

# SENATE . . . . . No. 818

By Mr. White, petition (accompanied by bill, Senate, No. 818) of W. Paul White and Mary C. Fitzpatrick for legislation relative to actions for contempt in support proceedings and to provide surety to ensure the appearance of persons before the court on a *capias*. The Judiciary.

## The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Three.

AN ACT RELATIVE TO ACTIONS FOR CONTEMPT IN SUPPORT PROCEEDINGS;  
SURETY TO ENSURE THE APPEARANCE OF PERSONS BEFORE THE COURT  
ON A *CAPIAS*.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 Chapter 215, section 34A of the General Laws, as most recently  
2 amended by St. 1985, Chapter 342 is hereby amended by striking  
3 the entire section and inserting in place thereof the following new  
4 section: —

5 Actions for contempt against any party for failure to obey any  
6 judgment of the probate and family court relative to the support  
7 of a spouse or children or affecting the custody of children shall  
8 be commenced in accordance with the rules of the probate and  
9 family court applicable to domestic relations matters.

10 The cost of such service shall, upon approval of the court be  
11 borne by the commonwealth. If the party summonsed for  
12 contempt fails to appear, the court may order a *capias* to issue  
13 which shall be returnable forthwith or at such time as the court  
14 may order. The *capias* may be served at any time and shall not  
15 require a sunset clause so-called. Said *capias* shall be served by  
16 a deputy sheriff, constable, or upon motion, by a person  
17 designated by the court to make such service and the costs of  
18 service shall be paid by the commonwealth. The court shall order  
19 the defendant to reimburse the commonwealth for costs of service  
20 of process when he appears before the court.

21 Any judge of the probate and family court may, with the  
22 approval of the chief of police, through the office of said chief,  
23 order a police officer to make service of the summons or of a  
24 capias, if in his opinion, service by a police officer is necessary  
25 to promote the efficient operation of this section. The schedule  
26 of fees in section eight of chapter two hundred and sixty-two shall  
27 apply to the cost of service made pursuant to this section.

28 Upon an arrest on a capias issued for the apprehension of a  
29 defendant who has defaulted, the court may order the defendant  
30 to post sufficient surety, in a manner prescribed by the court,  
31 properly assigned to the register of the county in which the matter  
32 is pending, in an amount equal to the arrearages alleged to have  
33 been owed at the time of the default, or may order the defendant  
34 to be committed to jail pending trial if said surety is not posted.  
35 A hearing on the merits must be scheduled within ten calendar  
36 days of the date that the defendant is brought before the court  
37 in custody.

38 In entering a judgment of contempt for failure to comply with  
39 an order or judgment for monetary payment, there shall be a  
40 presumption that the plaintiff is entitled to receive from the  
41 defendant, in addition to the judgment on monetary arrears, all  
42 of his attorney's fees and expenses, including wages lost as a result  
43 of appearances in court as a witness, relating to the attempted  
44 resolution, initiation and prosecution of the complaint for  
45 contempt. The contempt judgment so entered shall include  
46 reasonable attorney's fees and expenses upon presentment to the  
47 court by the plaintiff, unless the probate and family court judge  
48 enters specific findings that such attorney's fee and expenses shall  
49 not be paid by the defendant.

50 Any monetary contempt judgment shall carry with it interest,  
51 from the date of the filing of the complaint, under the provisions  
52 of chapter six C of chapter two hundred and thirty-one of the  
53 General Laws.