, 1956 PA 205, MCL 722.711 to 722.730, for the time period to the date of the support order.

(2) A surcharge as computed in subsection (1) shall be assessed on a semiannual cycle on January 1 and July 1 of each year except as otherwise provided under subsection (3).

(3) A surcharge shall not be assessed for the current semiannual cycle for any of the following:

(a) Beginning on July 1, 2005, in cases in which the friend of the court is collecting on a current child support obligation, the payer has paid 90% or more of the most recent semiannual obligation during the semiannual cycle.

(b) For a support order entered after the effective date of the amendatory act that added this subsection, for any period of time a support order did not exist when support is later ordered for that period.

(c) The surcharge is waived or abated under a court order under section 3d.

(4) The surcharge shall be collected and enforced by any means authorized under this act, the friend of the court act, or another appropriate federal or state law for the enforcement and collection of child support and paid through the state disbursement unit.”

A surcharge collected for support owed the custodial parent is paid to that parent. A surcharge collected for support owed to the State of Michigan for payments previously made to the custodial parent is paid to the State of Michigan.

Consumer Reporting

Lenders obtain a credit report from a consumer reporting agency when deciding whether to extend credit. A history of untimely child support payments or a large arrearage may result in the lender choosing to deny a loan application. Under MCL 552.512 when support arrears reach two or more months, the friend of the court sends a notice to the payer that the payer has been selected for consumer reporting. The notice gives the payer 21 days (after the date the notice is sent) to pay the arrears in full or to request a review prior to the consumer reporting agency being notified. The only grounds to request a review are a mistake of fact concerning the arrearage amount owed, or a mistake about the identity of the payer. The friend of the court office will not submit a payer's name to a consumer reporting agency while a review is pending.

If the payer does not request a review the friend of the court office, will report the arrearage to a consumer reporting agency and will continue to do so each month until the arrearage is eliminated.

If the friend of the court office discovers it has given incorrect information to a consumer reporting agency, the friend of the court has 14 days (from the date that the incorrect information was discovered) to notify the consumer reporting agency and correct the

error. Sometimes a payer asks the friend of the court to send current support information to a consumer reporting agency. Often, the request comes from a payer who is attempting to purchase a home or vehicle.

Sometimes the friend of the court office receives a direct inquiry from a credit-reporting agency for current support information about a payer. Michigan law allows the friend of the court to respond to these requests.

License Suspension: Support or Parenting Time Violations

Under MCL 552.628, the friend of the court office may take action to suspend occupational, sporting, recreational, or drivers' licenses' if a payer has a support arrearage of two or more months. This enforcement tool is used when an income withholding order is not in place or has not been effective, or when the payer has not made regular payments on the support obligation and the arrearage. The friend of the court office must give notice to a payer prior to petitioning for the suspension of a license. The notice informs the payer of the amount of the arrearage; the type of license to be suspended; and that the payer has 21 days from the mailing of the notice to either pay the arrearage or request a hearing on the arrearage or the suspension. Payers who request a hearing must either prove that there is a mistake as to the arrearage amount or as to the identity of the payer, or propose a schedule for payment of the arrearage to the court—which the court has the option to accept or reject.

The notice also must inform the payer of the right to petition for a modification of support if the payer has had a change in circumstances.

MCL 552.644(2) (g) allows the court to find a parent who violates a parenting time order without good cause in contempt, and to suspend the occupational, driver's, recreational, or sporting license of a parent who fails to comply with an order for makeup or ongoing parenting time. A contempt procedure involves a "show cause" hearing at which a party has an opportunity to explain why he or she should not be held in contempt for violating a court parenting time order. If a parent's license is suspended, only a court can cancel the suspension and the Secretary of State and/or occupational regulatory agency may charge the party a license reinstatement fee.

Passport Restrictions

Under 42 USC 652(k) (1), a parent who has more than \$2,500 in certified child support arrears will be ineligible to receive a passport

How Can You Avoid Enforcement Action?

If a court orders you to do something, obey the order. If you do not believe the order is fair, you may file a motion to change the order or appeal the judge's decision to a higher court.

Keep accurate records. If the court order requires you to make a payment, use a check, money order, or other method that will provide a record of the transaction. Child support payments should be made to the Michigan State Disbursement Unit (MiSDU) unless your court order specifically states otherwise. Information about the MiSDU is available at

<https://www.misdu.com/secure/>. Parties who opted out of friend of the court services and who make direct child support payments should keep dated, detailed receipts and be prepared to provide copies to the court.

If a parenting time violation occurs, detail the events in a written record. If possible, try to resolve disputes with the other party. Parties who cannot reach a resolution, should consider mediation services offered by the friend of the court office.

If you experience a change in circumstances that affects your ability to obey a court order (e.g. a significant change in income, a life-changing medical condition, a call to emergency military service, a reconciliation with the payer, a pending prison sentence) notify the other party and the friend of the court as soon as possible. Do not delay. If possible, try to reach an agreement with the other party to work through the change, especially if the change is temporary. Information about military adjustment procedures can be found at MCL 552.615a.

If the friend of the court office determines that you have had a change in circumstances, it may petition the court to review your current order. The court may then ask the friend of the court to make recommendations. If the friend of the court determines that you have not had a change in circumstances, you may file your own motion to change your court order with the circuit court and schedule a hearing to allow the court to make a ruling. SCAO- approved court forms are available online at <http://courts.michigan.gov/>, and forms are available at your friend of the court office.

Update your personal information with your friend of the court office. Your child support order requires you to notify your friend of the court when you change your address or employer. Do this in writing. A “Change of Personal Information” form (foc108) is available at <http://courts.michigan.gov/scao/courtforms/domesticrelations/focgeneral/foc108.pdf>.