



THE ENFORCER

BY DAVID FINDLING

THE FINDLING LAW FIRM

WITH SPECIAL THANKS TO ERICA J. EHRlichMAN, Esq., JOHN W. POLDERMAN, Esq., KRISTY L. BIDDINGER, Esq. AND BRANDON J. WILSON, Esq. FOR THEIR INVALUABLE ASSISTANCE IN PREPARATION.

Felony Non-Support and the Crime Victim's Rights Act

A practitioner seeking to collect child support or alimony on a client's behalf has likely found the process to be difficult. More than ever, those obligated to support their children and are unwilling or unable to do so. Conventional approaches may be ineffective against a determined scofflaw. However, when all else fails a practitioner should look to the Michigan Penal Code and the Crime Victims Rights Act for assistance.

Background

In dealing with a habitual offender of a support order, the law provides for several remedies to compel payment. Under MCL §600.552, if a payer fails to meet his or her support obligations, the amount of the support obligation constitutes a lien upon the real and personal estate of the non-payer. Furthermore, where a payer fails to pay a support obligation as it comes due, each non-payment serves as a judgment against the offending party. However, if the aforementioned remedies are not enough to satisfy an arrearage, what else can be done?

Felony Non-Support Charge Pursuant to MCL 750.165

Where the support payor fails to provide for support, the Michigan Penal Code provides for the imposition of criminal penalties. MCL 750.165 makes a person guilty of a four year felony and/or \$2,000.00 fine where that person;

1. was required to by a decree of separate maintenance or divorce order to support a child or current or former spouse;
2. appeared in or received notice by personal service in the action in which the order was issued; and
3. failed to pay the required support at the time ordered or in the amount ordered.¹

Therefore, in a case where the payor either neglects to pay on time, or in the requisite amount, the case may be referred to the county prosecutor's office. If a guilty verdict is entered, not only does the defendant face fines and jail time, but the threat of further jail time and civil penalties may lie ahead for a failing to satisfy an order of restitution.

Enforcement Pursuant to The Crime Victim's Rights Act

In 1985, the Michigan Legislature passed the Crime Victim's Rights Act.² Section 780.766 provides:

An order of restitution entered under this section remains effective until it is satisfied in full... An order of restitution may be enforced by the prosecuting attorney, a victim, a victim's estate, or any other person or entity named in the order to receive the restitution in the same manner as a judgment in a civil action or a lien.

Thus, once you have secured a guilty verdict, the Michigan Crime Victim's Rights Act allows the person or entity, for whose benefit restitution was ordered, or the prosecutor to enforce the order of restitution until it is satisfied. If the payor fails to honor an order of restitution for unpaid support, such inaction would likely result in a violation of the payor's probation and be grounds for further jail time. In addition, The Crime Victim's Rights Act gives the criminal court the authority to use civil remedies to enforce an order of restitution such as appointment of a receiver over the payor. When all else fails use of the to coercive power of imprisonment may be the most effective remedy in getting a dead beat to honor his or her support obligations.

Endnotes

1. *People v. Herrick*, 277 Mich.App. 255, 259, 744 N.W.2d 370 (2007).
2. MCL 780.766.

