

New Legislation Impacts Friend of the Court Procedures

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Several bills amending the Friend of the Court Act became effective in early 2010. The nine-bill package in its totality would revise certain procedures for matters under the jurisdiction of the Friend of the Court.

The amendments are encapsulated in Public Acts 193, 194, 233, 234, 235, 236, 237, 238 and 239 (all of 2009). Some of the amendments are limited in scope and will have little or no bearing on an attorney's divorce practice. Others are more technical. For purposes of this article I will focus on those amendments that are broader in scope and represent significant changes of importance to parties.

Among other changes, Public Act 193 provides:

- Parties in a support action where a support order was entered must present certain information to the Friend of the Court. Such information includes the payer's mailing address, residential address, telephone number, sources of income, Social Security number and driver's license number. A payer must notify the Friend of the Court within 21 days of the date on which any of the above-referenced information was changed.
- Amounts withheld from a payer's income must include court-ordered fines, costs and sanctions.
- Employer withholding for child support is limited to a maximum of 50 percent of the payer's disposable income.

- Surcharges may be added to past due amounts if the court determines that a payer willfully failed to pay child support as ordered by the court; however, automatic surcharges on all cases have been eliminated.
- The Secretary of State must suspend a payer's driver's license upon notification by the Friend of the Court that the payer failed to attend a license suspension hearing.
- A court may order that a payer's vehicle be rendered inoperable for a violation of a support order in a civil contempt hearing.
- Computer records from the State Disbursement Unit and Office of Child Support are prima facie authentic in support enforcement proceedings and are admissible as evidence.

Public Act 194 requires the Secretary of State to suspend a person's driver's license for failure to appear for a hearing, comply with a repayment plan order, or respond to a license suspension notice. The amended statute further requires that the suspension continue until the person obtains certification from the Friend of the Court that he/she complied with the court's support, custody or parenting time order and provides confirmation that the necessary license reinstatement fees were paid in full.

Public Act 233 amended the Friend of the Court Act in the following ways:

- If custody has already been established, the court may order the Friend of the Court to make an investigation only if the court finds that proper cause or a change in circumstances has been shown.
- The Friend of the Court may charge parties up to actual costs incurred in conducting an investigation and in making the report and recommendation regarding custody and/or parenting time.
- The Friend of the Court employee or other person who provides alternative dispute resolution services

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- in a custody, parenting time or support action is required to possess certain minimum qualifications as established by the State Court Administrative Office.
- Communications between a domestic relations mediator and party are privileged under the law. The amended statute removed this provision and in its place provides that communications between the Friend of the Court alternative dispute resolution provider and party are confidential subject to the Michigan Court Rules.

Public Act 235 provides that the mother and father of a child born out of wedlock are responsible for the medical expenses related to the mother's pregnancy, birth of the child, and genetic testing, if necessary. These expenses will be apportioned between the parents in the same manner as a child's medical expenses are apportioned under the child support formula; however, when those medical expenses are paid by Medicaid, then the mother will not be required to pay any portion of the expense.

Public Act 236 was amended to prohibit, except in certain circumstances, a child support order from being made retroactive before the date that the complaint was filed.

Another amendment pertains to the appropriate method of service when a custodial parent files a complaint against the noncustodial parent for failure to financially assist to provide necessary shelter, food, and/or clothing for the child. In such a circumstance, the court must issue a summons to appear for hearing that must be served personally upon the noncustodial parent and spouse of the petitioner. Service must be conducted in the manner prescribed by court rules for service of process in civil actions.

All nine public acts referenced at the outset of this article were passed by the Legislature and signed into law by the governor in late 2009. They represent the culmination of work conducted in large part by the Friend of the Court Association in Michigan.

Those who are interested should review the amended statutes in their entirety, as the amendments described above are by no means exhaustive but represent only some of the more noteworthy changes. As always, if you have any questions or need more information about the Oakland County Friend of the Court and its services, please visit the Web site at www.oakgov.com/foc or call 248-858-0431.

Until next time...

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